

Welcome to the new financial year 2021-22!

Welcome to our third edition for 2021, and to the new financial year.

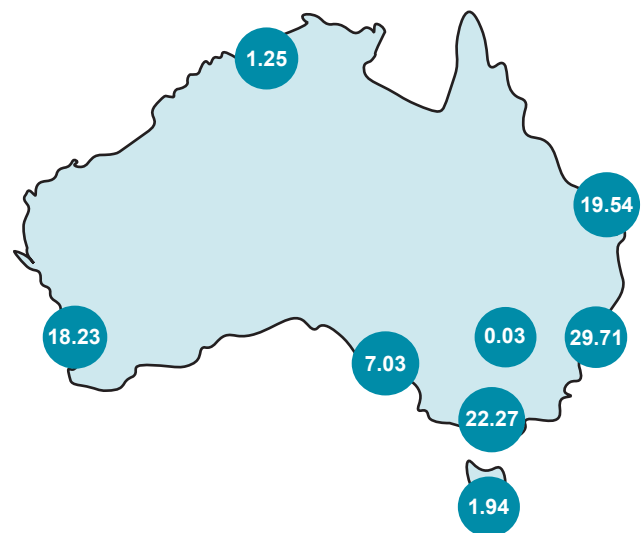
Our thoughts are with all our colleagues as we re-enter lockdowns and restrictions are once again imposed in various states as a result of the COVID-19 pandemic. We know you have again been working hard to support your affected customers and we are here to help you too.

To stay in the know, keep an eye out for our quarterly updates, and make sure you share them with your team and business partners. For other great content you can also visit: www.gadens.com/latest-insights, and if there is anything in particular you would like to see in future editions of Gadens Connect, please let us know [here](#).

Current Matters Affected by a COVID Hold

39.44% of the portfolio remains on hold due to the COVID-19 pandemic.

We expect this number to increase over the coming months due to potential holds on legal action as a result of lenders assisting their customers during the further lockdown periods.



Instructions Received Last Financial Year

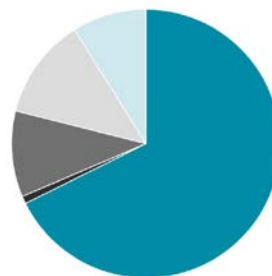
This map shows the percentage breakdown of new instructions (including re-instructed matters) received in the last financial year, 01 July 2020 to 30 June 2021. As expected, most instructions are in the major metropolitan areas, with Sydney and Melbourne experiencing higher volumes.

Cycle Times and Exit Reasons

The average cycle time across the industry is sitting at 429 days. Of the files exited during the last quarter, the leading exit reason, at approximately 68% were due to the file being returned to order.

Exits - last quarter

- Returned to order no exit - 68%
- Refinance - 1%
- Property sales in possession - 10%
- Property sales customer initiated - 12%
- Other - 9%



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

Update on Legislation

On 23 March 2021 the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (Vic)* (**the Act**) received royal assent and for the most part, the Act came into force in Victoria on 26 April 2021, being the date which the previous temporary measures under the *COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Vic)* (COVID-19 Regulations) were due to end. The permanent changes brought in under the Act allow for the continued operation of processes and procedures implemented during the COVID-19 pandemic, including the remote witnessing and signing of certain documents in Victoria by way of audio visual link, including deeds and mortgages, certain contracts and agreements, affidavits and statutory declarations.

Setting aside default judgment in South Australia by consent

It was the case that under the *Uniform Civil Rules 2020 (SA)* (**the Rules**), as originally drafted, that a default judgment (judgment obtained where a party has failed to file a defence to a claim within time) could only be set aside if:

1. there was an irregularity in obtaining that judgment e.g. the claim was not correctly served or the judgment was obtained as a result of misrepresentation; or
2. the claim documents did not come to the attention of the party/the party has a reasonable excuse for not filing a defence, and the party has a reasonable basis for defending the claim.

There was no allowance under the Rules for parties to agree to set aside a default judgment by consent when the judgment debt had been paid (after judgment was entered). This caused some anxiety regarding Credit Reporting, particularly for defendants. In reality however, the Magistrates Court of South Australia was guilty of showcasing a rather unpredictable approach to setting aside default judgments.

On some occasions, Magistrates would make orders to set aside a default judgment when the consent of all parties had been obtained. On other occasions, Magistrates would refuse to make such orders as the above criteria had not been satisfied, irrespective of the fact that the consent of all parties was annexed to the setting aside application.

Needless to say, the lack of consistency and “potluck” approach to judicial decision-making caused considerable frustration for a number of our clients, as well as other practitioners.

However, we are finally pleased to say that after persistent lobbying by us and other practitioners directly to the SA Joint Rules Advisory Committee, common sense has prevailed and the Rules have been further amended.

Under Amendment 5 to the Rules which came into operation on 01 July 2021, a Court may now, pursuant to rule 186.1(2)(c) (as amended), set aside a default judgment by consent if satisfied that the interests of justice so require.

While the original criteria for setting aside a default judgment is still available to parties, it is hoped that the new amendment will bring some consistency back to the Courts.

Success story

We recently had a matter where the mortgagor was made bankrupt and their trustee in bankruptcy disclaimed the land over which the bank held a mortgage. As a result of the disclaimer, the land had escheated to the Crown in the right of the State. Consequently, the Registrar of Titles lodged a Registrar's Caveat over the property preventing any dealings with it, thus the bank was unable to complete a contract of sale it had entered with a third party until it obtained a court order. Gadens Melbourne was successful in applying to the Federal Court for an order vesting the property in the bank pursuant to section 133(9) of the *Bankruptcy Act 1966* (Cth). Once the property vested in the bank, it was able to apply to the Registrar of Titles to be made the registered proprietor of the property, enabling it to complete the contract it had previously entered with the third party.

FAQ — Mortgagee in possession

In our most recent edition of [Gadens Connect](#), we asked the question whether a mortgagee is liable to pay council rates, owners corporation fees (Body Corporate Fees) or Land Tax notices. Furthermore, we commented that the answer depended upon the location of the property.

The answer will differ whether the mortgagee/lender is in possession of the property. The location of the property is another important determining factor.

If you have any queries or concerns regarding payment of council and water rates, owners corporation fees (Body Corporate Fees) or Land Tax notices, please contact [Malcolm Watson](#) (Partner, Melbourne).

PPSA: extension of time to register

The last 12 months has seen a number of court applications being made for an extension of time to register a *Personal Properties Securities Act 2009* (Cth) (PPSA) security interest. In the following article, we summarise the key issues considered by the courts and provide practical tips for any secured party who finds themselves out of time to correctly register their interest.

To view this article, please [click here](#).

If you wish to discuss registration of a PPSA security interest or any related matter, please [get in touch](#).

Let's celebrate!



- **Our staff** – We're excited to extend a warm welcome back to Anna Koumides, Special Counsel, from maternity leave!
- **The Best Lawyers in Australia (2022 Edition)** – Gadens has announced another successful year with Malcolm Watson, Partner, recognised for Real Property Law, and Susan Forrest, Partner, recognised for Alternative Dispute Resolution, Banking and Finance Law and Insolvency and Reorganisation Law.

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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