

## FINANCIAL SERVICES REGULATORY AND CLIMATE UPDATE

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

### FEATURE ARTICLE

#### Inaccuracies in customer reporting – Pinning the tail on the misleading or deceptive donkey

*On 5 September 2025, Herbert Smith Freehills Kramer published an [article](#) exploring with some granularity the issue of whether transactional reporting which contains incorrect data caused by underlying processing errors, is misleading and deceptive. We encourage you to read this article, which includes references to some recent case law. Set out on the next page are the set of Guiding Principles, which Herbert Smith Freehills Kramer put together as an addendum to their article.*

##### Factors in Law

##### (a) Guiding Principle 1

Customers should not expect a standard of perfection and should rather recognise that errors do occur.

##### (b) Guiding Principle 2

Reporting/recording of transactional errors is not prima facie misleading or deceptive where the report/record is accurate in terms of the transaction or transactions that occurred, even though those transactions may have occurred erroneously. In other words, such disclosure by itself does not convey an implication that the transaction(s) is/are correct.

##### Factors in Fact

##### (c) Guiding Principle 3

A report/record of a single transactional item may be more likely to be found misleading or deceptive if it conveys expressly or implicitly that the fee or charge was correct. So, for example, a report/record of a fee or charge may indicate (or a customer might reasonably infer) not just that the fee or charge amount was in fact deducted, but that it was the correct fee or charge.

Contrast:

(1) a statement that a premium of \$x, being the premium applicable to your age cohort and smoker status, was deducted from your account (and it was so deducted, but applying the wrong amount); with

(2) a statement that simply notes that \$x of premium was charged to your account (and it was so deducted, but it was the wrong amount).

Statement (1) is more likely to be held to be a representation as to the correctness of the premium than statement (2).

##### (d) Guiding Principle 4

In the case of conflicting disclosures, look to see whether/which disclosure is dominant, if any. In accordance with longstanding High Court authority, this can be a determinative factor.

*Continued next page.*

(e) **Guiding Principle 5**

Misleading or deceptive disclosure must also have regard to multiple reporting sources where applicable.

(f) **Guiding Principle 6**

The presence of some neutralising disclosure text can also be determinative. But choose the right neutralising disclosure.

Contrast statements:

(1) Statement 1: Readers should be aware that errors can occur in transactional reporting; with

(2) Statement 2: Errors can occur in transactional statements in relation to single transactions or account balances. Readers should accordingly check this disclosure against their own records including direct debit and other independent records.

The second text clearly offers superior protection.

(g) **Guiding Principle 7**

Above all, the existence of misleading or deceptive disclosures will depend on a consideration of all the relevant facts and circumstances which can displace any or all of the Guiding Principles discussed above.

## GOVERNMENT

### 1. Government Announces 2035 Emissions Reduction Target (18 September 2025)

The Government has [announced](#) its 2035 emissions reduction target for Australia's next Nationally Determined Contribution (NDC) to be submitted to the UN under the Paris Agreement.

The target is to reduce emissions to 62-70% below 2005 levels by 2035.

The Government has also released the six sector emissions reduction plans to support the Net Zero Plan.

### 2. Treasury Releases Draft Legislation on Digital Asset Reform (24 September 2025)

Treasury has released draft legislation—[the Treasury Laws Amendment \(Regulating Digital Asset, and Tokenised Custody, Platforms\) Bill 2025 Exposure Draft](#), which aims to update Australia's financial services regulatory regime, expressly capturing certain key activities within the digital and crypto asset ecosystem. It covers crypto or digital assets custodial services as well as custodial tokenisation activities that may have previously been unregulated, seeking to close regulatory gaps and support innovation in the digital asset sector.

Key takeaways:

- The draft Bill seeks to introduce a comprehensive regime for digital asset platforms and tokenised custody platforms, defining core concepts and bringing the platforms under the *Corporations Act 2001* (Cth). It focuses on the platforms themselves, regulating custody of digital tokens, rather than the underlying digital assets or tokens.
- In practice, it will require digital asset wallet providers and exchange operators who hold clients' tokens custodially to obtain an AFSL, and comply with the obligations under that licensing regime, as well as the tailored obligations this Bill would introduce. Licensees will need to comply with new asset-holding and transactional standards, platform rules and ministerial prohibitions, with breaches attracting civil penalties. The regime will give ASIC broad powers to supervise and enforce compliance with the new regime.

- Exemptions are likely to be available for small-scale platforms and intermediated staking arrangements, and transitional periods will be provided for existing operators to comply with the new regime. It will also exclude automated or self-executing software arrangements (e.g. self-hosted digital wallets or deployed smart contracts that take possession of, or transfer, digital assets).
- The new regime will not change the characterisation of whether the underlying digital assets or tokens are themselves financial products, or the obligations of issuers or those providing other services in relation to digital assets or tokens (other than the provision of digital asset platforms or tokenised custody platforms). The existing regime and ASIC's current guidance on these matters will continue to be relevant.

Consultation is open until 24 October 2025.

**Linked Article:** [Government consults on expanding Australian financial services law to digital assets](#), Allens Lawyers, 8 October 2025.

### 3. Treasury Introduces Regulatory Reform Omnibus Bill (8 October 2025)

Treasury has [introduced](#) the Regulatory Reform Omnibus Bill 2025, and has tasked the Council of Financial Regulators (CFR) with coordinating a review of financial sector regulation, including input from the ACCC, the ATO, AUSTRAC and the Australian Financial Security Authority. The CFR has also been instructed to prioritise harmonising data collection and conduct stakeholder consultation on other priority areas. The Federal Government plans to revise regulators' statements of expectations, promote the "tell-us-once" principle for government interactions, and conduct sector-specific regulatory deep dives.

## ASIC

### 4. Full Federal Court Dismisses Appeal Against False and Misleading Representations (4 September 2025)

The Full Federal Court has [unanimously dismissed](#) 'barely arguable' appeals brought by Latitude Finance Australia (Latitude) and Harvey Norman Holdings Ltd (Harvey Norman) over misleading conduct and false or misleading representations they made in a national advertising campaign promoting a 60-month interest free and no deposit payment method for goods purchased at Harvey Norman stores. The advertisements were published and broadcast thousands of times across Australia between January 2020 and August 2021 in newspapers, on radio and on television.

ASIC was concerned the advertisements masked that consumers were required to take out a credit card, such as the Latitude GO Mastercard, to purchase goods, and were liable to pay monthly account service fees and, up to 15 March 2021, also establishment fees.

In dismissing the appeals, the Full Court agreed with the trial judge that the advertisements were misleading. In their Honours' written judgment, Justices O'Bryan, Cheeseman and Bennett affirmed that:

*"The response of an ordinary and reasonable consumer to claims made in advertisements depends very much on the nature of the product being advertised and the nature of the claims being made, amongst other things. We reject the suggestion that the Court should assume in this case that ordinary and reasonable consumers who saw the representative advertisements would have been circumspect, or wary, about the claims made. The promotional message was clear and very attractive to consumers. It concerned the financial terms on which goods could be purchased at Harvey Norman stores. In our view, ordinary and reasonable consumers would have assumed that the offer made in the advertisements was stated accurately, particularly in light of Australia's strong consumer protection laws."*

The appellants argued that the existence of “large slabs of fine print” would have indicated to consumers that the meaning of the banner statements were qualified in some way. The Court overwhelmingly rejected this argument, stating:

*"Many ordinary and reasonable consumers would have been oblivious to the asterisk. Others might have noticed it but would not have been sufficiently directed to the specific sentences within the fine print statements to which the asterisk referred. To many, if not most, ordinary and reasonable consumers, the fine print statements would have appeared as a block of very fine print, and they would not have engaged with it."*

**TIP 1:** If you are conducting an advertising campaign, ASIC’s Regulatory Guide [RG 234](#) provides helpful guidelines for financial and credit product providers to avoid making false or misleading statements.

**TIP 2:** Disclaimers only have a very limited effect of qualifying the headline claim or statement in an advertisement. Disclaimers should be prominent and easy to understand. As a general rule, the more prominent and clear the disclaimer = the easier it is to rely on it in a dispute situation.

*Please reach out if you would like assistance in drafting disclaimers or reviewing advertising material.*

## 5. Grants Class Order Relief for Intermediaries Distributing Stablecoins Issues by Licensed Entities (18 September 2025)

ASIC has released [ASIC Corporations \(Stablecoin Distribution Exemption\) Instrument 2025/631](#) (Instrument 2025/631), granting class relief for intermediaries engaging in the secondary distribution of a ‘Named Stablecoin’ issued by an AFSL holder.

Under this relief, eligible intermediaries are exempt from the requirement to hold an AFSL, a market licence or a clearing and settlement licence in relation to the Named Stablecoin. Conditions to the relief include making a Product Disclosure Statement (PDS) available to retail clients. Currently, the only Named Stablecoin covered by the instrument is AUDM, issued by Catena Digital.

On 25 September 2025, [ASIC proposed amending Instrument 2025/631](#) to include AUDF, issued by Forte Securities, as a second Named Stablecoin alongside AUDM. The proposed amending instrument also clarifies that the obligation to provide a PDS only arises where one has been prepared by the issuer of the stablecoin. Comments on the proposed amendments closed on 2 October 2025.

The relief instrument and proposed amendment operate on the basis that AUDM and AUDF are financial products (that is non-cash payment facilities), despite the overall regulatory status of stablecoins not being finalised.

ASIC’s current [INFO 225](#) provides guidance on how Australian financial services law applies to crypto-assets—including cryptocurrencies, tokens, stablecoins and initial coin offerings, with an understanding of each of these likely operating as financial products. In December 2024, ASIC released [Consultation Paper 381](#) proposing significant amendments to INFO 225, including several worked examples. It contains guidance on the ASIC’s interpretation of existing laws, and its preliminary view that stablecoins are likely financial products (specifically, a non-cash payment facility). However, this update has not been implemented.

Concurrent to CP 381, Treasury’s December [Consultation Paper: Payments System Modernisation – Regulation of Payment Service Providers](#) also proposed a new licensing framework that would extend to payment stablecoins, aiming to bring issuers of ‘payment stablecoins’ under a dedicated payments licensing regime for stored value facilities

**Linked Article:** [ASIC proposes to expand stablecoin distribution exemption](#), G+T Law, 3 October 2025.

**Linked Article:** [The rise of stablecoins—Australian regulatory developments and their global context](#), Allens Lawyers, 8 October 2025.

**TIP 3:** Depending on the products and services offered, existing digital asset businesses may be already required to hold an AFSL. [ASIC](#) has set out its opinion on the application of the existing regulator regime to digital assets, in [INFO 225](#), which has been subject to regular updates since its release – and its latest [draft version](#) is likely to be finalised very soon.

*Please reach out if you are intending to launch a new product, or are reviewing existing products where “product drift” might have occurred, to ensure that you are complying with your existing authorisations.*

## 6. ASIC Chair Joe Longo to Step Down (19 September 2025)

ASIC Chair Joe Longo has [advised](#) the Treasurer of [his intention to leave ASIC at the end of his current term which expires on 31 May 2026](#).

## 7. ASIC Signals Opportunity for Industry to Lift Private Credit Standards (22 September 2025)

In its latest update on Australia’s public and private markets – [Report 814: Private Credit in Australia](#) (9 September 2025) – ASIC has called on industry bodies to lift their standards across Australia’s private credit sector following expert observations on better and poorer practices.

The update follows ASIC’s discussion paper on evolving capital markets ([25-021MR](#)) that highlighted the growing availability of private capital had met demand from investors and borrowers.

In response to the rapid growth of private credit, ASIC commissioned a review of Australia’s private credit funds sector by infrastructure investment executive Richard Timbs and former banker and chief risk officer Nigel Williams. [REP 814](#) provides foundational insights on the size and nature of the sector in Australia right now and includes examples of better and poorer practices and areas for industry and regulator attention.

The report highlights four key industry-wide areas requiring improvement:

- **Conflicts of interest are widespread**, particularly in fee structures, related party transactions, valuations and loan structuring
- **Fee structures are often opaque and vary widely across the industry**. This creates issues when fund managers receive substantial fees directly from borrowers such as upfront fees, default interest, and loan management fees which are not always passed on to investors or disclosed in fund documentation
- **Valuation practices and portfolio disclosures are inconsistent**. Many funds do not conduct quarterly valuations, with some relying solely on internal assessments that raise conflicts issues. Portfolio reporting varies from marketing-style documents to more granular portfolio reports
- **Terminology used across the sector such as “investment grade” or “senior debt” is often vague or inconsistently defined**, leading to investor confusion and potential misrepresentation of risk.

The report provides an overview of good practices, including:

- Quarterly fund composition reporting and disclosure, and independent loan valuations
- Where credit ratings or terms such as “investment grade” are used, providing information on whether the ratings are internal or from an accredited third-party rating agency
- All fees and earnings (including any interest earned) by managers as a result of managing investor money are disclosed
- Related party or inter-fund transactions (managed by the same or related manager) are transparently disclosed and have been reviewed and signed off by an independent third party
- Fund leverage is disclosed in investor reports, along with the fund’s leverage policy and guidelines
- Key investment terms are clearly defined.

In November, ASIC will release its response to the discussion paper on Australia's evolving capital markets, alongside its retail and wholesale surveillance findings. The response will include clear guidance on key principles, along with additional research and expert insights to guide our future priorities, work program and regulatory roadmap.

**TIP 4:** If you can't stomach reading the full report, this [Media Release](#) provides an excellent overview of REP 814 and a detailed summary of all of the different info that ASIC intends to issue in November

**TIP 5:** [REP 814](#) provides useful guidance for fund managers and trustees preparing disclosure documents (such as Information Memorandums) and investor reports. Consider whether improvements can be made to your disclosure documents, having regard to the "good practice" insights set out in section 5 of the Report. *Please reach out if you would like some assistance in this regard.*

## 8. ASIC Acts Against ESG Investment Fund Alleging Governance Failures and Misleading Conduct (3 October 2025)

ASIC has commenced [civil penalty proceedings](#) in the Supreme Court of NSW against Fiducian Investment Management Services Limited, alleging governance failures, breaches of responsible entity duties and misleading conduct in relation to its ESG-marketed Diversified Social Aspirations Fund.

ASIC is alleging FIMSL failed to act with care and diligence as the responsible entity of the Diversified Social Aspirations Fund (the Fund) and engaged in misleading and deceptive conduct relating to its description of how the Fund works in the Fund's Product Disclosure Statement (PDS).

The Fund was established to meet client demand for a 'socially responsible' or 'ethical' investment option and was available for investment between 2015 and 2024. The Fund selected investments by using underlying fund managers or underlying investment funds, (Underlying Funds) which had their own bespoke ESG methodologies and tolerance thresholds for choosing investments. ASIC alleges these processes did not align with the approach outlined in the Fund's PDS. The PDS of the Fund stated that: 'The share portfolios comprise investments in companies that aim to be positive for society and for the environment and aim to avoid investments in harmful activities'. It also specified a number of industries or activities that the Fund would avoid investing in.

ASIC also alleges the PDS of the Fund contained false and misleading statements that it would monitor the portfolio exposure and investment styles of the Underlying Funds in circumstances where FIMSL did not have the requisite information to conduct that monitoring.

ASIC alleges FIMSL failed to act with care and diligence when it failed to:

- review the underlying investments of the Fund to ensure their consistency with the PDS of the Fund;
- ensure its compliance documents identified any ESG related risks and included commensurate controls;
- comply with its own risk management framework including the procedure for reviewing PDSs, and
- engage or employ an ESG expert to review, monitor and, where necessary, amend the PDS and the structure of the Fund, including its underlying funds.

ASIC further alleges that FIMSL failed to comply with its compliance plan when it failed to record and lodge investor complaints in accordance with the compliance plan and when it failed to address investor concerns that the Fund held investments contrary to the representations made in the PDS such as investments in BHP Billiton Limited, Rio Tinto Limited, Woodside Petroleum Limited, Newcrest Mining Limited and Orica Limited. This was despite FIMSL having policies and procedures that applied to logging, investigating, managing and responding to investor concerns, and to the preparation and sending of external communications including PDSs.

This is ASIC's fourth greenwashing civil penalty case, and the first to allege a breach of a trustee's duty to exercise care and diligence. It signals a broader approach by ASIC, linking greenwashing claims to the

statutory duties of responsible entities under the *Corporations Act 2001* (Cth) and alleging governance and compliance failures.

ASIC is seeking declarations, pecuniary penalties and adverse publicity orders.

**Linked Article:** [ASIC targets governance in ESG-marketed fund greenwashing case](#), Allens Lawyers, 8 October 2025.

**TIP 6:** Your systems and processes must be able to deliver what has been promised to clients. You must ensure that all client-facing communications, including terms and conditions, websites, their promotional materials, product disclosures and other customer communications, are accurate and regularly reviewed. *Please reach out if you would like assistance with reviewing client-facing communications.*

## 9. ASIC Allows Cboe Australia to Directly Compete with the ASX (7 October 2025)

ASIC will [allow](#) Cboe Australia, a subsidiary of Cboe Global Markets, to list new companies on its platform, directly competing with the ASX.

Historically, Cboe Australia could only list exchange-traded funds (ETFs), despite carrying the capability to provide initial public offerings (IPO) listings across other regions, including the US and the UK.

ASIC believes the approval will lead to more investment options, IPOs and dual-listed foreign entities, claiming that the decision reinforces a "vibrant and attractive" local listing market.

Cboe Australia currently accounts for 20% of Australia's equity market turnover, representing nearly \$2 billion in daily trades. This comes as the ASX is looking to fast-track the IPO process to boost listings in June, initiating a two-year trial for eligible entities, following a decline in the number of listings over recent years.

## 10. ASIC Releases Annual Report 2024-25 (8 October 2025)

ASIC has [released](#) its Annual Report 2024-25.

# CLEAN ENERGY REGULATOR

## 11. CER Provides an Update on the New Unit and Certificate Registry (25 September 2025)

CER's [Unit and Certificate Registry webpage](#) has been updated.

The website now includes a [direct link](#) to the Registry, as well as updated details about the migration of ACCUs to the Registry which will take place from 7 November 2025, including how to prepare and what to expect.

CER notes that: "The migration will only proceed if we are certain we are ready" and "Provided the migration goes as expected, ACCUs will be live in the registry on Tuesday 11 November 2025".

After the migration, the ANREU system will still be used to: (a) manage any certified emissions reduction units held in ANREU accounts; and (b) access ANREU account authorised representative history.

# AUSTRAC

No relevant updates for this month.



## ATO

No relevant updates for this month.

## CARBON MARKET INSTITUTE

### 12. Introduces New Administration Arrangements for the Code of Conduct (19 September 2025)

The CMI has [announced](#) that the Australian Carbon Industry Code of Conduct will now be administered by a dedicated not-for-profit corporate entity, known as the Australian Carbon Industry Code of Conduct Administrator Limited.

The new company, which will be a subsidiary of the CMI, now has a separate constitution that specifies it is responsible for administering the Code. The company's principal objectives will include developing training and support to assist signatories to comply with Code requirements. It will also assist the Code Panel that is responsible for overseeing and monitoring the Code, and arbitrating cases and appeals.

## PROFESSIONAL DEVELOPMENT OPPORTUNITIES

### Sophie Grace Compliance Videos

Consultancy [Sophie Grace](#) has released a number of compliance-based videos that can be purchased separately. Consider, in particular, [AFSL Wholesale Client Qualification](#) and [What Things Must Not Be On Your Website](#).

### Carbon Market Institute Courses

- a. **Carbon Market Fundamentals Training:** e-learning course provides participants with an overview of the scientific and economic basis for carbon markets. More info [here](#).
- b. **Carbon Farming Banker Training:** This finance sector-focused module builds capacity and knowledge of carbon farming in Australia from the perspective of bankers and agri-lenders. More info [here](#).
- c. **Net Zero Transition Planning Program:** This transition planning education program introduces key concepts for organisations seeking to understand the role of net zero transition planning in private sector climate leadership. More info [here](#).

### FINSIA Micro-Learning Courses

FINSIA provides a range of micro-learning courses, which you can investigate [here](#).

### October 2025

- a. Carbon Markets Institute – **Carbon Derivatives Seminar** (Brisbane – 9 October) – more info [here](#).
- b. Australian Investment Council – **Principles of Venture Capital** (Sydney – 14 October) – more info [here](#).
- c. Australian Investment Council – **Principles of Private Equity** (Sydney – 15 October) – more info [here](#).
- d. Carbon Markets Institute – **Singapore Carbon Market and Investor Forum** (Singapore – 16-17 October) – more info [here](#).
- e. Clean Energy Regulator - **Be ACCUrate: Post-crediting period guidance and permanence obligations** (Webinar – 22 October 2025) – more info [here](#).



- f. FUND BUSINESS – **12<sup>th</sup> Fund Summit** (Sydney – 23 October) – more info [here](#).
- g. Australian Investment Council – **Principles of Private Equity** (Melbourne – 23 October) – more info [here](#).
- h. Carbon Markets Institute – **Carbon Derivatives Seminar** (Perth – 30 October) – more info [here](#).

#### November 2025

- a. Australian Investment Council – **Masterclass: Fundraising and Investor Relations** (Sydney – 12 November) – more info [here](#).
- b. ASIC – **Annual Forum** (Melbourne – 12-13 November) – more info [here](#).
- c. FAAA – **FAAA Congress: Ahead of the Curve** (Perth – 18-20 November) – more info [here](#).

#### December 2025

- a. Markets Group – **4<sup>th</sup> Annual Private Wealth Melbourne Forum** (Melbourne – 2 December) – more info [here](#).

#### February 2026

- a. Climate Investor Forum – **Climate Investor Forum** (Melbourne – 17-18 February) – more info to come.

### INTERESTING READS

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

All linked above.

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