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ISSUE 31



BANKING SECTOR NEWSLETTER

AFCA welcomes recommendations from Senate Inquiry into credit and hardship

AFCA has welcomed recommendations from the Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship

<https://www.afca.org.au/news/media-releases/afca-welcomes-recommendations-from-senate-inquiry-into-credit-and-hardship/>

IN THE MEDIA

Two members suspended by Conduct Review Commission

The Conduct Review Commission (CRC), the independent disciplinary body of the Financial Planning Association of Australia (FPA), has determined that FPA members Mr Matthew Brown, and in a separate case Ms Dianne Bainbridge, breached the FPA's Code of Professional Practice (FPA Code)

<https://fpa.com.au/news/two-members-suspended-by-conduct-review-commission/>

Taking action on the Banking, Superannuation & Financial Services Royal Commission - Recommendation 4.8: Removal of claims handling exemption

The Coalition Government has released a consultation paper on removing the exemption of insurance claims handling from the definition of 'financial service' under the Corporations Act

<http://jaf.ministers.treasury.gov.au/media-release/035-2019/>

AAT upholds ASIC decision to refuse an application for a limited AFS licence

The Administrative Appeals Tribunal (AAT) has affirmed ASIC's decision to refuse to grant a limited Australian financial services (AFS) licence to Superannuation Warehouse Australia Pty Ltd (SWA)

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-046mr-aat-upholds-asic-decision-to-refuse-an-application-for-a-limited-afs-licence/>

ASIC reports on licensing and professional registrations 2017-2018

ASIC's latest report on its assessment of licensing and professional registration applications (excluding applications to be registered as a liquidator) shows that less than half of the 2,879 applications considered during July 2017 to June 2018 were approved

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-045mr-asic-reports-on-licensing-and-professional-registrations-2017-2018/>

APRA announces policy priorities for 2019

APRA's near term policy agenda will be shaped by its response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. It also takes into account major developments including other inquiries, new legislation such as the Banking Executive Accountability Regime (BEAR), and important industry trends

<https://www.apra.gov.au/media-centre/media-releases/apra-announces-policy-priorities-2019>

AFCA offering financial dispute help for flood-affected Townsville small businesses

Ombudsmen from Australia's Financial Complaints Authority are in Townsville to offer their service to small businesses affected by the recent Townsville floods

<https://www.afca.org.au/news/media-releases/afca-offering-financial-dispute-help-for-floodaffected-townsville-small-businesses/>

Consultation on the Operation of the Bank's Interchange Standards

The Reserve Bank issued a consultation paper seeking stakeholder views on some proposed variations to Standards No 1 and No 2 determined by the Bank in 2016. Both standards relate to the setting of interchange fees in designated card schemes and net payments to issuers in those schemes

<https://www.rba.gov.au/media-releases/2019/mr-19-04.html>

ABA: Banking Code shakeup after Royal Commission Final Report

Farmers, small business owners, customers living in remote areas or with limited English and Australians with basic bank accounts will receive new protections under a revamped Banking Code of Practice in response to the Final Report of the Royal Commission <http://www.ausbanking.org.au/media/media-releases/media-release-2019/banking-code-shakeup-after-royal-commission-final-report>

Fraud is everyone's business

By its very nature, fraud involves deceptive conduct. Those who successfully exploit their privileged positions are often plausible, charming and highly adept at concealing their wrong-doing. This means that, despite AFSA's best monitoring and intelligence gathering activities, fraud is not easy to uncover early without the assistance of others <https://www.afsa.gov.au/about-us/newsroom/fraud-everyones-business>

COBA urges action to reduce unfair advantage for Big Four

The Customer Owned Banking Association has called for action to reduce the unfair funding cost advantage enjoyed by the 'Big Four' banks <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1351-coba-urges-action-to-reduce-unfair-advantage-for-big-four>

Australia's open banking journey on the right track

AusPayNet's incoming CEO Andy White noted there was debate about the timing of the introduction of open banking for smaller banks. Under the government's timetable, Australia's four largest banks (ANZ, CBA, NAB and Westpac) will begin sharing consumer data in February 2020, compared to February 2021 for all other banks <https://www.auspaynet.com.au/insights/blog/Australia%E2%80%99s-open-banking-journey-on-the-right-track>

RBA: Next generation \$20 banknote design reveal

The Reserve Bank has revealed the design of the new \$20 banknote, which will be released into general circulation in October 2019 <https://www.rba.gov.au/media-releases/2019/mr-19-02.html>

APRA welcomes IMF report on Australian financial system

APRA welcomes the IMF's Financial Sector Assessment Program (FSAP) report on Australia [1], which concluded that the Australian financial system has been further strengthened since the IMF's previous assessment in 2012. The 2018 FSAP underscores the strength and resilience of the Australian financial system <https://www.apra.gov.au/media-centre/media-releases/apra-welcomes-imf-report-australian-financial-system>

ASIC welcomes new whistleblowing laws

ASIC has welcomed the passing of the [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2018](#), approved by Parliament late on 19 February 2019. The reforms significantly improve the protections available for whistleblowers who report company misconduct. The reforms are outlined [here](#)

'Preying off other people's pain': Disaster victims at risk of payday lenders

An alarming number of natural disaster victims turn to high-cost, short-finance — or pay day loans — to avoid going broke, financial counsellors say <https://www.abc.net.au/news/2019-02-22/payday-lenders-natural-disaster-victims-financial-counsellors/10834342>

Labor to introduce royal commission bills

Labor is set to introduce three private member bills into Parliament that will implement key recommendations of the royal commission. Despite there not being more sitting weeks, the opposition party has given notice of intention behind three bills that deal with commissions, consumer protections and strengthening AFCA <https://www.investordaily.com.au/regulation/44461-labor-to-introduce-royal-commission-bills>

AFCA to accept legacy financial complaints from 1 July 2019

The Australian Financial Complaints Authority (AFCA) warmly welcomes the Government's announcement to extend AFCA's remit to review eligible financial complaints dating back to 1 January 2008 <https://www.afca.org.au/news/latest-news/afca-to-accept-legacy-financial-complaints-from-1-july-2019/>

Read the government statement [here](#).

Banking Royal Commission concludes focus on regulators and culture, rather than addition regulation

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has made a number of recommendations consistent with the Governance Institute's own conclusions on good governance. Commissioner Hayne highlighted the important role of leadership embedding an ethical culture from the top down. <https://www.governanceinstitute.com.au/news-media/news/2019/feb/banking-royal-commission-concludes-with-a-focus-on-regulators-and-culture-rather-than-additional-regulation/>

Court enforceable undertaking prevents Gold Coast accountant from providing financial services

The undertaking prevents Mrs Thorne (also known as Cenán Thorne or Cenán Dikmen) from providing financial services for a period of three years effective from 13 February 2019. ASIC decided to review Mrs Thorne's advice when it discovered that she was receiving referrals in relation to establishing self-managed superannuation funds (SMSFs) from Park Trent <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-034mr-court-enforceable-undertaking-prevents-gold-coast-accountant-from-providing-financial-services/>

New whistleblower laws praised by regulator

The Government passes new legislation that requires all public companies and superfunds to have a whistleblower policy from 1 July 2019. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, approved by Parliament late on 19 February 2019, improves the protections available for whistleblowers who report company misconduct <http://srr.ministers.treasury.gov.au/media-release/021-2019/>

IN PRACTICE AND COURTS

Treasury: Consultation: Removal of claims handling exemption

The Coalition Government has released a consultation paper on removing the exemption of insurance claims handling from the definition of 'financial service' under the Corporations Act. Through this consultation process, the Government will identify the most appropriate way to implement Commission Hayne's recommendation.

Submissions close on 29 March 2019. The consultation paper is available on the [Treasury website](#).

APRA Monthly Banking Statistics January 2019

APRA releases [Monthly Banking Statistics](#) for January 2019

AFSA: PPSR - Small Business Roundtable

The key themes that emerged from our market research, anecdotal feedback, and these discussions were: a lack of awareness of the PPSR amongst the small business sector; a lack of support for small business to effectively use the Register; the complexity of the legislation, the concepts and the Register itself; enforcement—being able to enforce the security interest.

[IEFFA: Over 100 global financial institutions are exiting coal, with more to come](#)

Global capital is fleeing the thermal coal sector, according to this report which calculates that over 100 globally significant financial institutions have divested from thermal coal, including 40% of the top 40 global banks and 20 globally significant insurers

[Credit and hardship: report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship](#)

Senate Economics References Committee, Parliament of Australia - The intractable maths of low income earners' family budgets pushes them towards the marginal credit products such as payday loans, consumer leases and debt management firms. This report argues that government can and should improve the terms under which these products are offered. Report released on 22 February 2019

FSC Submissions

27 February 2019 - [submission re: AFCA to Senate Leg Con Committee](#)

ASIC update on implementation of Royal Commission recommendations

ASIC has provided an update on its planned actions responding to the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission)

See the [ASIC update on implementation of Royal Commission recommendations](#).

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

ASFA Submissions

19 February 2019 - Submission to The Treasury - ASFA response to Consultation Paper: *Review of the early release of superannuation benefits*

[RBA: Consultation on the Operation of the Bank's Interchange Standards](#)

The Reserve Bank has issued a consultation paper seeking stakeholder views on some proposed variations to [Standards No 1 and No 2](#) determined by the Bank in 2016. Both standards relate to the setting of interchange fees in designated card schemes and net payments to issuers in those schemes. The Bank invites submissions in writing on the consultation paper and draft variations to the standards by 28 March 2019

RBA Payments System Board Update: February 2019 Meeting

At its meeting on Friday 22 February 2019, the Payments System Board discussed a number of issues outlined [here](#)

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

AUSPaynet reminder: 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](#)

ABA Publications

The ABA newsletter for [26 February 2019](#)

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 Current Inquiries - Economics Legislation Committee

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

Status: Accepting Submissions Date Referred: 14 February 2019; Submissions close on 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

CASES**[Yusofzai v Andask Pty Ltd \[2019\] NSWSC 124](#)**

INJUNCTIONS – Injunction to restrain mortgagee's power of sale – application brought the afternoon before scheduled auction – where notice of default had been issued under s 57(2)(b) Real Property Act 1900 (NSW) and s 92 Conveyancing Act 1919 (NSW) – whether the notice had been properly served – whether the notice was misleading or invalid – where the notice did not express an immediate intention to exercise mortgagee's power of sale – notice neither misleading nor invalid – whether the lender waived its rights by earlier representations – doctrine of election – no evidence of inconsistent rights – no waiver – balance of convenience – injunction refused

MORTGAGES AND SECURITIES – mortgages - duties, rights and remedies of mortgagee - power of sale – scope of application of National Credit Code – whether notice should have been given under s 88 National Credit Code – debtor not a natural person nor strata corporation – mortgage a genuine commercial arrangement – no notice required under s 88

[R.G Murch Nominees Pty Ltd v Paul David Annesley & Ors \[2019\] VSC 107](#)

MORTGAGES AND SECURITIES – Personal property securities – Whether valid security interest – Order removing registration on the Personal Properties Securities Register – Personal Property Securities Act 2009 (Cth) s 182(4)(a).

CORPORATIONS – Receivers, managers and controllers – Controllers – Whether any foundation for the registration of controller appointment – Order rectifying register of the Australian Securities and Investments Commission – Corporations Act 2001 (Cth) s 1332(4)(b).

INJUNCTIONS – Quia timet injunction – Where plaintiff seeks order to prevent future lodging of caveats – Imminence of act to be prohibited not sufficiently clearly established to justify Court's intervention

[BFJ Capital Pty Ltd v Financial Ombudsman Service Limited \(In Liq\) \[2019\] VSC 71](#)

PRACTICE AND PROCEDURE – Applications for summary judgment – Applications to strike out parts of statement of claim – Further particulars sought – Whether claims have a real prospect of success – Whether claims ought to be struck out – Whether further particulars ought to be ordered – Supreme Court (General Civil Procedure) Rules 2015 (Vic), rr 13.09, 13.10, 13.11, 22.16, 22.22, 23.01, 23.02 – Civil Procedure Act 2010 (Vic) ss 62, 63, 64.

Judicial Review Claim – ruling – (1) Paragraph 3.31 of the Enforceable Undertaking[73] provided that Macquarie undertook not to seek a variation of its Australian financial services licence or its membership of an external dispute resolution scheme, unless an independent expert provided an assessment of the impact on this undertaking and ASIC is provided with an opportunity to comment.

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

Finally passed both houses 19/02/2019 - 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

Regulations**[ASIC Corporations \(Amendment\) Instrument 2019/45](#)**

04/03/2019 - This instrument amends ASIC Corporations (Division 4 Financial Products) Instrument 2015/1030 to notionally modify regulation 7.11.08 of the Corporations Regulations 2001 so that interests in registered schemes that are quoted on the financial market operated by Chi-X Australia Pty Ltd are Division 3 securities and Division 4 financial products for the purposes of Part 7.11 of the Corporations Act 2001.

[Australian Securities and Investments Commission \(Investigation into Grandfathered Conflicted Remuneration for Financial Advice\) Direction 2019](#)

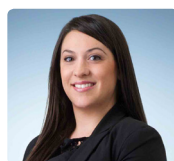
27/02/2019 - This instrument directs ASIC to investigate the extent to which persons who are giving or accepting grandfathered conflicted remuneration in relation to financial advice are changing their arrangements to end the payment of grandfathered conflicted remuneration

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