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Contributing Editors: **Richard B. Levin & Kevin Tran**

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CONTENTS

Australia

Peter Reeves, Simon Barnett & Alexa Bowditch
Gilbert + Tobin

Approaches and developments

While the COVID-19 pandemic was the defining feature of the Australian landscape over 2020–21, in 2022, the Australian economy has recovered reasonably well from the pandemic and there has been a focus on fintech and the rapid digital evolution of the financial sector in Australia. Many fintech businesses saw the pandemic as an opportunity to develop and refine product and service offerings to better meet shifting consumer preferences and reflect innovations and opportunities created by technology. For example, businesses that were able to capitalise on integrating digital payment infrastructure and services and provide online services generally saw relatively higher uptake as a result of social distancing and lockdown measures.

As of 2022, the pace of fintech creation, development and adoption has regained speed, propelled by a broadening of product offerings by the Australian fintech community and assisted by the maturing of the Australian policy and regulatory approach. While previous fintech offerings were limited to operating on the periphery of traditional financial services (including lending, personal finance and asset management), the sector has now moved to disrupt the core product offering of many Australian institutional financial service providers, including payments, wallets, wealth and investment, data and analytics and decentralised finance.

As discussed below under "Regulatory bodies", Australian regulators are generally receptive to the growth of the Australian fintech ecosystem and there has been considerable discussion around the opportunities, risks and challenges that have arisen for market participants, customers and regulators. Australian policy-makers and bodies continue to make regulatory and legislative developments to ensure that the scope of emerging services is adequately captured within the existing financial services framework. Regulators and the Government face the challenge of adapting and aligning existing financial regulation to new products and services, balancing innovation with consumer protection. Regulators such as the Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA), and the Australian Transaction Reports and Analysis Centre (AUSTRAC) have become more proactive on licensing, conduct and disclosure and have taken a more rigorous approach to enforcement.

Australia's current financial services policy and regulatory context is still largely informed by the findings of the 2017–2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). The Royal Commission made a series of recommendations for regulatory reform, focusing on matters such as prioritising the interests of consumers, overhauling conflicted remuneration

structures and changing the way add-on products are distributed. A raft of legislative changes followed (or are expected to follow) to implement these recommendations and fintechs – particularly those that are motivated to provide financial services in a way that is more convenient, personalised and simplified for consumers – will be well placed to adapt to these changes, and seize the opportunity presented by the current public sentiment of dissatisfaction with traditional providers. As part of the Government's response to the Royal Commission, the Australian Law Reform Commission (ALRC) conducted an inquiry into simplifying Australia's financial services regulatory framework to make it "more adaptive, efficient and navigable for consumers and regulated entities". The ALRC will provide interim reports on three areas, being the design and use of definitions in corporations and financial services legislation, the regulatory design and hierarchy of laws, and the potential to reframe or restructure Chapter 7 of the Corporations Act 2001 (Cth) (Corporations Act) (i.e., the overarching financial services laws). The first interim report on definitions has been released and the next interim report on regulatory design and legislative hierarchy is expected to be released on 30 September 2022.

Various physical distancing restrictions imposed by State and Federal Governments during the COVID-19 pandemic witnessed an increase in the creation and implementation of technology solutions across a broad range of industries. In response to stressed economic conditions, regulators implemented a range of exemptions to facilitate utilising technology to fulfil corporate actions and processes (e.g., electronic signatures). While these measures were not specifically targeted at fintechs (regulators have generally maintained their technology neutral stance), it has led to accelerated digital education and adoption across various financial service and product delivery channels.

Use of digital wallets and contactless payment solutions has surged. Recognising that such solutions are growing beyond the scope of current regulation, there is consultation underway. The Council of Financial Regulators (comprising Australia's major financial regulators) has made recommendations for a new framework for stored value facilities (i.e., digital wallets that are widely used as a means of payment and store significant value for a reasonable amount of time) to be overseen by APRA, Australia's banking regulator. The Reserve Bank of Australia (RBA) has undertaken a holistic review of the regulatory framework for card payments, releasing its report in October 2021 and the Australian Treasury undertook a simultaneous review of the overall regulatory architecture of the Australian payments systems.

The Treasury recently released a Consultation Paper "Crypto asset secondary service providers: licensing and custody requirements", proposing alternative licensing and custody regimes and requirements for crypto asset secondary service providers (CASSPrs). As at the time of writing this chapter, this paper was still in consultation phase. In relation to the regulation of CASSPrs, it proposes either:

1. implementing a CASSPr licensing regime, separate from the AFS licensing regime which includes similar obligations to the Australian Financial Service Licence (AFSL) regime;
2. defining crypto assets as financial products and bringing such businesses within the existing AFSL regime (with the ability to carve out certain crypto assets); or
3. self-regulation.

The principles-based obligations for the proposed new regime include similar obligations to those that apply to AFSL holders, fit and proper person requirements, capital requirements, client money obligations, anti-hawking, regular independent audits, breach reporting and custody arrangements.

The paper also sets out proposed mandatory principles-based obligations to be imposed on

CASSPrs who maintain custody of crypto assets (themselves or via third parties) on behalf of consumers. These principles are similar to the existing custody regime.

Once an option for regulation is determined, significant additional time will be required to implement the new regime.

For the past few years there has been sustained attention on blockchain technology and a growth in interest in the technology by established businesses in the financial services sector. In particular, there has been growing interest in how decentralisation and new governance models such as decentralised autonomous organisations (DAOs) can operate and be regulated. It is expected that further clarity on the application of the Australian regulatory regime to such models will come in due course – the Senate Select Committee on Australia as a Technology and Financial Centre recommended the introduction of a new DAO legal entity in Australian corporate law and this recommendation has received in principle support from the Government.

The year 2020 saw the launch of the new national Consumer Data Right (CDR) framework, initially applied to the banking sector under the "Open Banking" regime. The CDR enables consumers to exercise greater access and control over their banking data. A recent expansion of the CDR now means that consumers and businesses can instruct third parties to initiate actions on their behalf and with their consent. It is anticipated to have a profound effect on the financial services industry by encouraging customers to switch service providers and open the market to new fintech businesses.

There have been a number of relevant legislative changes in Australia (see "Fintech offering in Australia" below). The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019 introduced a design and distribution obligation (DDO) for financial services firms as well as a product intervention power (PIP) for ASIC. The new DDO regime applied from 5 October 2021 and requires product issuers to ensure products are targeted and offered to the appropriate customers. ASIC has held its PIP since 2019; however, it has only recently commenced intervening in the distribution of products it considers as carrying a risk of significant consumer detriment. More than ever, it will be crucial for financial service providers, including fintechs, to consider the suitability of products and disclosure documents for their own customer base.

Fintech offering in Australia

Fintech businesses have been disrupting the Australian banking, investment and wealth management, payments, advisory, trading and fundraising sectors through offers of alternatives to the relatively concentrated traditional providers of these financial services. These alternative offers generally focus on providing financial services in a way that prioritises customer experience and outcomes, utilises technology solutions such as apps and smart devices in the delivery of financial services, or disintermediates the provision of financial services.

Fintech businesses must comply with all existing laws and regulations for financial services and consumer credit activities in Australia. The Government has taken steps to alleviate the regulatory burden on fintechs looking to test the Australian market prior to a full product or service launch. See "Key regulations and regulatory approaches" below for further discussion.

Regulatory guidance has also been updated to address the fintech sector. For example, ASIC has released specific guidance clarifying the licensing, conduct and disclosure obligations that apply to the provision of digital financial product advice. This includes requiring the nomination of a person within the business who understands and will be responsible for the ongoing monitoring of the algorithms used to produce advice.

ASIC has clarified how Australian financial services laws may apply to a range of cryptocurrency offerings, whether through initial coin offerings or security token offerings as an alternative funding mechanism, non-fungible token offerings or fund offerings with cryptocurrency assets. In summary, the legal status of these offerings depends on the structure, operation and the rights attached to the tokens offered. Issuing tokens may trigger licensing, registration and disclosure requirements if the tokens are financial products (e.g., interests in managed investment schemes, securities, derivatives or non-cash payment facilities).

Blockchain technology continues to capture the attention of established businesses, and there is now an awareness of decentralised finance and its potential implications. In the past couple of years, Australia has witnessed the application of DLT in solutions across a broad range of financial market operators, financial institutions, financial service providers and fintechs, which has prompted new regulation. Given the rapidly evolving blockchain sector (particularly as institutional businesses move from observational practices to implementation), regulators have generally maintained a technology neutral stance to the application of the law and regulation. In addition to recent reviews being undertaken (see payments review "Approaches and developments"), over the past few years, there have been numerous framework developments to lower barriers to entry for fintech providers.

In 2018, ASIC introduced a two-tiered market licensing regime for financial market operators and updated its corresponding regulatory guidance. Specifically, the guidance reflects a risk-based assessment that will be undertaken, which is consistent with the approach taken internationally to the administration of market licensing. Under the revised Australian Market Licence (AML) regime, market venues can be designated as being either Tier 1 or Tier 2, depending on their nature, size, complexity and the risk they pose to the financial system, investor confidence and trust. While Tier 1 market venues are, or are expected to become, significant to the efficiency and integrity of (and confidence in) the Australian financial system, Tier 2 licences will be able to facilitate a variety of market venues and will have reduced obligations to accommodate new and specialised market platforms. The tiered market regime is expected to impact, amongst others, market operators and operators of market-like venues, as well as platforms seeking to offer secondary trading.

The Australian banking sector is highly regulated with stringent licensing, conduct (including reporting) and regulatory capital requirements which act as significant hurdles for new businesses entering the market. Any entity that conducts any "banking business", such as taking deposits (other than as part-payment for identified goods or services) or making advances of money, must be licensed as an authorised deposit-taking institution (ADI). To lower barriers to entry, APRA introduced a Restricted ADI framework which permits new businesses entering the banking industry to conduct a limited range of banking activities for two years while they build their capabilities and resources. After such time, they must either transition to a full ADI licence or exit the industry. Since then, various "neobanks" (which are wholly digital quasi-banks that provide full banking services to customers via a solely mobile platform) have progressed through the Restricted ADI route and granted full ADI licences. Neobanks have largely been met with a positive response from the market and experienced significant uptake by consumers.

Fintech businesses will generally have obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act) and Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1) (AML/CTF Rules). The AML/CTF Act applies to entities that provide "designated services" with an Australian connection. To address the rise of cryptocurrency offerings, the AML/CTF

Act also captures digital currency exchange providers, which must register and enrol with the AUSTRAC. Registered exchanges are required to implement know-your-customer processes to adequately verify the identity of their customers, adopt and maintain an AML/CTF Program, as well as meet ongoing obligations to monitor and report suspicious and large transactions.

Buy now, pay later (BNPL) has continued to be a growth area, with some providers now dominating the Australian fintech landscape. Many BNPL providers operate outside the Australian credit licensing regime on the basis of exemptions. This has given rise to calls to action with respect to BNPL industry regulation and in 2020, ASIC undertook a review of the industry, reporting on the impact on consumers and upcoming regulatory developments. Importantly, these regulatory developments rely on existing and impending regulatory changes rather than proposing new industry specific policy and regulation, which ASIC stated "remain[s] a matter for Government and, ultimately, the Parliament". However, in reaction to various consumer concerns, the Australian Finance Industry Association (which includes a range of BNPL providers in its membership) drafted a voluntary BNPL Code of Practice (BNPL Code), which came into effect on 1 March 2021. The BNPL Code sets out nine Key Commitments regarding how BNPL products are to be designed and distributed to consumers and has been adopted by an estimated 95% of the Australian BNPL market.

Businesses have continued to explore new automated service methods including the use of robo-advisors for distributing financial advice. There has been sustained attention on blockchain and distributed ledger technology (DLT) to the extent that fintechs have begun formalising use cases for DLT to manage supply chains, make cross-border payments, trade derivatives, and manage assets and digital currency exchanges. The Australian Securities Exchange (ASX), Australia's primary securities exchange, continues to progress its adoption of a DLT-based replacement for its clearing and settlement process to replace its current "CHESS" system. This is scheduled to be implemented by April 2023. The ASX now offers Synfini, DLT as a service, which includes all the infrastructure, platform, software and connectivity services for businesses to build a DLT application.

Regulatory and insurance technology

The rising cost of compliance has prompted many companies using artificial intelligence (AI), customer due-diligence (e.g., "know-your-customer") and data breach monitoring (e.g., "know-your-data") technologies to invest in regulatory technology, or regtech. ASIC has indicated the benefits of regtech to provide better outcomes for consumers and has hosted annual fora for collaboration between businesses and to promote stakeholder engagement. It has also been reported that ASIC has actively encouraged incumbent financial institutions to partner with fintechs to harness regtech to automate regulatory reporting, manage compliance and ensure clarity to how regulation is interpreted.

During 2019–2020, ASIC undertook five regtech initiatives (another three were put on hold due to COVID-19), including:

1. a machine-learning trial to help ASIC identify potential misconduct in financial services promotions to vulnerable consumers (in response to COVID-19);
2. engaging a regtech consultancy firm to deliver an organisation-wide voice analytics operational framework to incorporate into supervisory and investigative projects involving audio file reviews;
3. a proof-of-concept project that aimed to automate data flows and report matters of interest to improve licensing and misconduct and breach reporting processes;
4. a first-phase natural language processing application to extract core prospectus information for supervisory analysis; and

5. engaging regtech consultants to develop an enhanced evidence score capability in relation to ASIC's evidence document system.

Under the Business Research Innovation Initiative, ASIC is currently working with five regtech firms to explore potential solutions in addressing poor corporate disclosure by listed companies. At the time of writing this chapter, the regtech entities are conducting a feasibility study, with presentations expected to take place in May. Going forward, ASIC will continue to promote the application of regtech to deliver better regulatory compliance and consumer outcomes through information-sharing and problem-solving events within the industry.

AUSTRAC also recognises that regtech plays an important role in assisting reporting entities to meet their AML/CTF obligations and provides general guidance about AML/CTF regulation through the AUSTRAC RegTech Engagement programme. It has also published fact sheets for regtechs and reporting entities considering engaging regtechs.

Investments in insurance technology in Australia have increased, with companies and fintechs focusing on forging cross-sector alliances in order to embed their offerings into alternative value propositions. Insurance technology has the potential to disrupt individual sections of the insurance value chain, augment the existing processes of underwriting risk and predicting loss, and improve the existing capabilities of insurers, reinsurers, intermediaries and service providers. The increase in partnerships and alliances between insurance fintechs and incumbents with established customer bases will be effective for insurance start-ups to fuel expansion.

There have not been any specific changes to legislation or regulation due to regtech or insurance technology; however, this may change in the future as uptake increases and becomes more mainstream.

Regulatory bodies

Australia has a twin peaks model of regulation with respect to financial services:

1. ASIC is Australia's primary corporate, markets, financial services and consumer credit regulator. It is responsible for regulating consumer protection and maintaining market integrity within the financial system. ASIC supervises the conduct and regulation of Australian companies, financial markets, and financial service and consumer credit providers.
2. APRA is concerned with maintaining the safety and soundness of financial institutions, promoting financial stability in Australia and is tasked with protecting the interests of depositors, policy-holders and superannuation fund members. APRA oversees ADIs (e.g., banks, building societies and credit unions), general and life insurers, friendly societies, reinsurers and superannuation funds.

AUSTRAC is responsible for administering Australia's anti-money laundering and counter-terrorism financing regime under the AML/CTF Act and the AML/CTF Rules. AUSTRAC may pursue a wide range of enforcement sanctions under the AML/CTF Act which include imposing civil and criminal penalties (which can be significant in value), enforceable undertakings, infringement notices, remedial directions, and the power to cancel or suspend registrations of providers of digital currency exchange and designated remittance services. AUSTRAC plays an active role in setting and implementing international standards and is a member of regional and global groups such as the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering.

The Office of the Australian Information Commissioner (OAIC) administers the Privacy Act 1988 (Cth) (Privacy Act) which regulates the handling of personal information by Federal

Government agencies and some private sector organisations. The Privacy Act includes 13 Australian Privacy Principles (APPs), which impose obligations on the collection, use, disclosure, retention and destruction of personal information. The APPs extend to an act carried out, or practice engaged in, outside Australia by an organisation that has an "Australian link" (including where it carries on business in Australia and has collected or held personal information in Australia, either before or at the time of the act or practice).

Fintechs may also be subject to the prohibitions in the Australian Consumer Law, which is enforced by the Australian Competition and Consumer Commission (ACCC). Broadly, these include prohibitions on misleading and deceptive conduct, false or misleading representations, unconscionable conduct and unfair contract terms. Whilst the Australian Consumer Law does not apply to financial products or services, many of these protections are enforced by ASIC either through mirrored provisions in the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) or through delegated powers.

The RBA is Australia's central bank and provides a range of banking services to the Government and its agencies, overseas central banks and official institutions. It is also responsible for maintaining the stability of the financial system through monetary policy and regulating payment systems.

The Fair Work Commission is Australia's national workplace relations tribunal and is responsible for administering the provisions of the Fair Work Act 2009 (Cth) (Fair Work Act), which governs the regulation of employment in Australia. In relation to hiring, minimum terms and conditions of employment for most employees (including professionals) are governed by modern awards, which sit on top of the National Employment Standards. The Fair Work Commission's powers and functions broadly include dealing with unfair dismissal claims, anti-bullying claims, unlawful termination claims, setting and reviewing minimum wages in modern awards and making orders to stop or suspend industrial action.

Key regulations and regulatory approaches

Fintech businesses must comply with the applicable licensing, registration and disclosure obligations under Australia's financial services regime. Broadly, the regulatory framework that applies to fintech businesses includes financial services and consumer credit licensing, registration and disclosure obligations, consumer law requirements, privacy and anti-money laundering and counter-terrorism financing (AML/CTF) requirements.

Fintech businesses carrying on a financial services business in Australia must hold an Australian financial services licence (AFSL) or be exempt from the requirement to be licensed. Financial services are broadly defined under the Corporations Act, which is administered by ASIC, to include the provision of financial product advice, dealing in financial products (as principal or agent), making a market for financial products, operating registered schemes and providing custodial or depository services. There are specific things that are listed as financial products (e.g. securities, derivatives and managed investment schemes). Financial products are also defined generally as a facility through which, or through the acquisition of which, a person makes a financial investment, manages a financial risk or makes a non-cash payment. The definitions of financial service and financial product are broad, and will generally capture any investment or wealth management business, payment service (e.g., non-cash payment facility), advisory business (including robo-advice), trading platform, and crowdfunding platform.

The Australian credit licence (ACL) regime applies to entities who engage in consumer credit activities in Australia, such as providing credit under a credit contract or consumer

lease. Fintech businesses that provide marketplace lending products and related services will constitute consumer credit activities and will generally trigger the requirement to hold an ACL. Consumer credit activity is regulated by ASIC and under the National Consumer Credit Protection Act 2009 (Cth) and associated regulations.

Fintech businesses may also need to hold an AML where they operate a facility through which offers to buy and sell financial products are regularly made (e.g., an exchange). If an entity operates a clearing and settlement mechanism which enables parties transacting in financial products to meet obligations to each other, the entity must hold a clearing and settlement facility licence or be otherwise exempt.

The Anti-money Laundering and Counter-terrorism Financing Act 2006 (Cth) (AML/CTF Act) applies to entities that provide "designated services" with an Australian connection. Generally, the AML/CTF Act applies to any entity that engages in financial services or credit (consumer or business) activities in Australia. Obligations include enrolment with AUSTRAC, reporting and customer due diligence.

The Banking Act 1959 (Cth) regulates entities engaged in the business of banking and requires those entities to be authorised by APRA (i.e., be an ADI). APRA also administers the Banking Executive Accountability Regime (BEAR), which establishes, among other things, accountability obligations for ADIs and their senior executives and directors, and deferred remuneration, key personnel and notification obligations for ADIs.

Generally, fintech businesses that operate as holders of stored value in relation to purchased payment facilities under the Payment Systems (Regulation) Act 1998 (Cth) are required to be an ADI unless otherwise exempt (see the above "Fintech offering in Australia" section). A purchased payment facility is a facility (other than cash) where the facility is purchased and can be used to make payments up to the amount available for use under the facility and the payments are made by the provider or a person acting under an arrangement with the provider, rather than the user of the facility.

The Financial Sector Collection of Data Act 2001 (Cth) (FSCODA) is designed to assist APRA in the collection of information relevant to financial sector entities. FSCODA generally applies to any corporation engaging in the provision of finance, over certain annual thresholds, in the course of carrying on business in Australia, and requires the finance provider to regularly report relevant data to APRA including aggregated lending activity and balance sheet information.

As discussed above in "Regulatory bodies", the Privacy Act regulates the handling of personal information by Federal Government agencies and some private sector organisations.

ASIC operates a regulatory sandbox regime that allows fintech businesses to operate small-scale financial service and credit offerings as pilot projects. The sandbox provides licensing relief for the projects. There are strict eligibility requirements for both the type of businesses that can enter the regulatory sandbox and the products and services that qualify for the licensing exemption.

Regulators have also committed to helping fintech businesses more broadly by streamlining access and offering informal guidance to enhance regulatory understanding. Both ASIC and AUSTRAC have established Innovation Hubs to assist start-ups in navigating the Australian regulatory regime. AUSTRAC's Fintel Alliance has an Innovation Hub targeted at combatting money laundering and terrorism financing and improving the fintech sector's relationship with the Government and regulators. The Innovation Hub also assesses the impact of emerging technologies such as blockchain and cryptocurrency.

Restrictions

At the time of writing this chapter, there have not been any explicit prohibitions or restrictions on fintech business types. Australian regulators and policy-makers have generally sought to encourage and support fintech businesses, provided such businesses comply with applicable laws (including financial services, consumer credit and consumer laws).

As discussed above in "Regulatory developments", the DDO & PIP Act introduced DDOs requiring financial product issuers to make a "target market determination" for the product, conduct distribution in accordance with the determination, notify ASIC of significant dealings inconsistent with the determination and regularly review the determination. The DDO & PIP Act also empowered ASIC to intervene using its PIP when it considers a financial product has, will, or is likely to result in significant consumer detriment.

Cross-border business

Collaboration

Australian regulators and policy-makers have sought to improve their understanding of, and engagement with, fintech businesses by regularly consulting with industry on proposed regulatory changes and entering into international cooperation and information-sharing agreements. ASIC has entered into a number of cooperation agreements and information-sharing agreements with overseas regulators for the purpose of facilitating cross-border financial regulation and removing barriers to market entry. Under these arrangements, there is a sharing of information on fintech market trends, encouraging referrals of fintech companies and sharing insights from proofs of concept and innovation competitions. Through these agreements, regulators hope to further understand the approach to regulation of fintech businesses in other jurisdictions, in an attempt to better align the treatment of these businesses across jurisdictions. ASIC currently has either information-sharing or cooperation agreements with numerous jurisdictions, including the China Securities Regulatory Commission, Hong Kong's Securities and Futures Commission, the Monetary Authority of Singapore, the Swiss Financial Market Supervisory Authority, the United States Commodity Future Trading Commission, the Capital Markets Authority of Kenya, Indonesia's Otoritas Jasa Keuangan and Canada's Ontario Securities Commission.

ASIC has also committed to supporting financial innovation in the interests of consumers by joining the Global Financial Innovation Network (GFIN), which was formally launched in January 2019 by a group of financial regulators from around the globe. GFIN currently has over 60 organisations dedicated to facilitating regulatory collaboration in a cross-border context and provides more efficient means for innovative businesses to interact with regulators.

Foreign financial services providers

At the time of writing this chapter, the way in which a foreign financial service provider (FFSP) is regulated in Australia is in a state of flux. The bill to implement proposed FFSP AFSL exemptions (the Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022 (FFSP Bill)) lapsed on dissolution of Parliament, following the calling of the Federal election on 10 April 2022. The FFSP Bill set out exemptions from the requirement to hold an AFSL for (1) persons regulated by comparable overseas regulators subject to certain conditions including ASIC registration and notification obligations, and (2) persons that provide financial services from outside Australia to professional investors subject to certain conditions. The FFSP Bill also proposed an exemption from the fit and proper person assessment process for FFSPs authorised to provide financial services in a comparable regulator regime that wish to apply for a full

AFSL in Australia. Whether the FFSP Bill will be re-introduced to Parliament after the election on 21 May 2022 will depend on the outcome of the election and the legislative agenda adopted by the incoming government.

Entities currently relying on "passport" relief under the prior FFSP regime can continue to do so until 31 March 2023. Passport relief was available to certain FFSPs providing financial services to wholesale clients only, where such FFSPs are regulated by certain foreign regimes considered by ASIC to be sufficiently equivalent to the Australian regime.

Limited connection relief is available until 31 March 2023 to an FFSP that undertakes very limited activities in Australia and is carrying on a business in Australia only because it is inducing, or intending to induce, wholesale clients in Australia to use its financial services that are provided from overseas.

During this transitional period, until 31 March 2023, ASIC will consider new applications for individual temporary licensing relief or new standard AFSL or Foreign AFSL applications from entities that cannot rely on the transitional relief.

New structures

Australia is a participating economy in the Asia Region Funds Passport (Passport) initiative. The Passport is a region-wide initiative to facilitate the offer of interests in certain collective investment schemes established in Passport member economies to investors in other Passport member economies, with reduced regulatory requirements. It aims to provide Australian fund managers greater access to economies in the Asia-Pacific by reducing existing regulatory hurdles. Australia, Japan, the Republic of Korea, New Zealand and Thailand are all signatories to the Passport's Memorandum of Cooperation. Broadly, the Passport requires an eligible fund to apply to its home regulator for a passport and comply with home economy requirements in order to be registered (for Australian funds, this effectively requires registration as a managed investment scheme with ASIC). Once registered, the fund must notify the host regulator and meet host economy requirements relating to disclosure, distribution and complaints handling (for offshore funds wishing to be offered in Australia, this effectively requires compliance with the corresponding obligations for registered managed investment schemes).

In addition to the Passport, the Government passed the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022 (Cth) which provides an alternative to the existing managed investment scheme regime under the Corporations Act. A Corporate Collective Investment Vehicle (CCIV) is a new type of company limited by shares and has a single corporate director. The corporate director must be a public company with an AFSL authorising it to operate the business and conduct the affairs of the CCIV. A CCIV is an umbrella vehicle that can comprise one or more sub-funds and can offer multiple products and investment strategies within the same vehicle through its sub-fund structure. The CCIV regime is intended to:

1. increase the competitiveness of Australia's managed funds industry internationally to attract offshore investment, by drawing on the features of other equivalent vehicles internationally;
2. offer internationally recognisable investment products, flow-through tax treatment, commercially flexibility and strong investor protections;
3. complement the Passport, which will allow Australian fund managers to pursue overseas investment opportunities through a company structure; and
4. contribute to the Australian Government broader objective of global regulatory alignment.

Peter Reeves
Tel: +61 2 9263 4290 / Email: preeves@gtlaw.com.au

Peter is a partner in Gilbert + Tobin's (G+T) Corporate Advisory group and leads the Fintech practice at G+T. He is an expert and market-leading practitioner in fintech and financial services regulation. Peter advises domestic and off-shore corporates, financial institutions, funds, managers and other market participants in relation to establishing, structuring and operating financial services sector businesses in Australia. He also advises across a range of issues relevant to the fintech and digital sectors, including platform structuring and establishment, payments, blockchain solutions and digital asset strategies. *Chambers and Partners 2021* ranks Peter in Band 1 for Fintech and Peter is also ranked by *Chambers and Partners 2021* for Financial Services Regulation.

Simon Barnett
Tel: +61 2 9263 4399 / Email: sbarnett@gtlaw.com.au

Simon is special counsel in G+T's Corporate Advisory group in Sydney. Simon has over 20 years of experience, focusing on the Australian financial services laws, fintech, funds management, non-financial risk and anti-money laundering regulation. He advises domestic and off-shore financial services businesses in dealing with regulators, structuring and launching new wholesale and retail products and navigating through the regulatory and legal issues that arise in this complex area of the law.

Alexa Bowditch
Tel: +61 2 9263 4739 / Email: abowditch@gtlaw.com.au

Alexa is a lawyer in G+T's Corporate Advisory group in Sydney. Her expertise is particularly focused in the virtual assets, payments, fintech, CFDs brokerage, financial advice and fund management sectors. Alexa advises offshore and onshore clients with regard to their legal and compliance obligations under the anti-money laundering and counter-terrorism financing, the financial services licensing and consumer credit regimes in Australia.

Gilbert + Tobin

Level 35, Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo,
Sydney NSW 2000, Australia
Tel: +61 2 9263 4000 / Fax: +61 2 9263 4111 / URL: www.gtlaw.com.au

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