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ISSUE 25



## BANKING SECTOR NEWSLETTER

**Reminder: the Australian Financial Complaints Authority**  
AFCA is the new one-stop-shop for financial complaints, and will replace the Superannuation Complaints Tribunal (SCT), the Final Ombudsman Service and the Credit and Investments Ombudsman. SCT set to continue accepting complaints until 31 October 2018. AFCA will commence accepting complaints on 1 November 2018.

### IN THE MEDIA

#### Planners seeking to move beyond FASEA

Many financial planning practice owners are not waiting to see the final shape of the new Financial Advisers Standards and Ethics Authority (FASEA) regime but are simply getting on with the task of ensuring their businesses are ready to face the new policy environment <https://www.moneymanagement.com.au/news/financial-planning/planners-seeking-move-beyond-fasea>

#### S&P anticipates 'further pressure' on mortgage repayments due to Australia's housing market downturn

Falling home prices in Australia are expected to lead to "further pressure" in mortgage arrears in the months ahead, particularly among those borrowers with high loan-to-value ratios, says ratings agency Standard and Poor's (S&P) <https://www.businessinsider.com.au/australia-housing-market-downturn-prices-mortgage-repayments-standard-and-poors-2018-10>

#### Banks lobbied to extend moratorium on drought branch closures

The banking union is pushing Australia's biggest agricultural lenders to commit to long-term drought policies to protect country branches and customers, ahead a meeting with key government representatives in Canberra <https://www.abc.net.au/news/2018-10-25/banks-lobbied-to-extend-moratorium-on-drought-branch-closures/10427814>

#### Financial firms yet to join Australian Financial Complaints Authority must act immediately

More than 35,000 financial firms required to join the Australian Financial Complaints Authority (AFCA) have now joined the scheme. There are more than 300 licensed financial firms who are still to join, and most of these are credit licensees who were previously members of the Credit and Investments Ombudsman <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-324mr-financial-firms-yet-to-join-australian-financial-complaints-authority-must-act-immediately/>

#### ASIC cancels Austplan's licence

The Australian Securities and Investments Commission (ASIC) has cancelled the Australian financial services (AFS) of Austplan effective from 25 November due to concerns around the firm's ability to ensure that advice provided was compliant <https://www.moneymanagement.com.au/news/financial-planning/asic-cancels-austplan%E2%80%99s-licence>

#### Frydenberg urges tougher ASIC approach

The Federal Treasurer, Josh Frydenberg has made it clear he wants the Australian Securities and Investments Commission (ASIC) to adopt a tougher approach to the financial services industry, including more litigation <https://www.moneymanagement.com.au/news/policy-regulation/frydenberg-urges-tougher-asic-approach>

#### Australian banks should 'prepare accordingly' for stricter accounting standards on risky home loans

The big banks will need to be "thoroughly prepared" to ensure compliance with changes to the Australian accounting standard for Financial Instruments (AASB 9). The key change relates to how banks make provisions for credit losses on their financial statements <https://www.businessinsider.com.au/australian-banks-risky-mortgage-loans-accounting-standards-2018-10>

**COBA says legislative reform will accelerate bank sector competition**

Legislation to allow Australia's customer owned banking sector to more easily raise capital will increase its ability to compete with the nation's major banks

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1310-coba-says-legislative-reform-will-accelerate-bank-sector-competition>

**Banking commission lessons likely to be short-lived, warns former ACCC boss**

Shocking misconduct revealed at the banking royal commission is likely to be repeated as short memories allow complacency to gradually return, warns a former competition regulator

<https://www.abc.net.au/news/2018-10-22/graeme-samuel-slams-asic-in-wake-of-banking-royal-commission/10403362>

**Industry 'caught up' in product rules reform**

The National Insurance Brokers Association (NIBA) has called for insurance to be withdrawn from new legislation designed to help eradicate the mis-selling of financial products. A Senate inquiry is under way into provisions of the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

<http://www.insurancenews.com.au/regulatory-government/industry-caught-up-in-product-rules-reform>

**CFPL gets qualified mark on EY undertakings**

Commonwealth Financial Planning (CFPL) has received only a qualified "pass" mark from the independent expert report undertaken by Ernst & Young as part of its enforceable undertaking (EU) with the Australian Securities and Investments Commission (ASIC) around remediation arising out of its fee for no service breaches

<https://www.moneymanagement.com.au/news/financial-planning/cfpl-gets-qualified-mark-eu-undertakings>

**Amending Australia's Offshore Banking Unit Regime**

The Coalition Government will reform Australia's Offshore Banking Unit regime to strengthen the integrity of our tax system. The Offshore Banking Unit Regime, established in 1992, provides a more attractive tax rate for offshore banking activity conducted by Australian registered banks

<http://jaf.ministers.treasury.gov.au/media-release/040-2018/>

**Legislating stronger penalties for white collar crime**

The Coalition Government has introduced legislation into Parliament to significantly strengthen criminal and civil penalties for corporate and financial sector misconduct. The legislation will bring our penalties closer to those in other leading jurisdictions and further protect Australian consumers from white collar crime. Criminal penalties are set to double

<http://jaf.ministers.treasury.gov.au/media-release/035-2018/>

**10 year imprisonment for misconduct**

The government is set to introduce tougher new criminal penalties for misconduct in the financial sector with individuals to face ten years imprisonment as a result of misconduct. The legislation is based on recommendations from the ASIC enforcement review taskforce and will also expand the range of contraventions subject to civil penalties

<https://www.investordaily.com.au/regulation/43837-ten-years-imprisonment-for-misconduct>

**Calls for APRA, ASIC to answer to mega regulator to end the banking scandals**

The corporate and prudential regulators have become culturally and intellectually captured by the banks and should be made to answer to a UK-style financial oversight committee, a forthcoming Federal Law Review paper argue

<https://www.afr.com/business/banking-and-finance/financial-services/calls-for-apra-asic-to-answer-to-mega-regulator-to-end-the-banking-scandals-20181020-h16wil>

**New financial ombudsman reveals strategy ahead of launch**

AFCA, the new dispute resolution body which brings together the Financial Ombudsman Service, the Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal, have unveiled its strategy and new brand ahead of being open to taking complaints from consumers and small business on 1 November 2018

<https://www.superreview.com.au/news/superannuation/new-financial-ombudsman-reveals-strategy-ahead-launch>

**APRA sets out BEAR expectations**

The Australian Prudential Regulation Authority (APRA) has released an information paper to assist authorised deposit-taking institutions (ADIs) to meet their obligations under the Banking Executive Accountability Regime (BEAR)

<https://www.apra.gov.au/media-centre/media-releases/apra-sets-out-bear-expectations>

**Government consults on stiffer penalties for corporate misconduct**

Draft legislation to strengthen penalties for corporate and financial sector misconduct has been released by the government for public consultation. Assistant Treasurer Stuart Robert says the aim is to ensure the ASIC has the powers it needs to take strong action to protect consumers from corporate wrongdoing

<https://www.governanceinstitute.com.au/news-media/news/2018/oct/government-consults-on-stiffer-penalties-for-corporate-misconduct/>

## IN PRACTICE AND COURTS

### RBA: New Payments Platform: Consultation

The RBA is seeking views from interested stakeholders about the functionality of, and access to, the New Payments Platform. The Australian Competition and Consumer Commission is providing input and assistance on access issues, and will participate in the consultation. The closing date for submissions is 30 November 2018. For further details, see [New Payments Platform Functionality and Access: Consultation](#)

### PPSR - Amending a registration

It's free of charge to make minor amendments, such as shortening the duration time, removing a grantor, and discharging a registration. If you need to amend your registration to extend the duration time or add a grantor, fees start from \$6. [Click here](#) to see a full list of what can and cannot be amended

### ASIC: penalties for white collar crime

Based on recommendations from the ASIC Enforcement Review Taskforce which follows our Financial System Inquiry, the bill significantly increases maximum penalties for both criminal and civil wrongdoing. As the legislation includes changes to the Corporations Act, its introduction requires the agreement of at least three states or two states and one territory. The Government is actively seeking this agreement. The new maximum criminal penalties are tabled here <http://jaf.ministers.treasury.gov.au/media-release/033-2018/>

### APRA: Banking Executive Accountability Regime

The Banking Executive Accountability Regime, set out in Part IIAA of the [Banking Act 1959](#), establishes accountability obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors. The regime also establishes deferred remuneration, key personnel and notification obligations for ADIs.

### APRA Update

On 17 October 2018, APRA released an information paper to assist ADIs to meet their obligations under the Banking Executive Accountability Regime. On 23 October 2018, an updated information paper and accompanying accountability statement template were released to incorporate minor amendments to formatting.

### [Credit and financial services targeted at Australians at risk of financial hardship](#)

Status: Accepting Submissions Date Referred: 17 October 2018 Submissions Close: 09 November 2018

### Reminder: the Australian Financial Complaints Authority licences

If licensees were not a member of AFCA as at 21 September 2018 they are in breach of their licence obligations and ASIC can immediately commence action to suspend or cancel their licence. For credit representatives, if they are required to join AFCA but do not do so by 1 November 2018, their authorisation will become invalid and they will need to cease engaging in credit activities. See the [AFCA website](#)

### Royal Commission Update

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was established by the Government in December 2017, with the first of seven public hearings held in March 2018, and the final round to be held in November 2018

### AUSTRAC: Draft Amendments to Chapter 11 of the AML/CTF Rules

Chapter 11 specifies the reporting and lodgment periods applicable to the compliance reporting obligation in section 47 of the Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF Act). The draft amendments to Chapter 11 exempt reporting entities who in 2018 ceased, and did not recommence, to provide a designated service. The consultation period closes on 22 November 2018. Access the draft amendments on the [Draft AML/CTF Rules page](#)

### [Reforms to strengthen penalties for corporate and financial sector misconduct - Draft Legislation](#)

The Government is seeking public comment on draft legislation to strengthen penalties for corporate and financial sector misconduct. The proposed changes would double maximum imprisonment penalties and significantly increase financial penalties for some of the most serious 'white-collar' criminal offences.

### IFAC: Global Consultation: Identifying and Assessing the Risks of Material Misstatement

*Proposed Changes to ISA 315 (Revised) to Advance Audit Quality*

The International Auditing and Assurance Standards Board (IAASB) seeks public comment by November 2, 2018 on [Exposure Draft, ISA 315 \(Revised\), Identifying and Assessing the Risks of Material Misstatement](#)

### AASB Invitation to Comment

[ITC 40 Financial Instruments with Characteristics of Equity](#) - The International Accounting Standards Board has recently published Discussion Paper DP/2018/1 *Financial Instruments with Characteristics of Equity*. Submissions to the IASB are due by 7 January 2019.

### [Parliamentary Joint Committee on Corporations and Financial Services: Opening Statement](#)

ASIC Chair James Shipton, 19 October 2018; Opening statement by James Shipton, Chair, Australian Securities and Investments Commission, Parliamentary Joint Committee on Corporations and Financial Services

### ABA Submissions

18 October 2018 - [Design and Distribution Obligations and Product Intervention Powers](#)

### CASES

#### [UBS AG v Tyne \[2018\] HCA 45](#)

Appeal allowed with costs. Practice and procedure – Permanent stay of proceedings – Abuse of process – Where respondent (in personal capacity) was controlling mind of former trustee and related company – Where respondent (in personal capacity), former trustee and related company commenced proceedings in Supreme Court of New South Wales – Where respondent (in personal capacity) and former trustee discontinued as parties in Supreme Court proceedings – Where Supreme Court proceedings permanently stayed – Where respondent (as trustee) pursued substantially same claims in Federal Court of Australia – Where primary judge permanently stayed proceedings for abuse of process – Whether on appeal Full Court erred in finding no abuse of process and setting aside permanent stay – Whether Full Court failed to consider overarching purpose of conduct of civil litigation.

The Trust's claims in the SCNSW proceedings and in these proceedings are founded on allegations that UBS gave negligent advice and/or that UBS engaged in misleading or deceptive conduct (or conduct that was likely to mislead or deceive), in relation to financial services, in the representations made by its officers to Mr Tyne, and, through Mr Tyne, to Telesto and ACN 074 (in its capacity as trustee of the Trust)

#### [R v Hike \[2018\] QDC 207](#)

I refuse the Crown application to amend the particulars.

CRIMINAL LAW – PROPERTY OFFENCES- FRAUD- EVIDENCE- NO CASE SUBMISSION- whether elements can be proved beyond reasonable doubt- whether particulars alleged by the crown could be sustained-

whether there was a false representation as alleged- whether there was an inducement as alleged

CRIMINAL LAW- INFORMATION, INDICTMENT OR PRESENTMENT- Particulars- Application to amend at the conclusion of the Crown case- whether should be granted- whether prejudice to the defence- whether the particulars were proved

Hitzke prepared, or counselled or procured Christie to prepare, an invoice dated 12 August 2009 to be included in an application to BOQ Equipment Finance Limited for a hire purchase agreement in favour of Jestrose Pty Ltd in the sum of \$167,700

### LEGISLATION

#### Commonwealth

##### Bills

#### [Treasury Laws Amendment \(Strengthening Corporate and Financial Sector Penalties\) Bill 2018](#)

HR 2nd reading moved 24/10/2018 - This Bill amends the Corporations Act, ASIC Act, Credit Act and Insurance Contracts Act to introduce a stronger penalty framework in response to a number of recommendations from the ASIC Enforcement Review Taskforce report. The amendments made by this Bill will deter misconduct and improve community confidence in the corporate and financial sector

#### [Treasury Laws Amendment \(Australian Consumer Law Review\) Bill 2018](#)

Finally passed both Houses 18 October 2018 - Implements certain recommendations of the Australian Consumer Law Review Final Report by amending the Australian Securities and Investments Commission Act 2001 to: correct inconsistent terminology for financial products that involve interests in land; and clarify the application of consumer protections to financial products

##### Regulations

#### [ASIC Corporations and Credit \(Amendment\) Instrument 2018/937](#)

25/10/2018 - This instrument makes minor and consequential amendments to five ASIC instruments to reflect the commencement of the Australian Financial Complaints Authority

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