

## FINANCIAL SERVICES REGULATORY UPDATE

True Oak develops and distributes a monthly overview of current and proposed regulatory changes in the Australian financial services industry that we think might be of interest to our CAR and Fund Manager clients.

### GOVERNMENT

#### (1) Parliamentary Committee Confirms Changes to Wholesale Investor Test Thresholds Still on the Agenda

The Parliamentary Joint Committee on Corporations and Financial Services is currently looking into the sustainability of the wholesale investor tests, which are now 22 years old, listening from investors and product providers about any unintended consequences of changing them.

Sitting on the committee, [senator Paul Scarr said](#) while there has been public debate about the tests, he doesn't foresee any changes being made in the current government's term. However, Scarr said "the issue is still on the agenda" and potential changes may well be in the future.

#### (2) Releases Discussion Papers on AI and Consumer Law

Treasury has opened consultation on ['Review of AI and the Australian Consumer Law'](#), seeking views on how Australian Consumer Law should apply to Artificial Intelligence-enabled goods and services.

Treasury is seeking:

(a) Views on whether the Australian Consumer Law (ACL) remains suitable to:

- protect consumers who use Artificial Intelligence (AI)
- support the safe and responsible use of AI by businesses.

(b) Views on how the ACL applies to AI-enabled goods and services, including:

- how the existing principles apply
- the remedies available to consumers where things go wrong
- the mechanisms for allocating liability among manufacturers and suppliers.

Consultation is open until 12 November 24.

#### (3) Introduces Cyber Security Bill

The Government has introduced the [Cyber Security Bill 2024](#) and the [Intelligence Services and Other Legislation Amendment \(Cyber Security\) Bill 2024](#) into the House of Representatives to require reporting of cyber security incidents.

If passed the Cyber Security Bill will:

- Establish the power to mandate security standards for smart devices that are either internet- or network-connectable.
- Introduce a mandatory reporting obligation for entities who are affected by a cyber incident, receive a ransomware demand and elect to make a payment or give benefits in connection with that cyber security incident.

- Establish a 'limited use' obligation that restricts how cyber security incident information provided to the National Cyber Security Coordinator during a cyber security incident can be used and shared with other government agencies, including regulators.
- Establish a Cyber Incident Review Board to conduct post-incident reviews into significant cyber security incidents.

The Bill covers when information is intercepted, an extortion demand is received, and a payment is made in relation to that information.

The Bill will require a mandatory report to be made when:

- A cyber security incident has occurred, is occurring or is imminent and has had, is having or could reasonably be expected to have, a direct or indirect impact on a reporting business entity.
- An extorting entity makes a demand of the reporting business entity, or some third party directly related to the incident impacting the reporting entity, in order to benefit from the incident or the impact on the reporting business entity.
- The reporting business entity provides or is aware that another entity, directly related to the reporting entity, has provided a payment or benefit to the extorting entity that is directly related to the demand.

Reports will be made to the Department of Home Affairs through a portal available on [cyber.gov.au](https://cyber.gov.au), which is administered by Australian Signals Directorate (ASD)'s Australian Cyber Security Centre (ACSC).

These reports must be made within 72 hours of the payment being made, or the reporting entity becoming aware of the payment being made.

**Linked Article:** [New cyber incident response obligations for Australian organisations](#) (Allens Lawyers – 11 October 24)

**Linked Article:** [Redefining cyber readiness – Three ways to outpace Australia's new cyber laws](#) (Ashurst Lawyers – 10 October 24)

## ASIC

### (4) Releases State of the Market Review of the Use and Adoption of AI

ASIC is urging financial services and credit licensees to ensure their governance practices keep pace with their accelerating adoption of artificial intelligence (AI).

The call comes as ASIC's first state of the market review of the use and adoption of AI by 23 licensees - [Report 798 Beware the gap: Governance arrangements in the face of AI innovation](#)- found there was potential for governance to lag AI adoption, despite current AI use being relatively cautious.

ASIC Chair Joe Longo said making sure governance frameworks are updated for the planned use of AI is crucial to licensees meeting future challenges posed by the technology.

ASIC's findings revealed nearly half of licensees did not have policies in place that considered consumer fairness or bias, and even fewer had policies governing the disclosure of AI use to consumers.

Mr Longo said AI could bring significant benefits, but without governance processes keeping pace, significant risks could emerge.

'Without appropriate governance, we risk seeing misinformation, unintended discrimination or bias, manipulation of consumer sentiment and data security and privacy failures, all of which has the potential to cause consumer harm and damage to market confidence.'

Understanding and responding to the use of AI by financial firms is a key focus for ASIC, which made addressing the poor use of AI a key focus area in its latest Corporate Plan. ASIC will continue to monitor how licensees use AI as it has the potential to significantly impact not just consumer outcomes, but the safety and integrity of the financial system. Where there is misconduct, ASIC will take enforcement action if appropriate and where necessary.

## OAIC

### (5) Publishes AI Guidance

The OAIC has published 2 new guides for businesses that articulate how Australian privacy law applies to artificial intelligence (AI) and set out the OAIC's expectations as the regulator.

- The [first guide](#) is aimed at helping businesses to comply with their privacy obligations when using commercially available AI products and help them to select an appropriate product.
- The [second guide](#) provides privacy advice for those developing AI products around using personal information to train generative AI models.

## PROFESSIONAL DEVELOPMENT OPPORTUNITIES

### Online Courses

[Carbon Markets Institute](https://carbonmarketinstitute.org/education-and-training/) - <https://carbonmarketinstitute.org/education-and-training/>

- Carbon Market Fundamentals Training
- Carbon Farming Banker Training

[Bright Law](https://learn.brightlaw.com.au/collections) - <https://learn.brightlaw.com.au/collections>

- The Hawking Prohibition: financial services marketing (January 2024) – 36 min video; \$330.
- Privacy Law for Financial Services Providers – a course of 4 videos; \$440.
- Responding to Regulatory Investigations – draft policies on responding to regulatory investigations, either with or without notice; \$66

[Financial Education](https://www.financialeducation.com.au/courses/) - <https://www.financialeducation.com.au/courses/>

[FINSIA](https://www.finsia.com/education) - <https://www.finsia.com/education>

- Certificate in Climate Risk - <https://www.finsia.com/education/qualifications/certified-professional-banker/the-certificate-in-climate-risk>
- Certificate in Ethical Artificial Intelligence - <https://www.finsia.com/certificate-in-ethical-artificial-intelligence>
- Professional Refresher Packages - <https://www.finsia.com/professional-refresher>
- The Ethics of Artificial Intelligence - <https://www.finsia.com/the-ethics-artificial-intelligence>

## Events and Webinars

### November 2024

- a. AUSTRALIAN INVESTMENT COUNCIL – **Mandatory Climate Reporting: Implications for Private Capital** (Webinar – 6 November) – more info [here](#).
- b. INVESTOR GROUP ON CLIMATE CHANGE (IGCC) – **Summit 2024 Mission 1.5 Degrees** (Melbourne – 7-8 November) – more info [here](#).
- c. FINSIA – **Meet the Regulators** (Sydney – 8 November) – more info [here](#).
- d. FINSIA – **Australian and New Zealand Economic Wrap-Up** (Webinar – 12 November) – more info [here](#).
- e. AUSTRALIAN INVESTMENT COUNCIL – **Masterclass: Fundraising and Investor Relations** (Sydney – 12 November) – more info [here](#).
- f. ASIC – **Annual Forum 2024** (Sydney – 14-15 November) – more info [here](#).
- g. VARIOUS – **Women in Finance Summit 2024** (Sydney – 15 November) – more info [here](#).
- h. INTERNATIONAL BUSINESS REVIEW – **AI for Customer Experience in Financial Services 2024 Summit** (Sydney – 18-19 November) – more info [here](#).
- i. FINANCIAL ADVICE ASSOCIATION AUSTRALIA (FAAA) – **FAAA Congress** (Brisbane – 27-29 November) – more info [here](#).

### December 2024

- a. INFORMACONNECT – **Australian Carbon Capture, Utilisation and Storage Conference** (Perth – 3 December) – more info [here](#).

### March 2025

- a. Climate Zeitgeist – **Climate Investor Forum** (Melbourne – 19 March) – more info [here](#).

## INTERESTING READS

### Links to interesting blogs and articles I've recently read:

- a. [FSC calls wholesale investor test 'largely effective'](#) - Much of the current managed investment scheme regime remains fit for purpose, according to the FSC, but the "blunt instrument" of wholesale investor thresholds needs to be tweaked. (Investor Daily – 7 October 24)
- b. [Australia's first tranche of privacy reforms – a deep dive and why they matter](#) - Australia's first tranche of privacy reforms is currently before Parliament – the first step in a generational shift in Australian privacy laws. In this second publication on the latest privacy reforms, we explore "what good looks like" in building a risk-informed response to more agile, risk- and harms-focussed privacy regulation; and dig deeper into the key tranche 1 reforms, explaining what they are, and why they matter. (Ashurst Lawyers – 15 October 24)
- c. [Investor alert: Reports of stolen shares due to identity theft on the rise](#) - ASIC is warning investors to be on high alert following a significant increase in reports of stolen shares since August 2024 from people who have had their personal identity compromised. (ASIC – 15 October 24)

- d. [Banking and finance get ready for quantum computing](#) - The onus is on financial services to design a strategic map to help manage quantum computing's benefits and limitations as it's widely adopted. (FINSIA – 16 October 24)
- e. [Aussie private credit poses low direct risk, but transparency concerns persist, says RBA](#) - Australia's central bank has assessed that the local private credit market poses low direct risks to financial stability, but transparency concerns do exist. (Investor Daily – 23 October 24)
- f. [Insight Alert: Global Bank Review 2024](#) - As we approach the middle years of the current decade, banks face mounting pressure to adapt to a market defined by unsettling technological developments, uncertain geopolitics and regulators that frequently press conflicting priorities. All these issues and more are explored in this edition, which draws upon insights from Herbert Smith Freehills' global network of banking law experts. As banks face up to the imperative for reinvention, we hope this report can frame some of the most challenging questions and help provide a few of the answers. (Herbert Smith Freehills – 23 October 24)
- g. [A big win for bank customers against scammers](#) - A recent ruling from The Australian Financial Complaints Authority may herald a new era for financial scams. For the first time, a bank is being forced to reimburse a customer for the amount they were scammed. (Firstlinks – 23 October 24)
- h. [Chalmers puts the brakes on negative gearing reforms](#) – Treasurer Jim Chalmers has put the brakes on any changes to negative gearing and capital gains tax discounts, emphasising that the solution to Australia's housing crisis hinges on boosting supply. (Investor Daily – 25 October 24)
- i. [Treasurer confirms talks on Future Fund's future amid climate criticism](#) - The government is in discussions with the Future Fund regarding its future, Treasurer Chalmers has confirmed. (Investor Daily – 29 October 24)

Published by True Oak Investments Pty Ltd (ABN 81 002 558 956, AFSL 238184).

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