



## BANKING SECTOR NEWSLETTER

### IN THE MEDIA

#### AFA accuses Government of interfering in AFSL contracts

The Federal Government has been accused of unilaterally seeking to alter the contract which exists between Australian Financial Services Licensees and the Australian Financial Complaints Authority (AFCA) by allowing the authority to deal with complaints dating back to 2008. <https://www.moneymanagement.com.au/news/financial-planning/afa-accuses-govt-interfering-afsl-contracts>

#### Are financial planners facing double jeopardy?

The risk of double jeopardy for financial planners sits at the heart of the Financial Planning Association's (FPA's) concerns about the Australian Financial Complaints Authority (AFCA) dealing with complaints dating back as much as 10 years. <https://www.moneymanagement.com.au/news/financial-planning/are-financial-planners-facing-double-jeopardy>

#### FPA raises concerns about impact of AFCA legacy complaints rule changes on professional indemnity market

The FPA has raised concerns about the Australian Financial Complaints Authority's (AFCA) proposed legacy complaints rule changes and the potential impact they will have on the professional indemnity (PI) costs for financial planners. <https://fpa.com.au/news/fpa-raises-concerns-about-impact-of-afca-legacy-complaints-rule-changes-on-professional-indemnity-market/>

#### ASX a rare target in defamation lawsuit

Brisbane-based businessman Lev Mizikovsky has launched defamation proceedings against debt collection company Collection House and the ASX in the Queensland Supreme Court. His action relates to a sharemarket announcement released by Collection House in November, which was titled 'Collection House responds to shareholder's latest false claims'. <https://www.afr.com/business/banking-and-finance/false-claims-asx-targeted-in-defamation-lawsuit-20190425-p51ha2>

#### APRA grants new authorised deposit-taking institution licence to Judo Bank

The APRA has granted Judo Bank Pty Ltd a licence to operate as an authorised deposit-taking institution (ADI) without restrictions under the Banking Act 1959 (24 April 2019) <https://www.apra.gov.au/media-centre/media-releases/apra-grants-new-authorised-deposit-taking-institution-licence-judo-bank>

#### Prospective borrowers struggling to grasp mortgage concepts

Almost half of prospective home buyers are unfamiliar with key mortgage terminology, according to new Westpac research. <https://www.mortgagebusiness.com.au/breaking-news/13348-prospective-borrowers-struggling-to-grasp-mortgage-concepts>

#### Post commission home loans delayed, denied and dearer

Banks are requiring more information from borrowers before approving loans, with their more rigid approach being attributed to the initial hearings of the banking royal commission. Lendi's data shows that 69 per cent of home loans in the first quarter of 2019 were held up at the More Information Required stage. <https://www.afr.com/business/banking-and-finance/home-loans-delayed-denied-and-dearer-post-hayne-20190422-p51g5h>

#### APRA releases new Enforcement Approach

The APRA has released details on the future role and use of enforcement activities in achieving its prudential objectives. The APRA Members formally commissioned the Enforcement Review last November in response to a range of developments, including the evidence presented to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. <https://www.apra.gov.au/media-centre/media-releases/apra-releases-new-enforcement-approach>

### Citigroup to refund over \$3m to clients

Following an ASIC investigation, Citigroup will refund over \$3 million to 114 retail customers for losses arising out of structured product investments offered between 2013 and 2017. ASIC was concerned that while Citigroup considered its financial advisers to be providing general advice, elements of its practice may have led some customers to believe that Citigroup was providing personal advice. <https://www.investordaily.com.au/regulation/44785-citigroup-to-refund-over-3-million-to-clients>

### ASIC Warns On Overseas Derivatives

ASIC has warned Australian financial services licensees that offer over-the-counter derivatives to retail investors located overseas could be breaking laws abroad, with Chinese authorities having alerted the watchdog that some online platforms have engaged in illegal activity. <http://digitalfinanceanalytics.com/blog/asic-warns-on-overseas-derivatives/>

### AIST research shows just how poor banking-owned super products are

The Fee and Performance Analysis 2019 by leading superannuation research house SuperRatings, commissioned by AIST, drills down into the differences between fees and returns across the many super products on offer and finds significant disparities between the fees charged by for-profit retail funds and profit-to-member funds. [http://www.aist.asn.au/media/1296013/aist\\_research\\_shows\\_just\\_how\\_poor\\_banking-owned\\_super\\_products\\_are.pdf](http://www.aist.asn.au/media/1296013/aist_research_shows_just_how_poor_banking-owned_super_products_are.pdf)

## IN PRACTICE AND COURTS

### [Australian Law Reform Commission \(ALRC\): Review into Australia's corporate criminal responsibility regime](#)

Note: Scope of the reference -The reports which the ALRC should consider should include but not be limited to the: 2019 Final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry; and 2017 report of the ASIC Enforcement Review Taskforce. The ALRC should provide its report to the Attorney-General by 30 April 2020.

### [APRA Consultation: The Financial Sector \(Shareholdings\) Rules 2019 \(the Rules\)](#)

In particular, APRA has proposed Rules setting out the matters that must be considered in determining if a person is "fit and proper" for the purposes of the FSSA. The consultation period on the proposed Rules has now commenced, with APRA accepting submissions until 27 May 2019.

### [APRA: Open consultation on determination under paragraph 37EA\(4\)\(b\) of the Banking Act 1959](#)

The Banking Executive Accountability Regime (BEAR), 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 April 2019 consultation package sets out APRA's proposal to allow a structure-neutral application of the deferred remuneration obligations under the BEAR. Submissions are requested by 30 April 2019.

### [ASFA Reminder: Recovering Your Unclaimed Money](#)

From the 27th June 2019 applications for unclaimed monies under s254 of the Bankruptcy Act can be made directly to Australian Financial Security Authority (AFSA) replacing the current Court application process.

### [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 ISO 20022 Migration for the Australian Payments System](#)

The Reserve Bank and the Australian Payments Council (APC) today issued a consultation paper seeking stakeholder views on the migration of messaging used in some parts of the Australian payments system to the International Organization for Standardization (ISO) 20022 payments messaging standard. Submissions close on 31 May 2019.

### [ABA: Raising the bar to help customers doing it tough](#)

The ABA welcomes written responses to this consultation paper which should be submitted to [submissions@ausbanking.org.au](mailto:submissions@ausbanking.org.au). Written consultation responses are due by 10 May 2019. For more information on how to make a submission [click 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 20 May 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.

#### [CCMC Bulletin: Banking Code Compliance Monitoring Committee Bulletin – April 2019](#)

16 April 2019 - Topics covered in this issue of the Bulletin: Code transition and CCMC Forum; CCMC takes tough action over direct debits; In the pipeline for the CCMC.

### FPA Submissions

[AFCA Rules Change – Legacy complaints – AFCA - 23 April 2019](#)

### AFCA Current Matters

[Digital Rebl Pty Ltd and Media Rebl Pty Ltd](#)

[Forex Capital Trading Pty Ltd](#)

[AGM Markets Pty Ltd](#)

[Berndale Capital Securities Pty Ltd](#)

[Bestjet Travel Pty Ltd \(Bestjet\)](#)

[Viewble Media and the Shoppers Network](#)

### Current Inquiries Current Inquiries - Economics Legislation Committee

[Banking System Reform \(Separation of Banks\) Bill 2019](#).  
Reporting Date: 13 May 2019

### CASES

[Private Mortgages Australia Pty Limited ACN 600 628 813 as trustee for the PMA Trust v Stever \[2019\] NSWSC 462](#)

CONTRACTS – construction and interpretation – whether fees stipulated in agreement are payable where loan did not proceed – whether fees stipulated for payment constitute a penalty – Andrews v Australia and New Zealand Banking Group Limited [2012] HCA 30; (2012) 247 CLR 205 applied.

### LEGISLATION

Commonwealth  
Act Compilation

#### [Corporations Act 2001](#)

24/04/2019 - Act No. 50 of 2001 - Division 6A—Security interests - Meaning of PPSA security interest; security interest; PPSA retention of title property Corporations Act 2001.

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