



BANKING SECTOR NEWSLETTER

IN THE MEDIA

Australian Financial Complaints Authority consultation

The Turnbull Government today welcomes the release by Dr Malcolm Edey of the Consultation Paper on the terms of reference, governance and funding arrangements for the *Australian Financial Complaints Authority (AFCA)*, the new one-stop shop dispute resolution body for all financial disputes. AFCA will commence from 1 July 2018 and will provide free, fast and binding dispute resolution for consumers and small businesses.

<http://kmo.ministers.treasury.gov.au/media-release/108-2017/>

ABA: Answers needed on the comprehensive credit reporting

The Australian Bankers' Association has welcomed the prospect of increased competition and a better deal for consumers, but believes the comprehensive credit reporting regime announced by the Treasurer raises some important questions.

<http://www.bankers.asn.au/media/media-releases/media-release-2017/answers-needed-on-comprehensive-credit-reporting>

Credit card details, salary information published by government contractor

The personal details of up to 50,000 Australians - included credit card numbers and salaries - are posted online by a contractor, in one of the biggest data breaches to date.

<http://www.abc.net.au/news/2017-11-02/major-government-data-breach-prompts-investigation/9112246>

Concerns new credit reporting scheme will penalise people struggling with debt

Federal Government plans to force Australia's big banks to give credit agencies more detailed information about customers' financial behaviour could penalise the poor, consumer groups are warning.

<http://www.abc.net.au/news/2017-11-02/concerns-new-credit-reporting-scheme-will-penalise-the-poor/9111432>

Regional personal insolvency statistics - September quarter 2017

The Australian Financial Security Authority (AFSA) released regional personal insolvency statistics for the September quarter 2017. There were 8,296 debtors who entered a new personal insolvency in the September quarter 2017 in Australia. Of these, 5,047 debtors or 60.8% were located in greater capital cities.

<https://www.afsa.gov.au/about-us/newsroom/media-release-regional-personal-insolvency-statistics-september-quarter-2017>

Treasurer wants more digital banks and 'cheaper loans'

Federal Treasurer Scott Morrison has outlined how removing the prohibition of the term "bank" could lead to a "flood of new online lenders" and drive rates down for consumers.

<https://www.mortgagebusiness.com.au/breaking-news/11630-treasurer-wants-more-digital-banks-and-cheaper-loans>

ASIC publishes business plans

ASIC has published its 2017-2018 business plans. Each year ASIC publishes business plans for each of the sectors it regulates. These are published by 31 October.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-366mr-asic-publishes-business-plans/>

One bank to fight rate-rigging case, others settle

Westpac Bank has resisted pressure to settle its rate-rigging case, and will contest ASIC's charges in court. <http://www.abc.net.au/news/2017-10-30/westpac-to-fight-bbsw-rate-rigging-case-in-court-nab-anz-settle/9083848>

ASIC to dish out tougher penalties

The federal government has recommended substantial increases to penalties issues by ASIC, a move prompted by Financial System Inquiry proposals.

<https://www.mortgagebusiness.com.au/breaking-news/11614-asic-to-dish-out-tougher-penalties>

IN PRACTICE AND COURTS**ABA Submissions**

[Australian Bankers' Association submission on banking executive accountability](#)

3 November 2017 - Australian Bankers' Association lodged a submission to the Senate inquiry into Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017 and accompanying Explanatory Memorandum.

APRA Submissions

APRA has released its [Submission to the Senate Economics Legislation Committee Inquiry into the Treasury Laws Amendment \(Banking Executive Accountability and Related Measures\) Bill 2017](#)

Consultation Paper: Terms of reference, governance and funding arrangements for the Australian Financial Complaints Authority (AFCA)

Feedback from the Consultation Paper will provide the basis of Dr Edey's advice to the Minister on the authorisation of AFCA, including any conditions that should be imposed on authorisation. The Consultation paper is available on the [Treasury website](#). Interested stakeholders are invited to comment. Submissions on this will close on 20 November 2017.

Public consultation exposure draft legislation: the Treasury Laws Amendment (Whistleblowers) Bill 2017

These reforms will, for the first time, create a single whistleblower protection regime in the Corporations Act, to cover the corporate, financial and credit sectors, and create a new whistleblower protection regime in the taxation law, to protect those who expose tax misconduct. Stakeholders are invited to comment on the draft legislation and supporting explanatory material available at the [Treasury website](#). Submissions for this consultation will close on 3 November 2017.

ASIC Positions paper: Strengthening penalties for corporate and financial sector misconduct

The Taskforce will provide its recommendations to Government by the end of November 2017. The position paper is available on the [Treasury website](#). Interested stakeholders are invited to comment on the positions put forward by the Taskforce. Submissions for the consultations close on 17 November 2017.

APRA: Consultation on phased licensing for authorised deposit-taking institutions

APRA is reviewing its licensing approach for authorised deposit-taking institutions (ADIs). The discussion paper seeks views on the proposed amendments to introduce a phased approach to authorisation, designed to make it easier for applicants to navigate the ADI licensing process. Submissions close on 30 November 2017. <http://www.apra.gov.au/AboutAPRA/Pages/0817-Consultation-Licensing.aspx>

See the [Discussion Paper - Licensing: A phased approach to authorising new entrants to the banking industry](#).

FOS Publications

[The FOS Circular - Issue 31](#) (October 2017)

FPA Submissions

[Exposure Draft Treasury Laws Amendment \(Whistleblowers\) Bill 2017](#)
Treasury - 3 November 2017

Current Senate Inquiries**Economics Legislation Committee**

[Treasury Laws Amendment \(Putting Consumers First - Establishment of the Australian Financial Complaints Authority\) Bill 2017](#)

Improving banks' compliance with direct debit cancellation obligations: Annual Review

[CCMC Report](#), October 2017

APRA banking statistics September 2017

APRA has released [monthly banking statistics](#) for September 2017.

CASES

[Hopkins v Australia and New Zealand Banking Group Limited & Anor \[2017\] NSWSC 1461](#)

CIVIL PROCEDURE - Motion seeking orders to give effect to settlement of proceedings - where settlement terms entitle mortgagee to vacant possession and writ of possession if sale is not effected by mortgagor on terms reasonably acceptable to mortgagee - whether sale effected on terms reasonable acceptable to mortgagee.

[Westpac v Anderson \[2017\] VCC 1519](#)

CONTRACT - plaintiff seeking to recover judgement debt - whether plaintiff entitled to debit enforcement expenses from defendant's loan account without telling her first - was the defendant entitled to cease paying her monthly repayments because of the plaintiff's conduct - did the plaintiff breach any implied term to act reasonably and in good faith.

UNCONSCIONABILITY - whether the plaintiff acted unconscionably under the Australian Securities and Investments Commission Act 2001 (Cth)

PRACTICE AND PROCEDURE - did the plaintiff engage in an abuse of process by later reversing the disputed payment and making a second summary judgement application.

LOSS AND DAMAGE - losses claimed by the defendant, including loss of income, not caused by any breach of contract or unconscionable conduct on the part of the plaintiff.

LEGISLATION**Commonwealth****Treasury Laws Amendment (2017 Measures No. 6) Act No 118 of 2017**

Registered 31/10/2017; Date of Assent 30/10/2017 - Schedule 1 - GST treatment of digital currency

[Treasury Laws Amendment \(2017 Measures No. 6\) Act 2017](#)**Bills**[Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017](#)

Amends the: Anti-Money Laundering and Counter-Terrorism Financing Act 2006 to: expand the objects of the Act to reflect the domestic objectives of anti-money laundering and counter-terrorism financing

regulation; expand the scope of the Act to include regulation of digital currency exchange providers; clarify due diligence obligations relating to correspondent banking relationship and broadening the scope of these relationships; qualify the term 'in the course of carrying on a business'; allow related bodies corporate to share information; expand the range of regulatory offences for which the AUSTRAC Chief Executive Officer (CEO) is able to issue infringement notice; allow the CEO to issue a remedial direction to a reporting entity to retrospectively comply with an obligation that has been breached; give police and customs officers broader powers to search and seize physical currency and bearer negotiable instruments and establish civil penalties for failing to comply with questioning and search powers; revise certain definitions; and clarify certain powers and obligations of the CEO; and Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Financial Transaction Reports Act 1988 to de-regulate the cash-in-transit sector, insurance intermediaries and general insurance providers.

Progress: House of Representatives Second reading debate 24 Oct 2017; Referred to Federation Chamber 24 Oct 2017.

[Banking Amendment \(Establishing an Effective Code of Conduct\) Bill 2017](#)

Amends the Banking Act 1959 to: require the minister to make, by legislative instrument, a Banking Code of Conduct; and provide for the Australian Prudential Regulation Authority to receive and investigate complaints in relation to non-compliance with the code by authorised deposit-taking institutions.

Progress: House of Representatives: Removed from the Notice Paper in accordance with (SO 42).

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