



## BANKING SECTOR NEWSLETTER

### Government statement: Government taking action on all 76 recommendations

The Coalition Government is getting on with the job of implementing the recommendations of the Royal Commission in a number of important areas. Legislation passed through the Senate to significantly increase criminal and civil penalties for corporate and financial sector misconduct and announced an immediate review of financial counselling services.

<http://jaf.ministers.treasury.gov.au/media-release/024-2019/>

### IN THE MEDIA

#### ASIC to appeal Westpac subsidiaries Federal Court decision

ASIC has made an appeal with the Federal Court against two Westpac subsidiaries, calling into question the decision regarding whether the firms failed to adhere to the best interests duty, ASIC deputy chair Daniel Crenan said the dividing line between personal and general advice is one of the most important provisions within the Financial Services Laws

<https://www.investordaily.com.au/regulation/44450-asic-appeals-westpac-best-interests-ruling>

Read the ASIC statement [here](#).

#### New laws to amplify ASIC's penalty powers

Corporate regulator ASIC will soon be able to deal harsher civil penalties and criminal sanctions to corporate criminals, after a significant bill passed the Senate last week. The new legislation increased maximum prison penalties for the most serious offences, including breaches to director's duties, false or misleading disclosure, and dishonest conduct, to 15 years

<https://www.insurancebusinessmag.com/au/news/breaking-news/new-laws-to-amplify-asics-penalty-powers-159036.aspx>

### ASIC threatens maximum jail terms of 15 years and steeper fines for convicted white-collar criminals

The corporate watchdog has put white-collar criminals on notice with a raft of tough new proposed penalties, including potential maximum jail terms of fifteen years. Companies could also face a capped fine of \$525 million per civil violation, where violations could be three times the benefit gained or ten percent of annual turnover

<https://www.abc.net.au/news/2019-02-15/asic-imposes-jail-terms-of-15-years-for-white-collar-criminals/10815976>

### ASIC consults on responsible lending update

ASIC has issued a consultation paper to update its guidance on responsible lending in the wake of the royal commission. The review will consider whether the guidance remains effective and identify changes that need to be made to the guidance to help credit licence holders better understand ASIC expectations

<https://www.investordaily.com.au/regulation/44432-asic-consults-on-responsible-lending-update>

### Australian bank customers caught in valuation firm data breach

Australian banks have started notifying customers that may have been caught up in an "industry-wide" data breach at an ASX-listed property valuation firm

<https://www.itnews.com.au/news/bank-customers-caught-in-valuation-firm-data-breach-519204>

### Reforms backing more choice and more competition

These firms connect with Australians through a range of customer and community-focused services across many industries including agriculture, banking and finance, housing, insurance and retail. The changes will benefit the sector, by allowing these member-focused organisations greater flexibility to grow their businesses, and providing more choices to Australians for banking and other retail services

<https://www.financeminister.gov.au/assistant/media-release/2019/02/13/reforms-backing-more-choice-and-more-competition>

**COBA welcomes steps towards a more competitive banking sector**

The Australian banking sector is a step closer to becoming more competitive following the introduction of the *Treasury Laws Amendment (Mutual Reforms) Bill 2019* into Federal Parliament's Upper House  
<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1349-coba-welcomes-steps-towards-a-more-competitive-banking-sector>

**FASEA releases Code of Ethics Standard**

FASEA has released the legislative instrument and explanatory statement for the Code of Ethics standard. The legislative instrument was informed through consultation received in 18 submissions during the final consultation period  
<https://www.fasea.gov.au/fasea-releases-code-of-ethics-standard/>

**AMP executives facing potential criminal charges over fees for no service, Federal Court hears**

The Australian Securities and Investment Commission (ASIC) is in the process of preparing cases against executives over the scandal, where customers were charged fees but not provided with a service  
<https://www.abc.net.au/news/2019-02-08/amp-executives-will-face-criminal-charges/10793402>

**Banks stand ready to help cattle farmers affected by floods**

ABA member banks offer a range of services to help customers who have been affected by natural disasters or other circumstances outside their control. Services on offer to customers who have been affected by natural disasters or other circumstances beyond their control can include items listed here  
<http://www.ausbanking.org.au/media/media-releases/media-release-2019/banks-stand-ready-to-help-cattle-farmers-affected-by-floods>

**AFCA announces appointment of dedicated Small Business Lead Ombudsman**

The Australian Financial Complaints Authority (AFCA) is pleased to announce the appointment of Mr Geoff Browne GAICD to its staff  
<https://www.afca.org.au/news/media-releases/afca-announces-appointment-of-dedicated-small-business-lead-ombudsman/>

**Responsibility lies with management: EY**

Royal Commissioner Kenneth Hayne's emphasis on culture in his final report signals clearly that responsibility for misconduct lies with the senior management and boards of the entities involved, an executive at Ernst & Young (EY) has said  
<https://www.superreview.com.au/news/financial-advice/responsibility-lies-management-ey>

**FASEA releases Final Examination Standard**

FASEA has today released the legislative instrument and explanatory statement for its Examination standard. The legislative instrument was informed through consultation received in 26 submissions during the legislative instrument final consultation process  
<https://www.fasea.gov.au/fasea-releases-final-examination-standard/>

**Royal Commission: Governance culture of 'box-ticking' over**

Reinforcing a good culture based around ethical conduct and accountability as part of governance frameworks will be vital to acting on the Commission's report. The Governance Institute of Australia welcomes the release of the Banking Royal Commission's final report, and especially its focus on fixing the sector's failings of culture and governance  
<https://www.governanceinstitute.com.au/news-media/media-releases/2019/feb/royal-commission-governance-culture-of-box-ticking-over/>

**Statement from ASIC Chair James Shipton on the Final Report of the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry**

ASIC will consider the report carefully, particularly its recommendations on regulatory and enforcement practices. These recommendations, and the Government's response, will inform ASIC's priorities and strategic direction moving forward.  
<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-020mr-statement-from-asic-chair-james-shipton-on-the-final-report-of-the-royal-commission-into-misconduct-in-the-banking-superannuation-and-financial-services-industry/>

**IN PRACTICE AND COURTS****IASB Updates****February 2019**

The issue covers IFRS for SMEs® Standard—review and update; Management Commentary; Primary Financial Statements; Amendments to IFRS 17 Insurance Contracts and IBOR Reform and the Effects on Financial Reporting

**IFAC: Global Consultation on Quality Management for Firms and Engagements Now Open**

The International Auditing and Assurance Standards Board (IAASB) seeks public comment by July 1, 2019 on [three interrelated standards that address quality management](#). The proposals bring important changes to the way professional accountancy firms are expected to manage quality—for audits, reviews, and other assurance and related services engagements

[APRA update on implementation of Royal Commission recommendations](#)

APRA intends to incorporate further information about the activity and timeframes associated with implementing the recommendations in future public announcements. The first of these will be APRA's Policy Agenda for 2019, which is scheduled to be published later this month.

The table with APRA's plans in relation to specific recommendations contained in the Final Report of the Royal Commission can be found [here](#)

**FASEA Code of Ethics Standard 2019**

FASEA has clarified aspects of the Code, including the values underlying the Code, and amending standards around conflicts, the best interests of the client, the effects of advice on the client and adviser record-keeping. The Legislative Instrument has been registered on the Government's Legislative Instruments Register and can be viewed [here](#)

**FASEA Final Examination Standard 2019**

Under the final standard, FASEA has reduced the reading time for the exam to 15 minutes within a total 3.5 hour sitting period. FASEA has also clarified that exam content under the topic of Financial Adviser Regulatory and Legal Requirements will cover the Tax Agents Services Act (TASA) only and not broader requirements of the Tax Practitioners Board. The Legislative Instrument has been registered on the government's Legislative Instruments Register and can be viewed [here](#)

**AUSPaynet: Mitigating card-not-present (CNP) Fraud**

The industry *CNP Fraud Mitigation Framework* has been finalised, subject to completion of legal formalities. The Framework is designed to reduce CNP fraud as well as to build consumer trust and support continued growth in e-commerce. It is proposed that the first reporting obligation for issuers and acquirers will be in July 2019, covering the period April to June 2019. Further detail on the implementation timeline is available [here](#)

**ASIC Consultation: Responsible Lending Guidance**

ASIC has issued a consultation paper to update its guidance on responsible lending ([CP 309](#)).

ASIC wants to ensure its guidance provides industry with certainty, including as a result of emerging technology and initiatives such as open banking and comprehensive credit reporting. ASIC is currently welcoming submissions from interested parties. The consultation is open for a period of three months, with comments due by Monday 20 May 2019

**Current Inquiries**

[New: Banking System Reform \(Separation of Banks\) Bill 2019](#)

Status: Accepting Submissions Date Referred: 14 February 2019 Submissions Close: 12 April 2019

**ASX Public Consultations**

On 30 January 2019, ASX released a consultation paper outlining potential changes to the contract specifications and order management functionality for the [Australian 90 Day Bank Bill Futures](#). The consultation paper has been published in response to customer feedback requesting a number of changes to the Bank Bill Futures. The following potential changes are outlined in the consultation paper. Written submissions close on 30 April 2019

**AASB Fatal-flaw review draft: Proposed Standard AASB 2019-X Amendments to Australian Accounting Standards - References to the Conceptual Framework**

Consequential amendments to support the AASB issuing the *Conceptual Framework* for Financial Reporting are set out in the proposed Standard AASB 2019-X. [Comments](#) to the AASB on any fatal flaw with the consequential amendments are due by 22 March 2019

**AASB: Exposure Draft: Onerous Contracts - Cost of Fulfilling a Contract**

[ED 287 Onerous Contracts – Cost of Fulfilling a Contract](#) proposes to amend AASB 137 to specify that the costs of fulfilling a contract include both incremental costs, such as the costs of materials, and an allocation of other costs directly related to the contract, such as the depreciation charge for equipment the company uses to fulfil contracts. Please submit your comments to the AASB by 22 March 2019 via the [AASB website](#)

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

Status: Submissions Closed Date Referred: 17 October 2018 Reporting Date: 22 February 2019

**CASES**

[Suncorp-Metway Ltd v Nagatsuma \[2019\] QSC 16](#)

MORTGAGES – MORTGAGEES REMEDIES – POSSESSION – Section 78(2) Land Title Act 1994 (Qld) – whether respondents had real prospects of resisting claim for possession

EQUITY – GENERAL PRINCIPLES – UNDUE INFLUENCE AND DURESS – DURESS – ECONOMIC

DURESS – Where second respondent alleged that bank's employee had dishonestly caused second respondent's company financial loss – where second respondent's company defaulted on loans made to it by the bank – where receivers appointed – where second respondent

commenced legal proceedings to have receivers removed, relying on bank's employee's dishonesty – where proceeding settled – where deed of settlement required discontinuance of proceedings and included release of bank from further claims alleging employee's misconduct – where company defaulted again – where heads of agreement signed after Farm Debt Mediation – where heads of agreement released bank from further claims alleging employee's misconduct – whether releases voidable for economic duress

[National Australia Bank Ltd v Esposito \[2019\] WASC 27](#)

Practice and procedure - Application to set aside summary judgment entered in absence of party - Principles to be applied - Application to adduce further evidence. The plaintiff was suing on a loan agreement entered into with the first and second defendants. The evidence established the loan had been made, there had been default, a default notice had issued and the default had not been rectified

[Australia and New Zealand Banking Group Limited v James \(No 2\) \[2019\] NSWSC 59](#)

The amended notice of motion filed on 25 October 2018 dismissed with costs

CIVIL PROCEDURE – Discovery – Subpoenas – whether documents necessary for the resolution of the real issues in dispute. ANZ commenced these proceedings against Mr James seeking to recover the sum of \$14,133,818.66 together with interest under four guarantees Mr James had given in respect of loans that had been provided by ANZ to the companies controlled by Mr James

[Australian Competition and Consumer Commission v Optus Mobile Pty Limited \[2019\] FCA 106](#)

CONSUMER LAW – false and misleading representation in contravention of s 12DB(1)(b) of the Australian Securities and Investment Commission Act 2001 (Cth) – where respondent did not adequately inform customers that they were automatically opted in to direct billing for third party content – where some customers unintentionally purchased third party content without knowledge or consent – where Optus applied charges to customer accounts despite awareness of this issue – principles relevant to appropriate penalty – appropriateness of agreed declaration and order for \$10 million pecuniary penalty

THE COURT DECLARES THAT: The Respondent (Optus), between 1 April 2014 and 24 August 2018, by applying charges for Direct Carrier Billing (DCB) content to the accounts of customers who had unintentionally purchased DCB content without their knowledge or consent (Non-consenting Customers):

(a) in trade or commerce, in connection with the supply or possible supply of financial services, represented to Non-consenting Customers that they

had agreed to acquire that DCB content when they had not; and

(b) thereby made a false and misleading representation that Non-consenting Customers had agreed to acquire services in contravention of s 12DB(1)(b) of the Australian Securities and Investment Commission Act 2001 (Cth).

[S & A Chalhoub Nominees Pty Ltd and Australian Securities and Investments Commission \[2019\] AATA 80](#)

CORPORATIONS - refusal to issue an Australian Financial Services Licence - whether the applicant will contravene the obligations under s 912A of the Corporations Act - Regulatory Guides - failure to meet requirements - professional indemnity insurance requirements - training requirements for responsible managers - efficiently, honestly and fairly requirement - decision affirmed  
CORPORATIONS - refusal to issue an Australian Financial Services Licence - whether the applicant will contravene the obligations under s 912A of the Corporations Act - Regulatory Guides - failure to meet requirements - professional indemnity insurance requirements - training requirements for responsible managers - efficiently, honestly and fairly requirement - decision affirmed

[Campbell and Australian Securities and Investments Commission \(Taxation\) \[2019\] AATA 110](#)

The Tribunal sets aside the decision of the Respondent dated 10 August 2018, and varies the duration of the banning order imposed on the Applicants, pursuant to s 920A of the Corporations Act 2001 (Cth), for a period of 18 months commencing from 10 August 2018.

CORPORATIONS LAW – ten year banning order – whether conduct misleading or deceptive or likely to mislead or deceive – whether banning order an appropriate sanction – factors to be taken into account when imposing a banning order – duration of banning order – deterrence – likelihood of applicants engaging in further misconduct – impact on employer and clients – decision under review is set aside and varied – applicants banned under s 920A of the Corporations Act 2001 for a period of 18 months

The applicants have been financial planners for some years. They were dismissed by Macquarie Bank (Macquarie) as authorised representatives for breaches of their contracts of employment as authorised representatives in the year 2017

**LEGISLATION****Commonwealth****Bills****[Banking Amendment \(Rural Finance Reform\) Bill](#)**

HR Second reading moved 18/02/2019 - Although ADIs are not responsible for the conditions facing small primary production businesses, additional protections are deemed prudent for loans to small primary production businesses, with a number of reforms outlined

**[Reserve Bank Amendment \(Australian Reconstruction and Development Board\) Bill 2019](#)**

Introduced HR 18/02/2019 - This Bill establishes an "Australian Reconstruction and Development Board" (ARDB), with the capacity to reconstruct debilitating financial arrangements, and to provide suitably tailored funds and capital arrangements that enable the sustainability and development of at-risk Australian agriculture and its associated industries and infrastructures

**[Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2018](#)**

HR 2nd reading debate 18/02/2019 - Amends the: Corporations Act 2001 to consolidate and broaden the existing protections and remedies for corporate and financial sector whistleblowers; Taxation Administration Act 1953 to create a whistleblower protection regime for disclosures of information by individuals regarding breaches of the tax laws or misconduct relating to an entity's tax affairs; and Banking Act 1959, Insurance Act 1973, Life Insurance Act 1995 and Superannuation Industry (Supervision) Act 1993 to make consequential amendments

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

Senate 14/02/2019 – 3rd reading - Implements recommendations of the ASIC Enforcement Review Taskforce by amending the Corporations Act 2001, ASIC Act 2001 as well as the National Consumer Credit Protection Act 2009 and Insurance Contracts Act 1994. It strengthens existing penalties and introduces new penalties for those who have breached the corporate laws of Australia designed to protect its citizens.

**[Treasury Laws Amendment \(Mutual Reforms\) Bill 2019](#)**

Introduced Senate 13/02/2019 - This Bill gives effect to recommendations 5, 8 and 9 of the Hammond Report to introduce a definition of a mutual entity into the Corporations Act; remove the uncertainty for transferring financial institutions and friendly societies in respect of the demutualisation provisions in Part 5 of Schedule 4 of the Corporations Act; and expressly permit mutual entities registered under the Corporations Act to issue equity capital without risking their mutual structure or status

**[Banking System Reform \(Separation of Banks\) Bill 2019](#)**

Introduced Senate 12/02/2019 - This Bill will separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities. The Bill provides for such a separation to protect deposits

**Regulations****[Financial Planners and Advisers Code of Ethics 2019](#)**

13/02/2019 - This instrument is the Code of Ethics for relevant providers (financial planners and advisers), made by the Financial Adviser Standards and Ethics Authority, the standards body under section 921X of the Corporations Act 2001. Under section 921E of the Act, all relevant providers must comply with the Code of Ethics.

**[Corporations \(Relevant Providers Exams Standard\) Determination 2019](#)**

12/02/2019 - This instrument approves the exam that a person must pass to meet the second of the education and training standards under section 921B of the Corporations Act 2001 (see subsection 921B(3) of the Act).

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