

Gadens Connect

2020 - Edition Two

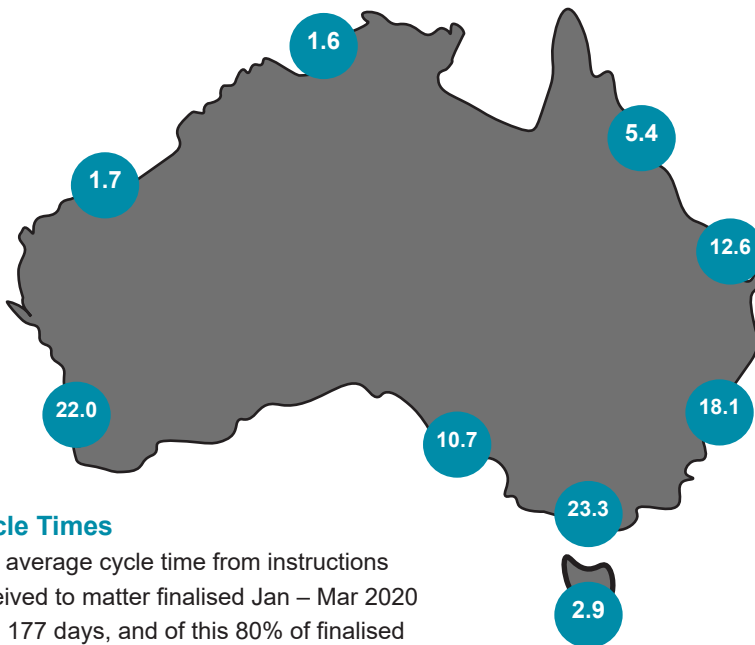
Welcome to the second edition of Gadens Connect, please share this edition with your team and business partners and if there is anything in particular you'd like to see in future editions of Gadens Connect, please let us know [here](#). For other great content you can also visit: www.gadens.com/latest-insights.

Key performance indicators

January saw us start the new year with a spike in instructions – this is consistent with same time last year with most lenders resuming recovery action after a pause of instructions over the Christmas and New Year period. Instructions, however, tapered off significantly from mid-March onwards as lenders were faced with the COVID-19 pandemic.

Instructions Received

This map shows the percentage breakdown of new instructions received in January to March 2020.



Watch point: Matters on hold

COVID-19 has seen an increase in matters on hold as most lenders have paused recovery action. This quarter (Jan – Mar) shows 55% of our total portfolio on hold, up 5% from last quarter (Oct – Dec). We can already see this number tracking up and will likely see a significant increase in our next quarterly update.

A new suite of hold reporting is currently being developed to give more targeted insights around hold, matter status and cycle times before, during, and after the pandemic.

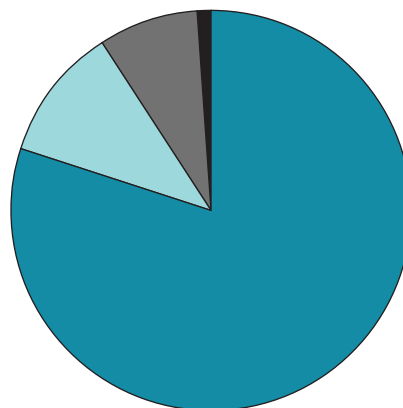
If there is particular data and insights you would like to see please [click here](#).

Cycle Times

The average cycle time from instructions received to matter finalised Jan – Mar 2020 was 177 days, and of this 80% of finalised matters were returned to order. The cycle time is up slightly from last quarter (Oct – Dec 2019) where the average cycle time from instructions received to matter finalised was 173 days, and of this 83% of finalised matters were returned to order.

Oct – Dec 2019 - 173 days
Jan – Mar 2020 - 177 days

The median cycle time of a recoveries file



Exits - last quarter (shown as a %)

- Returned to order no exit - 80
- Refinance - 0
- Property sales in possession - 11
- Property sales customer initiated - 8
- Other - 1

If you'd like to know more about your own portfolio's key performance metrics [click here](#).

Hot topic: COVID-19

The pressure on banks and financial institutions to support thousands of affected Australians during this pandemic is seeing fast and targeted action with banks deferring / changing repayments, offering moratorium periods, allowing access to surplus funds, providing financial aid to small businesses, and moving towards more flexible ways to do business. This means that there has been a significant focus on customer service, including the ability to identify those customers experiencing hardship, with the industry focusing more on day-to-day banking activities and pausing most, if not all, recovery action.

As lenders are making a change to the way in which customers do business with them during this time, Gadens too can support lenders with a range of options, including customer service and hardship calls with bank customers.

Federal Government Restrictions (COVID-19) – Impact on Mortgagee Sale Auctions

What do you need to know?

On 24 March 2020, Prime Minister Scott Morrison announced that auctions and open for inspections will be banned indefinitely from midnight on 25 March 2020. The question arises how this will impact sales by mortgagees.

Across Australia it is considered that a mortgagee may sell “in good faith having regard to the interest of the mortgagor”.

This provision has been judicially held to require, among other things, the following:

- the mortgagee is entitled to sell at a time of its choice without waiting for a time which a selling owner might consider more favourable;
- the mortgagee is bound to take reasonable steps to ascertain the value of the property before selling;
- the mortgagee cannot sell without advertising the property, to ensure the property is brought to the notice of persons likely to be interested and to possible buyers;
- the mortgagee is not entitled to adopt or accept any arrangement or price to simply ‘pay itself out’.

In our view, it is open to a mortgagee to select the appropriate method for the realisation of the property. It can sell by auction, by private treaty or tender. By selling the property after a proper marketing campaign it is much more difficult for a mortgagor and, indeed, any other interested party, to allege that the mortgagee has failed in its duty as a mortgagee, both at common law and according to statute, to achieve the best possible price.

Given the recent announcement, mortgagees should seek the recommendation of the relevant licensed valuer or agent as to the best sale method, including the use of an online auction, on a case by case basis.

Some things you might like to consider before proceeding with a proposed sale are:

1. Whether the measures are temporary (unlike a general slump) and (hopefully) likely to be relatively short term (China was lifting restrictions after three months).
2. The pool of buyers is drastically reduced by:
 - border closures (relevant particularly for investment properties);
 - people staying in their “village”; and
 - people generally not looking to buy property but waiting to see how this all pans out.There is some suggestion that the market will simply be “suspended”.
3. Whether a court could possibly say there is no way to achieve market price at present and a reasonable person would wait a few months before marketing the property.
4. Is there a potential surplus and should it be realised now and returned to the mortgagor given current circumstances?
5. How long has the property been on the market already?
6. Do you want to be a front runner in respect of new marketing and sales techniques which have not been tested generally in the market?

Changes to Insolvency laws

Changes were introduced into Parliament on 23 March 2020 as part of the Coronavirus Economic Response Package Omnibus Bill 2020 (Bill). As part of the additional \$66bn COVID-19 support announced on 22 March 2020, the Government temporarily increased the threshold at which statutory demands and bankruptcy notices can be issued as well as the time to respond. The package also includes temporary relief for directors from personal liability for insolvent trading.

What has changed?

- **Statutory demands:** the minimum threshold to issue a statutory demand has been increased to \$20,000 (from \$2,000) and the time to respond to a statutory demand has been increased to six months (from 21 days). This amendment will apply for six months post receipt of Royal Assent.
- **Bankruptcy notices:** the minimum threshold to issue a bankruptcy notice has been increased to \$20,000 (from \$5,000) and the time to respond to a bankruptcy notice has been increased to six months (from 21 days). This amendment will apply for six months post receipt of Royal Assent.
- **Directors:** temporarily relieved of their duty to prevent insolvent trading.

What has not changed?

- **Debt recovery:** there is no change to the ability of creditors to bring debt recovery proceedings through the Courts (subject to Court hearing procedures and availability, which have also been impacted).

Importantly, the Act will not have retrospective effect and these changes will not alter or invalidate bankruptcy notices that have been issued or statutory demands that have been served.

Workplace Volunteering - A day at St Kilda Mums

Recently, Gadens and ANZ teamed up for a day of volunteering at St Kilda Mums (a Melbourne charity that works to ensure children and families are happy, healthy and safe). The volunteers worked with St Kilda Mums to sort and package pre-loved baby and children's goods for re-homing with families in need.

St Kilda Mums is a pro bono client of Gadens, with women and children in need being one of the firm's priority areas of focus under our Corporate Social Responsibility program. If you would like to know more about joint workplace volunteering opportunities, please contact us [here](#).



GPSR

The year so far has seen us continue our journey of automation, integration and optimisation, with our initial focus on user experience. We want feedback from you on our GPSR application – what works well, what doesn't work so well, what would you like to see, etc. This will help us set our direction for your user experience for the year ahead. Over the course of the next month or two we will be issuing short surveys to gather this insight. Stay tuned!

In addition to this we are also focusing on a refresh of our reporting, data and insights and are looking towards more interactive dashboards within GPSR. This presents a good opportunity to do a pulse check on what we currently provide to you, and how we might be able to deliver our data to ensure it continues to add value and aligns to business priorities for the year ahead. If you'd like to connect, please [click here](#).

BCOP – notice of continuing default

With an increase in matters being placed on hold it is important to remember that you still have an obligation to notify a guarantor/s if an account remains in default 60 days after issue of the default notice (even where an arrangement is entered into with the customer, and including hardship).

Let's celebrate...

- **Welcome Mark Pistilli** – In March Gadens Melbourne and Sydney partnership was excited to welcome its new CEO, Mark Pistilli.
- **Real Property Law Firm of the Year** – Gadens announced another successful year in the 2021 Best Lawyer Award rankings, being named Real Property Law Firm of the Year and with 60 partners and lawyers ranked across 38 different practice areas. This included Susan Forrest, Kathy Merrick, Malcolm Watson and Rob Hinton and who were recognised as providing outstanding client experience in a number of areas.
- **Remote working** – Whilst Gadens has adopted the Government's recommendation of working remotely, we are available for our clients, embracing the world of video conferencing as well as good old-fashioned phone calls.

Key contacts

If you would like to discuss the contents of this newsletter or any other recovery-related matter, please contact one of our regional legal experts...

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