

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.

FEATURE ARTICLE

Action Initiated? Action initiation under Australia's Consumer Data Right becomes law

This month's feature article comes from Ashurst Lawyers, who have produced a summary of the upcoming and proposed law reforms in the digital space, with an emphasis on the Consumer Data Right and other reforms likely to be addressed in the current parliamentary term. You can read the full article [here](#).

Consumer Data Right

After almost 3 years before Parliament, the [Treasury Laws Amendment \(Consumer Data Right\) Act 2024](#) was passed unamended and with bipartisan support on 15 August 24, receiving assent on 26 August 24.

Action initiation (also referred to as "write access" for some use cases) allows a consumer to permit a service provider to initiate actions on their behalf. Examples include initiating payments, switching service providers, opening or closing accounts, automating the processes for undertaking loan or mortgage applications or 'one stop shop' budgeting applications.

Treasury will consult on which actions are introduced when, and for what sectors, with the initial focus to expected to be on use cases with lower cost, complexity and risk to implement, and clear consumer benefits. In a [letter to the Data Standards Chair](#), the Assistant Treasurer identified as high priority use cases: those relating to borrowing decisions, energy switching, and accounting services to small businesses.

Service providers will need to consider how they will implement action initiation in their existing systems, for example to enable switching or payment initiation via an instruction that is delivered through an API call. Service providers should be considering what limitations might be in place for these use cases, and what additional information might be needed from consumers to ensure that they can initiate actions on request.

The action initiation regime could also offer new opportunities for existing and new service providers and FinTechs to trigger actions as an Accredited Action Initiator.

While the action initiation framework has now been legislated, it does not identify or allow any specific types of actions under the CDR. Further work is required to identify high value actions, and to undertake the consultation necessary to declare an action and prepare the rules and data standards that would give effect to the action mechanisms.

Other Proposed Reforms

Privacy reforms – Expected in this session of Parliament, but not all of the Government's [blueprint for privacy law reform](#) will be addressed.

Digital ID – [New Digital ID laws](#) are expected to commence 1 December 2024, with work continuing on rules and standards required for launch.

Artificial intelligence – The Department of Industry, Science and Resources has published a [Voluntary AI Safety Standard](#) and opened consultation on new AI laws in the form of a proposal paper on [Introducing mandatory guardrails for AI in high-risk settings](#).

Misinformation – The Government has consulted on draft legislation to help combat [misinformation and disinformation](#), and provide ACMA with powers to enforce a code of practice.

GOVERNMENT

(1) Opens Consultation on new AI Laws

The Department of Industry, Science and Resources has published a [Voluntary AI Safety Standard](#) and opened consultation on new AI laws in the form of a proposal paper on [Introducing mandatory guardrails for AI in high-risk settings](#).

The new voluntary regime and proposed mandatory regime contain 10 closely aligned "guidrails" with the significant difference that the mandatory guardrails require conformity assessments (i.e. audit/assurance), while the voluntary guardrails require broad stakeholder engagement.

The proposal paper consultation seeks feedback on the mandatory guardrails, how "high-risk" should be defined, and how the mandatory guardrails should be legislated. Consultations close 4 October 2024.

Linked Article: [AI Regulation in Australia](#) (Bright Law, 12 September 24)

(2) Introduces AML Bill into Parliament

The Government has [introduced into Federal Parliament the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024](#). The Bill is expected to implement a comprehensive overhaul of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime, following two rounds of previous consultation with industry (one in [April 2023](#), and another in [May of this year](#)).

If passed by Parliament, the [bill will involve significant amendments](#) to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act).

The Bill has three primary objectives:

- a. [Expanding the application of the AML/CTF regime](#) to so-called "tranche 2" entities, which includes service providers such as lawyers, accountants, trustee service providers, corporate service providers, real estate agents, and dealers of commodities such as precious metals or stones;
- b. [Modernising the regulation of "virtual assets" and payments technology](#); and
- c. [Simplifying the regime](#) to increase flexibility, reduce regulatory impacts and otherwise support businesses to prevent and detect financial crime.

Significant detail will be left to the *Anti-money Laundering and Counter-terrorism Financing Rules 2007* which will be separately consulted on.

Changes will take effect in a staggered period with some changes taking effect shortly after Royal Assent, others with a commencement date of 31 March 2026 or 31 July 2026.

Linked Article: [Anti-Money Laundering Bill Tranche 2 Introduced](#) (Bright Law, 12 September 24)

(3) Publishes Exposure Draft for the Scams Prevention Framework

Treasury HAS published [exposure draft legislation](#) implementing the Scams Prevention Framework. The Framework is proposed to apply to banks, telecommunications and digital platform service providers. The Framework has the following features:

- Overarching principles that apply to regulated entities
- Sector-specific codes that apply to regulated sectors
- A multi-regulator framework
- Dispute resolution mechanisms (including external dispute resolution schemes)

Treasury is accepting feedback on the exposure draft legislation until 4 October 2024.

(4) Publishes Final Report for the Statutory Review of the Meetings and Documents Amendments

Treasury has published the [Final Report for the Statutory Review of the Meetings and Documents Amendments](#).

The Final Report made 11 recommendations in relation to the meetings and documents amendments, including that:

- Non-listed entities, such as proprietary companies and unlisted registered schemes, should be permitted to determine the appropriate meeting format and there should be no statutory requirement for constitutional permission for wholly virtual meetings.
- The Government should undertake a review of the format of AGMs and other members' meetings in 5 years' time.
- There should be an examination of whether the power to act for a company in relation to company documents should be extended to corporate entities.

The Final Report otherwise supported maintaining the current laws, including in relation to:

- Meeting formats for listed public companies and listed registered schemes.
- The requirement for listed companies and registered to vote on substantive resolutions via poll.
- Independent reports on polls.
- Electronic signing and execution.
- Electronic distribution of meeting related materials.

(5) Introduces Bill to Implement Privacy Act Reforms

Parliament has introduced the [Privacy and Other Legislation Amendment Bill 2024 \(Cth\)](#). The Bill introduces the first tranche of reforms following the Government's response to the Attorney-General's 2022 Privacy Act Review Report.

The Bill sets out amendments designed to address most of the 25 'agreed' proposals directed at legislative change, including in relation to automated decisions, overseas disclosure of personal information, data security and data breaches, children's privacy, civil penalties, enforcement powers and a statutory tort for serious invasions of privacy.

Linked Article: [Australian Privacy Reform Bill Tranche 1: Key impacts for your business](#) (Herbert Smith Freehills, 13 September 2024)

Linked Article: [First tranche of privacy reforms bring progress but no long-term clarity](#) (Allens, 13 September 2024)

Webinar: Digital Law Series: Australian Privacy Law Reforms (Piper Alderman – 3 October 2024) – more info [here](#).

ASIC

(6) Releases Enforcement and Regulatory Update for First Half of 2024

ASIC has released its [Report 794 Enforcement and Regulatory Update](#) for the first half of 2024.

This report noted that in the first half of 2024, ASIC was successful in 95% of its civil and criminal prosecutions and secured \$32 million in civil penalties imposed by courts.

It also identified ASIC's 2024 enforcement priorities, which includes:

- Enforcement action targeting poor distribution of financial products.
- Misleading conduct in relation to sustainable finance including greenwashing.
- Compliance with the reportable situations regime.

(7) Handed New Financial Market Infrastructure Powers

ASIC and the Reserve Bank of Australia (RBA) have been given new powers under new financial market infrastructure laws to enhance their licensing, supervisory, and enforcement abilities.

The [Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill 2024](#), which received Royal Assent this month, aims to strengthen the existing regulatory regime, giving the regulators the authority to monitor, manage, and respond to risks related to financial market infrastructures - the key entities that enable, facilitate, and support trading in capital markets.

The Bill:

- Introduces a crisis management and resolution regime.
- Enhances ASIC and the RBA's licensing, supervisory and enforcement powers, which will provide ASIC with more capacity to monitor the ongoing conduct of FMI entities, identify risks as they emerge, and take appropriate action to prevent those risks from escalating.
- Streamlines and transfers roles and responsibilities between the Minister, ASIC and the RBA.

ASIC is reviewing its approach to the regulation of financial market infrastructures to ensure that its expanded powers are used effectively and efficiently. ASIC will now plan and implement the new FMI regulatory regime and update its website with further publications and information, including the development of updated regulatory guidance to assist industry to comply with the enhanced regulatory framework for FMIs.

(8) Updates Carbon Markets Regulatory Guidance

ASIC has released its updated regulatory guidance for carbon market participants in [Regulatory Guide 236 - Do I Need an AFS Licence to Participate in Carbon Markets?](#) (RG 236).

The updates to RG 236:

- Address the safeguard mechanism reforms that commenced on 1 July 2023 by including specific references to Safeguard Mechanism Credits (SMCs) in the Guide.
- Provide up-to-date examples relevant to participants in carbon markets in relation to derivatives over emissions units, custodial services, making a market, and interests in managed investment schemes.
- Reflect changes to the ACCU Scheme that have occurred since RG 236 was last re-issued in May 2015.

An email discussing the updates in more detail was separately sent to all CAR Clients who are providing services in the carbon markets sector.

ASFI (Australian Sustainable Finance Institute)

(9) Releases Fourth Annual Australian Sustainable Finance Progress Tracker Report

The ASFI has released the fourth annual [Australian Sustainable Finance Progress Tracker Report](#) on implementation of the Australian Sustainable Finance Roadmap.

Key areas of progress in the past 12 months include the establishment of Australia's mandatory climate-related disclosure regime, continued development of Australia's sustainable finance taxonomy, and the issuance of Australia's first sovereign green bond.

Despite these gains, the average score across all 37 Roadmap Recommendations is 2.8 out of 5.0 – an increase of just 0.2 from 2023. Sustainable finance flows in Australia in 2024 are tracking at least on par with 2023, consistent with global trends. However, sustainable finance still represents a small portion of overall financial activity.

Much work remains to achieve the Roadmap's overarching vision of a realigned financial system that supports a more resilient, sustainable and prosperous Australia.

PROFESSIONAL DEVELOPMENT OPPORTUNITIES

Online Courses

Carbon Markets Institute - <https://carbonmarketinstitute.org/education-and-training/>

- Carbon Market Fundamentals Training
- Carbon Farming Banker Training

Bright Law - <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/>

FINSIA - <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

October 2024

- a. AUSTRALIAN INVESTMENT COUNCIL – **Principles of Venture Capital** (Brisbane – 1 October) – more info [here](#).
- b. FINSIA – **Beyond Climate: Shifting Focus to Nature** (Webinar – 2 October) – more info [here](#).
- c. IQ INTERNATIONAL – **Carbon Capture Summit Australia 2024** (Perth – 9-10 October) – more info [here](#).
- d. FINSIA – **Demystifying Structured Giving and Investing for Impact** (Webinar – 10 October) – more info [here](#).
- e. FSC – **Investment Performance Training Course** (Melbourne -16-18 October) – more info [here](#).
- f. INTERNATIONAL BUSINESS REVIEW – **Foundational Investment Finance Workshop 2024** (Melbourne – 17 October) – more info [here](#).
- g. FSC – **Investment Performance Training Course** (Sydney -22-24 October) – more info [here](#).
- h. INTERNATIONAL BUSINESS REVIEW – **Foundational Investment Finance Workshop 2024** (Sydney – 23 October) – more info [here](#).
- i. FINANCIAL STANDARD – **Best Practice Forum Series: Retirement Income** (Live Stream + Sydney – 24 October) – more info [here](#).
- j. AFCA – **Virtual Member Forum** (Online – 24 and 25 October) – more info [here](#).
- k. INTERNATIONAL BUSINESS REVIEW – **Asset Allocation Strategies 2024 Forum** (Sydney – 28-29 October) – more info [here](#).
- l. CARBON MARKET INSTITUTE – **Australasian Emissions Reduction Summit** (Melbourne – 29-30 October) – more info [here](#).
- m. FUND BUSINESS – **11th Fund Summit** (Sydney – 30 October) – more info [here](#).
- n. FINSIA – **Ethics of AI in Finance** (Webinar – 30 October) – more info [here](#).
- o. AUSTRALIAN SUSTAINABLE FINANCE INSTITUTE – **Australian Sustainable Finance Summit 2024** (Sydney – 31 October) – more info [here](#).

November 2024

- a. FINSIA – **Meet the Regulators** (Sydney – 8 November) – more info [here](#).
- b. ASIC – **Annual Forum 2024** (Sydney – 14-15 November) – more info [here](#).
- c. VARIOUS – **Women in Finance Summit 2024** (Sydney – 15 November) – more info [here](#).
- d. INTERNATIONAL BUSINESS REVIEW – **AI for Customer Experience in Financial Services 2024 Summit** (Sydney – 18-19 November) – more info [here](#).

December 2024

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

INTERESTING READS

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

- a. [Carbon accounting: Accounting for your GHG emissions](#) - With the Australian Government legislating mandatory climate-related financial disclosures it will bring with it a requirement for certain entities to disclose their Greenhouse Gas (GHG) emissions. Many organisations will need to upskill their boards, management and employees to understand these new concepts. This article outlines what is involved with calculating GHG emissions. (HLB Mann Judd – 1 September 24)
- b. [ASIC should consider MiFID II-style controls for bonds](#) – Experts suggest regulators look abroad to tighten rules around this opaque part of the financial system. (FINSIA – 2 September 24)
- c. [Preparing for voluntary standards and mandatory legislation: a deep dive into Australia's evolving AI regulatory landscape](#) - Over the past few weeks, the Australian Government has published a series of standards, proposals and policies which foreshadow the principles likely to be adopted in mandatory AI legislation once introduced. (Allens Lawyers – 10 September 24)
- d. [CIO urges ban on personal trading by fund managers: 'An undeniable conflict of interest'](#) - A newly launched fund manager has warned that “an undeniable conflict of interest” has compromised the integrity of the investment management industry and could ultimately harm investment returns. (Investor Daily – 10 September 24)
- e. [ASIC's Active Super case sends strong warning to fund managers](#) - Following this case, a new term – “greenruling” – has entered the fold to describe a situation where reliance on rules and technicalities in disclosures exceeds a realistic explanation. (Investor Daily – 24 September 24)

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This Regulatory Update is a summary of relevant legislative and regulatory information sourced from publicly available Government and Regulator announcements and eNewsletters produced by and for the financial services industry. The information contained within is not legal or compliance advice and should not be relied upon as such. Specific legal or compliance advice about your specific circumstances should always be sought separately before taking any action based on information in this publication.