

17 DECEMBER 2018

ISSUE 28



## BANKING SECTOR NEWSLETTER

This will be our last banking sector newsletter for 2018. We would like to take this opportunity to wish you all a safe and happy holiday season. We will be resuming our newsletters in late January.

### Financial complaints soar in first month of AFCA operations

The Australian Financial Complaints Authority (AFCA) has reported it received over 12,000 phone enquiries in its first month of operation. AFCA, which opened its doors on 1 November this year, has received so far 6,522 complaints from consumers and small businesses, about financial products or services.

<https://www.afca.org.au/news/media-releases/financial-complaints-soar-in-first-month-of-afca-operations/>

### IN THE MEDIA

#### Back book rate hikes spur arrears jump: S&P

Delinquencies underlying Australia's mortgage portfolio increased over the year to September 2018 off the back of out-of-cycle interest rate increases and refinancing constrains, according to S&P

<https://www.mortgagebusiness.com.au/breaking-news/12939-back-book-rate-hikes-spur-annual-arrears-jump-s-p>

#### ASIC reports on decisions to cut red tape - April 2018 to September 2018

ASIC has released its latest report outlining decisions on relief applications. The report also provides examples where ASIC has exercised, or refused to exercise, its exemption and modification powers under responsible lending provisions of the National Credit Act

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-369mr-asic-reports-on-decisions-to-cut-red-tape-april-2018-to-september-2018/>

#### Risks of tighter lending flagged by economists

Economists have issued a warning regarding the potential ramifications of stricter lending practices on the broader market

<https://www.mortgagebusiness.com.au/breaking-news/12930-risks-of-tighter-lending-flagged-by-economists>

#### Chair and Deputy Chair reappointed for another term

The Australian Banking Association Council held its Annual General Meeting, re-electing Shayne Elliot as Chair and David Carter as Deputy Chair for another 12 months

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/chair-and-deputy-chair-reappointed-for-another-term>

#### A new data right for all Australians

Australians will soon be able to better compare prices and switch between products and providers across the banking, energy and telecommunications sectors, with the Liberal National Government introducing legislation into Parliament that gives individuals access to personal data currently held by businesses

<http://jaf.ministers.treasury.gov.au/media-release/061-2018/>

#### Coalition Joint Party Room approval a positive start to implementing reforms

The Coalition Joint Party Meeting approved the *Treasury Laws Amendment Bill* (No.6) to be introduced into Federal Parliament. The Bill includes the first phase of reforms to address recommendations made in the Hammond Review to improve the competitiveness of credit unions, building societies and mutual banks

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1340-coalition-joint-party-room-approval-a-positive-start-to-implementing-reforms>

### Major financial reporting changes and other focuses

ASIC has called on companies to focus on new requirements that can materially affect reported assets, liabilities and profits. Major new accounting standards will have the greatest impact on financial reporting for many companies since the adoption of International Financial Reporting Standards (IFRS) in 2005.

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-364mr-major-financial-reporting-changes-and-other-focuses/>

### AFCA provides a submission to the inquiry into 'credit and financial services targeted at Australians at risk of hardship'

AFCA has provided a submission to the inquiry into 'Credit and financial services targeted at Australians at risk of hardship' by the Senate Economics References Committee. AFCA's submission focused on the issues that alter the effectiveness of EDR as a mechanism for consumers and small businesses

<https://www.afca.org.au/news/latest-news/afca-provides-a-submission-to-the-inquiry-into-credit-and-financial-services-targeted-at-australians-at-risk-of-hardship/>

### Commonwealth Bank denies customers' private medical data accessed in potential breach

Medical information supplied by an unknown number of customers to Commonwealth Bank's insurance operation is made available to other arms of the bank, including to staff who decide whether to approve or decline loan applications

<https://www.abc.net.au/news/2018-12-03/commonwealth-bank-medical-data-exposed-potential-privacy-breach/10563414>

### Report reveals miniscule number of advice complaints

Complaints about financial planning and advice represented only a microscopic proportion of complaints received from customers by the major banks, according to the latest report from the Banking Code Compliance Monitoring Committee

<https://www.moneymanagement.com.au/news/financial-planning/report-reveals-miniscule-number-advice-complaints>

### Banks' compliance, monitoring and reporting deficient, report finds

Banks breached their Code of Banking Practice 10,123 times in 2017–18, according to a *Banking Code Compliance Monitoring Committee (CCMC) report* released. The CCMC said these self-reported breaches of the Banking Code affected more than 3.4 million people, costing them more than \$95 million. However, these impacts are likely to be significantly understated

<https://www.ccmc.org.au/2018/11/29/media-release-banks-compliance-monitoring-and-reporting-deficient-report-finds/>

### Banking products to be designed with accessibility in mind

Australia's banks have committed to new principles to ensure accessible banking for the four million Australians living with disability. These principles have been developed in consultation with disability advocates and the banking industry

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/banking-products-to-be-designed-with-accessibility-in-mind>

### FASEA releases foreign qualifications policy

Financial advisers holding foreign qualifications have been given clearer guidance with the release by the Financial Adviser Standards and Ethics Authority (FASEA) of its policy on Foreign Qualifications

<https://www.moneymanagement.com.au/news/financial-planning/fasea-releases-foreign-qualifications-policy>

### RBA: Guilty Pleas made by Note Printing Australia and Securrency in the Supreme Court of Victoria

Following a decision by the Supreme Court of Victoria, the Reserve Bank of Australia (RBA) is able to disclose that in late 2011 Note Printing Australia (NPA) and Securrency[1] entered pleas of guilty to charges of conspiracy to bribe foreign officials in connection with banknote-related business

<https://www.rba.gov.au/media-releases/2018/mr-18-29.html>

### Government calls on business to exempt vulnerable consumers from paper billing fees

The Morrison Government is calling on businesses to take action to promote their exemption programs for paper billing fees to reduce the number of vulnerable and disadvantaged consumers paying fees to receive paper bills

<http://srr.ministers.treasury.gov.au/media-release/044-2018/>

### ASFA: Getting tough on untrustworthy advisors

Recent AFSA investigations into complaints by debtors and creditors have uncovered some insolvency. Their dishonest advice is either flagrantly illegal – actively hiding assets or abetting fraudulent activity – or, at the very least, unethical – making their client's financial situation worse than it needs to be

<https://www.afsa.gov.au/about-us/newsroom/getting-tough-untrustworthy-advisors>

### Franking credits policy "unAustralian"

The single biggest problem with policy proposals to remove refundable franking credits is that it treats people differently depending on where they've got their retirement savings, according to SMSF Association chair and Queensland academic, Professor Deborah Ralston

<https://www.superreview.com.au/news/superannuation/franking-credits-policy-%E2%80%9Cunaustralian%E2%80%9D>

## Regulators are pushing us into a cashless world as RBA declares 'a turning point has been reached'

Cash will become a niche payment sooner than we think and cheques will be phased out, says Reserve Bank of Australia governor Philip Lowe, as the Federal Government considers imposing tougher penalties on cash economy activity

<https://www.abc.net.au/news/2018-11-26/regulators-are-pushing-us-to-a-cashless-world-rba/10555868>

## IN PRACTICE AND COURTS

### APRA Monthly Banking Statistics October 2018

APRA releases its [Monthly Banking Statistics](#) publication for October 2018

### AASB Invitation to Comment:

[ITC 40 Financial Instruments with Characteristics of Equity](#) - The International Accounting Standard 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

### RBA Consultants

30 Nov 2018 [New Payments Platform Functionality and Access: Consultation](#)

### FASEA Code of Ethics Legislative Instrument

FASEA has released the legislative instrument for the Code of Ethics standard for consultation. Under the standard, FASEA proposes the Code of Ethics addresses the value of Trust, Competence, Honesty, Fairness and Diligence. All advisers must act at all times, in all cases in a manner that is demonstrably consistent with the 12 standards which will be monitored by ASIC's approved code monitoring bodies. The legislative instrument and explanatory statement can be viewed [here](#). All feedback and submissions close on 19 December 2018.

### [AASB: Exposure Draft: Not-for-profit lessees may elect not to fair value 'peppercorn leases'](#)

ED 286 Amendments to Australian Accounting Standards - Right-of-Use Assets of Not-for-Profit Entities proposes a temporary option for not-for-profit lessees to elect to measure right-of-use assets at initial recognition at cost rather than at fair value for 'peppercorn leases'. The Exposure Draft comment closed on 7 December 2018

### ABA Submissions

14 November 2018 - [Submission to the Royal Commission Interim Report](#)

## CASES

### [Burkett v Bendigo and Adelaide Bank Ltd \(No 2\) \[2018\] VSC 723](#)

COURTS AND JUDICIAL SYSTEM – Consequences of being a group member – Clarke (as Trustee of the Clarke Family Trust) v Great Southern Finance Pty Ltd (Receivers and Managers Appointed) (in liquidation)

BANKING AND FINANCE – Evidence required to establish the advance of moneys under an alleged loan agreement – Where evidence is equivocal regarding the genesis and assignment of the loan – Where inconsistencies abound amongst evidence and pleadings – Advance not proven.

DEEDS AND OTHER INSTRUMENTS – AGENCY – Whether application form for managed investment scheme purporting to confer a power of attorney was executed as a deed – Requirement that deed be delivered persists – Whether deed delivered – Application form a deed but not delivered – Relevant power of attorney not granted –

AGENCY – Whether power of attorney validly exercised – Where donor of power of attorney was not ascertainable at the time of alleged grant of power – Where a third party purported to exercise the power of attorney – Purported exercise of the power of attorney by third party ineffective.

RESTITUTION – Unjust enrichment – Moneys had and received – Liability of managed investment scheme participant to account to financier for moneys allegedly borrowed for investment scheme – Where loss by a financier not established – Where gain by investor not established 498

### [Bankwest a Division of Commonwealth Bank of Australia v Mann \[No 4\] \[2018\] WASC 370](#)

Contract - Where home loan and mortgage provide for conclusive certificate - Where home loan and mortgage provide for payment without set off or counterclaim - Whether bank has established amount outstanding - Whether borrower may advance claims in his defence and counterclaim in defence of the claim. The challenges in the role of trial judge are increased when one (or more) of the litigants is not legally represented

### [CSSC \(Qld\) Pty Ltd, Re \[2018\] WSC 282](#)

CORPORATIONS – WINDING UP – WINDING UP IN INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – GENUINE DISPUTE AS TO INDEBTEDNESS – ASSESSING GENUINENESS – GENERALLY – where one director issued the statutory demand against the company for repayment of the loan made by the director to the company – where the other director did not have authority to bring the application on behalf of the company to set aside the statutory demand – where the other director could not show there was a genuine dispute as to the debt – where the dispute between the directors was a dispute between the members of the company – where it was an abuse of process for one director to issue the statutory demand

**LEGISLATION****Commonwealth****Acts****[No 142 Treasury Laws Amendment \(Financial Sector Regulation\) Act 2018](#)**

Registered 30/11/2018 - Includes Restrictions on shareholdings and criteria for applications relating to new or recently established financial sector companies

**Bills Progress****[Treasury Laws Amendment \(Financial Sector Regulation\)](#)**

Assent Act no: 142 Year: 2018 29/11/2018

Amends the: Financial Sector (Shareholdings) Act 1998 to: increase from 15 per cent to 20 per cent the ownership restriction applying to life insurance and general insurance companies, authorised deposit-taking institutions (ADIs) and relevant holding companies; and create a streamlined path for owners of qualifying domestically incorporated companies with assets less than the relevant threshold applying to become a financial sector company; and Banking Act 1959 to: enable the Australian Prudential Regulation Authority to grant a new entrant to the banking sector a time limited ADI licence; and correct a drafting error. Finally passed both Houses 15 November 2018

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

Senate Second reading moved 03/12/2018

House of Representatives Third reading agreed to 29/11/2018 - Implements certain recommendations of the ASIC Enforcement Review Taskforce by amending the Corporations Act 2001, Australian Securities and Investments Commission Act 2001, National Consumer Credit Protection Act 2009 and Insurance Contracts Act 1984 to: introduce a stronger penalty framework for corporate and financial sector misconduct; and make miscellaneous technical and consequential amendments.

**Removed from Notice****[Banking System Reform](#)**

House of Representatives Removed from the Notice Paper in accordance with (SO 42) 04/12/2018

Enforces the separation of retail commercial banking activities involving the holding of deposits from wholesale and investment banking activities, such as financial advice, wealth management, stock broking and insurance.

**Regulations****[Accounting Standard AAB 2018-5 Amendments to Australian Accounting Standards - Deferral of AASB 1059](#)**

27/11/2018 - This standard amends the mandatory effective date (application date) of Accounting Standard AASB 1059 Service Concession Arrangements: Grantors so that AASB 1059 is required to be applied for annual reporting periods beginning on or after 1 January 2020 instead of 1 January 2019.

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