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BANKING SECTOR NEWSLETTER

ABA: Further measures to enforce industry codes a welcome step

The release of a consultation paper about further enforcement of industry codes is welcomed by Australia's banks, who look forward to working with regulators and the Treasury to identify what more can be done to further enforce its new Banking Code of Practice <http://www.ausbanking.org.au/media/media-releases/media-release-2019/further-measures-to-enforce-industry-codes-a-welcome-step>

IN THE MEDIA

Taking action on the Banking, Superannuation & Financial Services Royal Commission

Recommendation 1.15: Enforceable code provisions: The Coalition Government has released a consultation paper on making provisions of financial services industry codes of conduct more enforceable and providing both the regulator and consumers with more powers to hold financial services firms to account for misconduct <http://jaf.ministers.treasury.gov.au/media-release/044-2019/>

ASIC pledges to take on big financial players

ASIC has indicated it will be tackling corporate governance in a number of large financial services companies with a specially made taskforce in its new report on corporate finance regulation. The report, ASIC Regulation of Corporate Finance: July to December 2018 covers ASIC's regulation of fundraising transactions, mergers and acquisitions, experts and corporate governance issues <https://www.investordaily.com.au/regulation/44612-asic-pledges-to-take-big-financial-players>

FASEA releases Program & Provider Accreditation Policy

FASEA has released its final FPS002 Program & Provider Accreditation Policy. The policy was informed through stakeholder consultation and two pilot accreditations conducted at Higher Education Providers (HEPs). <https://www.fasea.gov.au/fasea-releases-program-provider-accreditation-policy/>

Banks on track to meet royal commission deadline

A new independent report has found that banks are on track to meet a 2020 deadline to overhaul staff pay, a critical issue highlighted by the royal commission. The report by former public service commissioner Stephen Sedgwick found that while banks are on track there is still more work to be done to ensure full implementation <https://www.investordaily.com.au/regulation/44582-banks-on-track-to-meet-royal-commission-deadline>

'Powerful lobby group' wins with Government's mortgage broker crackdown

Consumer groups warn many borrowers will continue to get unsuitable home loans after the Government backed down on a commitment to ban trailing commissions for mortgage brokers <https://www.abc.net.au/news/2019-03-12/government-backs-away-from-mortgage-commission-ban/10894228>

Review of mortgage broking trail commissions

Following consultation with the mortgage broking industry and smaller lenders, the Coalition Government has decided to not prohibit trail commissions on new loans, but rather review their operation in three years' time. The review will be conducted by the Council of Financial Regulators and the ACCC <http://jaf.ministers.treasury.gov.au/media-release/040-2019/>

ASIC accuses banks of dragging feet on fees-for-no-service response

The corporate regulator slams Australia's major banks for failing to complete further investigations into fees charged to customers who did not receive the services they paid for – a scandal expected to cost them more than \$1 billion in compensation <https://www.abc.net.au/news/2019-03-11/banks-drag-feet-on-fees-for-no-service-response-asic-says/10889194>

Budget can help slash burden of legacy products

The Federal Government should use next month's Budget to advance policy commitments to help the financial services sector to get rid of old, substandard legacy products that do not benefit consumers, FSCI CEO Sally Loane has said. The FSC has estimated there are at least 600 legacy structures, each of which may contain multiple products, disadvantaging an estimated 2.44 million consumers

https://www.fsc.org.au/_entity/annotation/36e0fdb8-8243-e911-a978-000d3ae0bc37

CBA shareholders footing most of bank's \$1.4b customer compensation bill

The Commonwealth Bank confirms shareholders will bear the bulk of its \$1.4 billion bill for customer compensation, while Westpac's boss struggles to answer some questions about the bank's home lending

<https://www.abc.net.au/news/2019-03-08/bank-bosses-front-parliament/10882560>

Australian companies urged to disclose climate change risks, ASX says

The Australian Securities Exchange and the Australian Accounting Standards Board have added their voices to the mounting pressure on companies to disclose their financial risk from strong global action on climate change, pointing out the issue affects all businesses, not just those consuming fossil fuels

<https://www.afr.com/news/australian-companies-urged-to-disclose-climate-change-risks-asx-says-20190306-h1c2ut?btis>

AFCA submission to the Senate Inquiry into the resolution of disputes with financial service providers within the justice system

AFCA made a submission to the Senate Inquiry into the resolution of disputes with financial service providers within the justice system

<https://www.afca.org.au/news/latest-news/afca-submission-to-the-senate-inquiry-into-the-resolution-of-disputes-with-financial-service-providers-within-the-justice-system/>

CCMC 2019 Forum - Setting expectations for the future of Code compliance

The banking sector faces fresh challenges and heightened community expectations as it transitions to its new and enhanced Code of Practice. At the Banking Code Compliance Monitoring Committee (CCMC) Forum, banks heard that they will need to show empathy to customers and live the spirit of the new Banking Code of Practice in order to meet their obligations come 1 July 2019

<http://www.ccmc.org.au/news-and-publications/latest-news/>

Why lower housing prices are not translating into more affordable housing

Falling house prices are doing little to improve housing affordability, with the latest survey showing the proportion of income required to meet loan repayments actually increased at the end of last year

<https://www.abc.net.au/news/2019-03-06/housing-affordability-worsens-despite-house-prices-falling/10874978>

NAB is the victim' - Bank executive charged over alleged \$40m fraud

Police charge former National Australia Bank executive Rosemary Rogers, who handed herself into officers in Sydney, with more than 50 offences relating to an alleged \$40 million fraud

[https://www.abc.net.au/news/2019-03-05/nab-executive-investigated-over-\\$40m-fraud-hands-herself-in/10871644](https://www.abc.net.au/news/2019-03-05/nab-executive-investigated-over-$40m-fraud-hands-herself-in/10871644)

New lending 'norm' continues drag on property prices

Stricter mortgage lending standards are expected to continue placing downward pressure on dwelling values, with the latest CoreLogic figures reporting a further nationwide decline

<https://www.mortgagebusiness.com.au/breaking-news?start=40>

IN PRACTICE AND COURTS

Treasury Consultation: Recommendation 1.15: Enforceable code provisions

This consultation paper sets out a series of questions which will inform the development of legislation to enact the Government's commitment to implement recommendation 1.15 (that certain provisions of financial sector codes should be 'enforceable code provisions'. The consultation paper is available on the [Treasury website](#). The consultation is open from 18 March 2019 - 12 April 2019

ASFA Notice

[Cryptocurrency – AFSA guidance for practitioners](#) 14 March 2019

AFSA has released [guidance for bankruptcy trustees about cryptocurrency](#), including how to identify, classify and realise digital assets.

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](#).

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

AFCA Current Matters - March 2019

[AGM Markets Pty Ltd](#)

[Berndale Capital Securities Pty Ltd](#)

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

[RBA: 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. The Bank invites submissions in writing on the consultation paper and draft variations to the standards by 28 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](#)

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 20 May 2019

Current Inquiries - Economic 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

[RHG Mortgage Corporation Ltd v Summerfield \[2019\] NSWCA 44](#)

MORTGAGES AND SECURITIES – mortgages – mortgagee's duties, rights and remedies – entitlement to possession – whether default established – effect of requirement for notice under National Credit Code – whether mortgagee can rely on a default not referred to in default notice. CONTRACTS – terms – construction – whether "condition" was a condition of retaining possession or a contractual obligation. EVIDENCE – proof – evidentiary certificates – minimum requirements

[Young Investment Group Pty Ltd v QBE Insurance \(Australia\) Limited \[2019\] WASC 74](#)

Corporations Act 2001 (Cth) - Action against insurer pursuant to s 601AG - Prior Federal Court action where default judgment entered - Whether amount payable to a deregistered company can be recovered - Whether exclusions apply under the policy - Where respondent in Federal Court action to be treated 'as if' an employee for the purpose of indemnity policy - Determination of how many claims exist within meaning of the policy. Loans – loan agreements - authorised securities

[Equititrust Limited v Tucker and Ors \[2019\] QSC 51](#)

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – DISCLOSING NO REASONABLE CAUSE OF ACTION OR

DEFENCE – applications to strike out the claim and statement of claim in their entirety, or alternatively parts of them, on the basis no reasonable cause of action disclosed or that the pleading has a tendency to prejudice or delay the fair trial of the proceeding

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – AMOUNT AND NATURE OF SECURITY – where the

parties agree that security for the applicant/defendants'

costs is to be provided, but are in dispute as to the amount of security to be provided for two defendants, and as to the form of security to be provided – where the plaintiff proposed security in the form of a deed of indemnity between a foreign third party insurer of the plaintiff's litigation funder and the applicants for security – whether the form of security proposed is adequate and does not impose unacceptable disadvantage on the applicants

Equititrust was indebted to BOS International (Australia) Pty Ltd (BOSI) [from which it had borrowed funds pursuant to a loan facility, for the purpose of on lending to others] for an amount of approximately \$6.8 million

[Dimitrov v Bendigo & Adelaide Bank Ltd \[2019\] VSCA 41](#)

APPEAL – Application for extension of time for leave to appeal – Proposed appeal against orders approving settlement of group proceedings – Delay over four years – Numerous transactions undertaken pursuant to or in reliance upon the settlement – Proposed appeal not futile – Unsatisfactory explanation for delay – Prejudice to respondents, other group members and third parties if extension granted – Application for extension of time refused – PCCEF Pty Ltd v Geelong Football Club Ltd [2018] VSCA 225 applied.

[Burkett v Bendigo & Adelaide Bank \(No 4\) \[2019\] VSC 140](#)

PRACTICE AND PROCEDURE – Costs – s24(1) Supreme Court Act 1986 – Part 4.5 Civil Procedure Act 2010 – rr63.02 and 63.04 Supreme Court (General Civil Procedure) Rules 2015 – Where plaintiff has been successful – Where costs follow the event - Whether plaintiff should be granted indemnity costs – Where plaintiff seeks to rely on contractual agreement for allocation of costs – Where trial judgment found no valid and enforceable contractual agreement – Where plaintiffs do not submit any other basis for award of indemnity costs - Application for indemnity costs refused

LEGISLATION

Commonwealth

Bills

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

Assent Act no: 10 2019 – 12 March 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

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