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BUSINESS REVIEW

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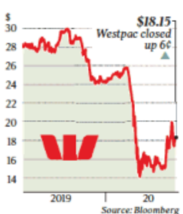
Austrac urged to draw a line on Westpac money-laundering case charges



JOYCE MOULLAKIS

Westpac and Austrac will not square off in the Federal Court over outstanding differences on 23 million alleged legal breaches until next year, although the presiding judge has warned the financial crimes regulator to draw a line under adding to the case.

In a Federal Court case management hearing on Wednesday, judge Jonathan Beach said he hoped a hearing over liability would be scheduled for the first half of next year, but noted it should occur "ideally in the first three months of 2021".

Justice Beach added that there "wasn't sufficient agreement" to produce a statement of agreed facts between Austrac and Westpac in the legal case brought by the regulator.

"That hasn't borne terribly much fruit at the moment," he said, noting that the significant point of contention between the parties was whether Westpac's anti-money-laundering and counter-terrorism financing program was sufficient and in place.

Justice Beach was pressing the parties for an earlier detailed hearing this year on their outstanding matters, but both sides took the view it would take time to sift through additional material Austrac was seeking to potentially broaden its case against the bank. That material could span tens of thousands of documents.

Austrac's initial case against Westpac, lodged in November, alleged 23 million breaches of the law, including helping to facilitate payments linked to child exploitation material by 12 customers.

A financial settlement has not been reached as Westpac has set aside $900m for a potential penalty, while Austrac is said to be pushing for $1.5bn.

The case management hearing came hours before Westpac executed a selldown of its remaining 9.5 per cent in ASX-listed fund manager Pendal. The bank said the divestment would boost its core capital position by two basis points and result in a post-tax accounting gain of $32m in the six months to September 30.

The financial crimes case took a twist last week, when Westpac disclosed that Austrac was considering amending its initial claim to include further transactions that were deemed suspicious, reported late or went unreported.

Those additional matters include payments by as many as 272 customers that are potentially linked to pedophile activity.

Westpac's barrister, John Sheahan, QC, said the new matters could see the bank providing the regulator with tens of thousands of further documents, making an earlier court timeline difficult to meet.

"Complying with the timetable that is proposed in the orders will be, I think, challenging but it's not a bad idea to set a challenging timetable," Mr Sheahan said.

"There has to come a point

Continued on Page 17

'REMARKABLE TURNAROUND'

Shares rally lifts hope for super returns

JOHN DURIE
GERARD COCKBURN

The sharemarket's recent rally has raised the prospect that super funds may escape a negative annual return, with AustralianSuper chief executive Ian Silk lifting his forecast for the current year on the back of the equities rebound.

Speaking to The Australian, Mr Silk on Wednesday lifted his outlook for annual returns to around zero — plus or minus 1 per cent — for balanced funds, revising his warning last month that members should expect the first negative return for balanced funds in 11 years.

His comments came as data released by super research company Chant West on Wednesday showed funds rose for the second consecutive month in May, with the median growth fund lifting 2.2 per cent as stockmarkets continued to rally.

Chant West labelled the feat a "remarkable turnaround", saying it raised the possibility of a positive year if stocks continued to rally, which was unthinkable in the depths of March when markets were smashed as economies locked down due to the coronavirus pandemic.

The benchmark S&P/ASX 200 Index closed at 5991.8 points on Wednesday, bringing its rise from the March 23 low to 31.8 per cent.

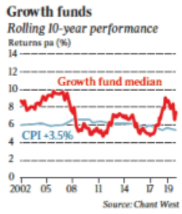
Speaking to The Australian, Mr Silk said AustralianSuper had long told its members to expect five negative annual returns in every 20 years.

But in the past decade the fund's returns have been consistently positive, with an average annual return of 7.6 per cent.

Mr Silk said the 2021 financial year would be "stuttering" but he was looking for growth in returns "from the 2022 year onwards".

"The governments will be loath to reimpose restraints on the economy," he said.

Investment chief Mark Delaney said earlier in the week the fund had an unusually high proportion of funds in cash (9 per cent), but this would be reduced next financial year as the fund looked for the new base for growth.



AustralianSuper has $178bn under management and Mr Silk said the superannuation system had "played a key role in the crisis".

He noted that while the withdrawal program was being well managed, "to the extent you have to be worried about liquidity means less money available to help companies recover".

Mr Silk also stressed the strong role his fund had played in helping corporate Australia recover from the economic damage wrought by the coronavirus pandemic, with $450m invested in equity raisings in recent weeks.

The fund is also continuing to back new companies, including a recent $150m investment in Paul Bassett's Square Peg fund. Since 2013, when AustralianSuper started managing Australian equities, in house it has paid more than $2.5bn in equity raisings.

Meanwhile, Chant West senior investment researcher Mano Mohankumar said a yearly return of zero for the median growth fund would be an excellent outcome given the impacts of the pandemic on Australia's near $3 trillion retirement pool.

"One key reason that funds appear headed for a better than expected result is that they manage well-diversified portfolios invested across a wide range of growth and defensive asset sectors, including, for many, a meaningful allocation to unlisted and

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JAMES KIRBY P20

> We're in uncharted territory so it's difficult to be confident, but I think we should expect a stuttering recovery
>
> IAN SILK, AUSTRALIANSUPER CEO

Pandemic puts the brakes on industry fund's run

RICHARD GLUYAS

The economic lockdown due to the coronavirus has slowed AustralianSuper's relentless march towards $200bn in member assets by the end of this financial year.

The nation's biggest super fund will still end up with about $180bn in the till, which is well on the way to a revised target of $300bn by 2025.

Contributions, however, have slowed, with fewer people in paid employment, or getting by on reduced hours.

The halo effect for the big industry funds from a trouble-free run in the 2018 financial services royal commission compared to the for-profit funds has also weakened.

After royal commissioner Kenneth Hayne completed his demolition job on the banks, AustralianSuper's net flows would top $2bn in some months.

> Silk remains a vociferous opponent of any extension to the early access scheme

That's now retreated to about $1bn a month, although an extra $17bn will line the fund's coffers in the year to June 30, excluding investment returns.

Chief executive Ian Silk's forecast last month of the first negative return in 11 years for the balanced option now looks a little pessimistic after the market's spectacular run.

The return is now looking like it will be around zero, plus or minus 1 per cent.

For Silk, the main risks include a dreaded second wave of COVID-19, although he rates the prospect of a second lockdown as very low because of the huge scale of the economic impact from restrictions.

The other risk is the economy

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MARGIN CALL

JONATHAN CHANCELLOR

Fintech Douugh seeks $6m

Douugh, another fintech start-up, is gearing up for its initial public offering in August when it will join the flood of other fintechs on the Australian bourse.

Some $6m will be sought for the Sydney-founded, San Francisco-headquartered business.

Marketed as offering a "bank account with a brain", its consumers can access an app that suggests how to cut back, and segment, spending via an AI assistant, which operates as a personalised wealth manager, something the big four haven't been able to do well.

Not that Douugh is a bank or even a neobank, as it's bypassing the bank part, instead partnering with existing institutions that have banking licences.

It has been around since 2017 when founded by **Andy Taylor**. His board seems set to include the former ANZ group markets boss **Steve Bellotti** and the ex-Pepper Group chief executive **Patrick Tuttle**.

Taylor was a co-founder of peer-to-peer lender SocietyOne.

The ASX listing will be via the currently listed Ziptel, a telecoms business that has been voluntarily suspended from trading since January.

Its initial IPO speculation in 2018 had an undisclosed Munich-based European family office as likely to underwrite the raising.

Canaccord Genuity Australia has been named the lead manager of the raising.

A portion will be handled by the crowd-funding platform Equitise.

By the way, the extra "u" was to secure a domain name.

Controversial name

IBAC, Victoria's independent Broad-based Anti-corruption Commission, has named its investigation into serious allegations of corrupt conduct among Victorian frontbench politicians Operation Fortescue.

Apparently IBAC selects its names from Australian rivers.

The Fortescue River feeds a lush garden of Eden in the heart of the north Pilbara desert in

Continued on Page 14

Tanner kicks in to rebuild trust in Sargon

EXCLUSIVE

DAMON KITNEY

Tanner

Lindsay Tanner uses a football analogy to explain his surprise role in the new entity that has purchased the operating businesses of collapsed financial services business Sargon.

"The challenges that we face here are similar to the challenges I faced taking on the Essendon role five years ago," the former Labor minister says of his presidency of AFL club Essendon, which he took on in the wake of the club's notorious doping scandal.

"We have had to rebuild that trust and acceptance within the football world literally from the ground up. I would argue that process has been complete. So this is a challenge that I relish."

The Australian can reveal that Mr Tanner and Marcus Price will be the chairman and chief executive, respectively, of the entity known as Pacific Infrastructure Partners, which has purchased Sargon's trustee, corporate trust and responsible entity operations and its proprietary technology infrastructure.

PIP is currently completing a process — pending final approvals — to rebrand Sargon to the name Certes Group, a word derived from Latin meaning truth, assurance and certainty.

"The challenge now facing everyone in the sector is making competition work for members. One of the great lessons from the Hayne royal commission is that competition isn't working as well as it should be," Mr Tanner, who is also a Suncorp director, told The Australian.

"This is a great opportunity to

Continued on Page 17

Unions back Cyrus in Virgin buyout battle

ROBYN IRONSIDE
DAMON KITNEY

Two key unions have declared their support for Cyrus over Bain as the new owners of Virgin Australia, saying the company is the best fit for the airline.

Days before final bids are due to be lodged with administrator Deloitte, the Australian Licensed Aircraft Engineers Association and Flight Attendants Association of Australia publicly backed Cyrus.

ALAEA secretary Steve Purvinas said the Cyrus team "seemed to have a far deeper appreciation for the Virgin brand".

"I feel it would be better for all of our members if Cyrus was successful come the next cut by the administrator," Mr Purvinas said. "I think Virgin will be best placed to succeed with Cyrus once they put in place their plans."

FAAA secretary Teri O'Toole said she thought it was important to make their preference known so the right decision was made by Deloitte at the end of the month.

"They've just got really good brand values," Ms O'Toole said.

"They're the right fit. They've got experience with the Virgin brand and when Cyrus talk about the airline, and their plan for it, it's with genuine commitment."

She said Cyrus was very familiar with brand co-founder Sir Richard Branson's approach to the airline of "employees first, customers second and shareholders third".

"Cyrus are putting their reputation on the line for this — they're not dipping their toes in it," said Ms O'Toole. "They're committed. You can tell that when they speak about the airline."

Other unions, including the Transport Workers Union and the Australian Federation of Air Pilots are continuing to weigh up the proposals made by the two bidders.

After multiple meetings and briefings with both Bain and Cyrus, TWU secretary Michael Kaine said they were finely balanced.

"We've got Bain who seem to

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ASIC reveals 'shoddy product' powers

JOYCE MOULLAKIS
GERARD COCKBURN

The corporate regulator has released final details about how it will use its sweeping product intervention powers, as it seeks to protect consumers from shoddy products and "significant harm".

The Australian Securities & Investments Commission on Wednesday released a regulatory guide around the powers, which allow it to ban business models or products or restrict how they are sold or administered in the market. Deputy chair Karen Chester said the power enabled ASIC "to confront, and respond to, harms in the financial sector in a targeted and timely way".

"But there are important checks and balances — it is a temporary intervention power and we must consult before each and every use," Ms Chester said.

"The availability of this power to protect consumers from products that result in significant harm is particularly timely now, when so many are facing uniquely challenging circumstances with the impact of COVID-19."

The product intervention powers, which were enacted by legislation in April last year, will sit alongside other financial product design and distribution obligations, which are aimed at ensuring products are fit for purpose. Those obligations come into force in October next year.

Payday lenders charging mammoth fees were caught in ASIC's product intervention crosshairs last year. That included the controversial business model of payday lender Cigno that the regulator said was among those that caused "significant consumer detriment". In September, Cigno's review application was dismissed by the Federal Court, which upheld ASIC's product intervention order for short-term credit.

The regulatory guide for product intervention on Wednesday outlined that parties had the right to complain to the Commonwealth Ombudsman, seek independent reviews of ASIC's decisions, or apply to the Administrative Appeals Tribunal for a merits review.

Ms Chester said that over time ASIC's use of product intervention could result in less overall regulation of the industry. "In recommending the power, the Financial System Inquiry identified the objective of limiting or avoiding the future need for more prescriptive regulation," she said.

Under product intervention, ASIC has also proposed to ban the sale of binary options to retail clients, and wants restrictions on the sale of highly leveraged contracts for difference.

Binary options are also known as "all-or-nothing options" and typically allow investors to make short-term, high-risk and often big bets on things such as share prices and currency movements.

Another area that ASIC is consulting on in product intervention is the sale of add-on financial products by car yards.

Separately, a financial planner entangled in the Hayne royal commission dodged time behind bars on Wednesday, despite committing a slew of financial fraud offences related to loans totalling more than $17m.

Former Aussie Home Loans adviser Shiv Prakash Sahay pleaded guilty in a NSW court for providing ongoing credit services, even though ASIC had permanently banned him from engaging in the activity.

The court sentenced Mr Sahay to a nine-month prison term, which was wholly suspended upon entering into a good behaviour bond of $1000. Mr Sahay was charged on two counts relating to consumer credit protection laws, after ASIC revealed he had provided credit advice on 38 loan contracts for three years until October 2, 2018.

ASIC previously barred Mr Sahay from providing financial advice in July 2015, for falsifying documents on behalf of clients to get them an approved home loan.

Mr Sahay's conduct as an Aussie mortgage broker was part of evidence brought to the Hayne royal commission that showed the CBA subsidiary failed to report the misconduct to ASIC.

PwC cuts 400 jobs on fall in demand

LACHLAN MOFFET GRAY

PwC will cut 400 employees in the financial advisory, consulting and support sectors of the business as the COVID-19 pandemic reduces demand for the big four firm's services.

The cuts, which account for about 5 per cent of the firm's Australian workforce, were announced on Wednesday.

The process will be completed by the end of next month and affect partners as well as standard employees, with some staff to be made redundant and some partners to take retirement.

"PwC Australia, like all businesses, has been responding to the COVID-19 crisis and the impact it is having on our clients and our market and today we updated our people on the next stage of our response, reflecting the economic outlook for Australia," PwC CEO Tom Seymour said. "We do not underestimate the impact this has on our people and we will work through this process as thoroughly and quickly as possible to bring our people certainty."

The economic downturn caused by the coronavirus pandemic has resulted in a sharp drop-off in demand for some of PwC's services, with Mr Seymour projecting revenue growth to be between zero and negative 20 per cent. In a bid to control costs, Mr Seymour in April reduced a majority of employees to a four-day work week under the "reduced working week program", reducing the annualised pay of most staff by 4 per cent. Partners have had their income reduced by 30 per cent or more.

PwC on Wednesday said the program would not be extended beyond June 30, with all employees to be returned to their usual working arrangements from July 1. Promotions and associated pay rises at the firm will resume in the new financial year.

In a statement, the firm on Wednesday said it expected "significant volatility to continue for at least the next 12 months".

Other big four firms have taken measures to reduce the coronavirus pandemic's impact on their bottom line.

In May, KPMG cut almost all staff pay between May and August by 20 per cent, equating to a 7 per cent annualised reduction. Partners have taken a pay cut of 17 per cent. Deloitte has cut annual pay by 8 per cent with partners taking a hit of at least 20 per cent, while EY has reduced the pay of non-fully utilised staff by 5 per cent annually, while partners have seen cuts from what they can draw from the firm.

Tanner leads bid to rebuild Sargon trust

Continued from Page 13

be a senior player in a company that will bring more competition, innovation and choice into the nuts and bolts upon which the sector runs," Mr Tanner added.

Mr Tanner and Mr Price, a former chief executive of the Link-backed e-conveyancing group PEXA, are under no illusions as to the task ahead.

Sargon, whose board included entrepreneur Phillip Kingston, former Crown Resorts chairman Rob Rankin and former Labor senator Stephen Conroy, was tipped into administration earlier this year by one of its biggest lenders, Chinese state-owned insurance company Taiping Trustees.

The entities being purchased by PIP continued trading as seven Sargon holding companies went into administration in February in a process that was handled by accounting firm EY.

The collapse put paid to the grand ambitions of Mr Kingston to turn Sargon into a thriving fintech business. He is no longer involved in the assets being purchased by PIP.

Listed platform provider OneVue, which is still owed $31m from its original sale of Diversa Trustees to Sargon before the company fell into administration, is seeking to recover its share of the sale proceeds through the Federal Court. PIP is not involved in that action.

"Trust isn't rebuilt in a day," Mr Price said. "The reasons for the voluntary administration were not associated with the business itself. The business itself is fundamentally a good business. Most of its customers have stuck with it. That shows faith in what the business was doing."

Mr Price has been advising PIP in the acquisition process. International strategic credit investor Vista Credit Partners is a minority strategic investor in PIP, alongside New York-based financiers Teddy Wasserman and Matthew Kibble. Mr Price and Mr Tanner also have equity in PIP.

"It has been very unfortunate for the staff. It's not ideal," Mr Price said of the problems of Sargon.

> 'There is a real role for this sort of business in this industry'
>
> MARCUS PRICE
> PIP CHIEF EXECUTIVE

"But there is a real role for this sort of business in this industry, an entity that is prepared to work with the smaller funds to develop their innovation agendas. It would be a real loss if you didn't have the incubator trustees to help these funds emerge."

Despite its troubles, the business still has $50bn in assets under trusteeship and supervision.

Mr Price revealed that PIP would make an initial capital injection to the business of $50m and that it would be open to bringing more investors on board.

"The regulators were very focused on ensuring we had a strong balance sheet. Especially in terms of cash," he said.

"So the company is well capitalised and has access to other funds as required.

"There would be a preference by the shareholders to bring in marquee Australian investors into this business in due course.

"Vista are well aware they are an American outfit. They would certainly be looking for Australia-based investment from here on in and Australian institutional money that can bring knowledge from Australia. As the business expands, that will be one of the objectives of the group."

Mr Price said the firm wanted to bring new technology and innovation to the industry, especially to improve efficiency and functionality.

"The one-size-fits-all model doesn't work for the smaller funds," he said.

"We are developing tools around compliance and monitoring that enhance transparency for trustees and the regulator. We lead the pack in that. The company will want to look at horizons beyond what it currently does in the super industry. We are doing a strategic review on this at the moment."

As previously announced by PIP, financial services executive Sue Thomas has joined PIP as an independent non-executive director.

Lindsay Tanner and Marcus Price

Draw line on Westpac charges, Austrac told

Continued from Page 13

where new issues stop being loaded into this existing proceeding," Mr Sheahan added.

Justice Beach agreed that Austrac had to draw a line under continuing to add to the initial legal claim. "We do need to guillotine it at some stage so that we can formulate the boundaries and content of a short trial on liability ... and then the penalty phase," he said.

Austrac's barrister, Wendy Harris, QC, was arguing that the Westpac matter be heard next year to allow time to sift through and examine the additional material.

"There is a real prospect that the Austrac CEO will complete an investigation and say 'we need to put forward some additional allegations' within that suite," she said, noting that hearing the case this year could be counter-productive. "It's likely to be the short cut that ends up being the long way home ... we need this time to explore."

Justice Beach also told Mr Sheahan it was his responsibility to inform the court of any subsequent legal action against Westpac by the corporate regulator or Australian Prudential Regulation Authority.

Following his comments, APRA released a statement on Wednesday noting it had delegated "certain enforcement powers" to the Australian Securities & Investments Commission in connection with its Westpac investigations. APRA started a Westpac probe in December and ASIC continues to investigate the chain of events that led to the court action and the bank's disclosures around a capital raising late last year.

Earlier this month, The Australian revealed ASIC had hit Westpac executives and managers embroiled in the scandal with compulsory examination orders that compelled them to attend in-depth interviews with the regulator.

DAVID GERAGHTY

Austrac's initial case against Westpac, lodged in November, alleged 23 million breaches of the law

> 'We do need to guillotine it at some stage'
>
> JONATHAN BEACH
> FEDERAL COURT JUSTICE

After Austrac's November case was lodged, new transactions were self-reported by Westpac after further review that related to suspicious matter reports being identified for as many as 272 customers. There were also threshold transaction reports above $10,000 — that were not submitted to Austrac — disclosed in Westpac's half-year results. The accounts showed Westpac was late in reporting 17,870 threshold transaction reports and as many as 90,000 that were not reported to the regulator at all.

The Federal Court on Wednesday also heard of an affidavit lodged by Austrac's national manager for legal and policy, Kathryn Haigh, dated June 15. It related to a range of issues including the new transactions in question.

An amended statement of claim is due to be filed with the court on August 14. The next case management hearing is scheduled for September 18.

While the parties prepare for the next phase, it also appears that mediation has not completely ceased.

"I don't think it has formally come to an end," Ms Harris said.

However, Mr Sheahan pointed out that Austrac had not responded to the bank's version of an agreed statement of facts lodged with the regulator's legal team in May. He also expressed hope the mediation process could be "re-enlivened down the track".

Financial planners granted more time to take and pass exams

JOYCE MOULLAKIS

The battered financial planning industry was granted a reprieve on Wednesday that gives it more time to meet tougher professional standards and qualifications, following scrutiny of the sector at the Hayne royal commission.

Legislation was passed in federal parliament that gives existing planners extra time to meet qualification and examination requirements set by the Financial Adviser Standards and Ethics Authority.

The law mandates that existing advisers complete the FASEA exam by January 1, 2022, reflecting a one-year extension, while they have an extra two years to meet qualification requirements now due by January 2026.

These changes do not apply to new advisers registered after January last year. The new FASEA requirements were put in place to help rebuild consumer trust in the battered financial planning industry, which has been caught up in a number of scandals in the past five years.

The industry received breathing space on the professional standards when the legislation overcame a hurdle posed by a proposed amendment by South Australian senator Rex Patrick. The barrier was removed when the amendment was withdrawn.

Jane Hume, assistant minister for superannuation and financial services, said the new timetable gave "welcome relief" and certainty to financial advisers.

"The government recognises how valuable access to quality professional financial advice is, particularly at the moment during the COVID-19 crisis," she said.

The timetable follows a report by Adviser Ratings last month showing just 7488 advisers had done the exam, with 1080 failing.

The first round of exams were held last year, and three further sittings have occurred. The 7488 candidates to sit the exam represent 32 per cent of advisers on the corporate regulator's registry.

The Association of Financial Advisers on Wednesday welcomed the timetable extensions.

"It will allow advisers to continue to focus on the immediate needs of their clients ... facing the economic impact of COVID-19," AFA boss Philip Kewin said.

The industry body for self-managed superannuation funds also applauded the legislation.

"It illustrates all sides of parliament recognise that the industry needs more time to adjust to the FASEA reforms while remaining on the path towards improved financial advice standards," SMSF chief executive John Maroney said.

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