



BANKING SECTOR NEWSLETTER

IN THE MEDIA

RBA warns banks on tap-and-go payment costs

The Reserve Bank is warning banks they risk facing further regulation if they fail to address retailers' concerns over the mounting cost to merchants from tap-and-go payments made on debit cards.

<http://www.smh.com.au/business/banking-and-finance/rba-warns-banks-on-tapandgo-payment-costs-20171118-gzoaex.html>

Disqualified bankers to be listed on 'register'

The APRA has revealed that it intends to list individuals disqualified under the Banking Executive Accountability Regime on a "disqualification register". In its submission to the Senate Standing Committees on Economics' hearing on [Banking Executive Accountability and Related Measures Bill 2017](#) on Friday, 17 November, the prudential regulator said that it aims to provide transparency.

<https://www.mortgagebusiness.com.au/breaking-news/11695-disqualified-bankers-to-be-listed-on-register>

ASIC releases guidance for the Financial Services and Credit Panel

ASIC has today released regulatory guidance on the newly established Financial Services and Credit Panel (FSCP), which covers the types of matters to be referred to sitting panels of the FSCP and the hearing procedures and decisions of these panels.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-388mr-asic-releases-guidance-for-the-financial-services-and-credit-panel/>

The bank tax is dead: SA Government dumps controversial plan

The Weatherill Government abandons its controversial levy on the five major banks, declaring it will not pursue the budget measure and will not take it to the South Australian election in March.

<http://www.abc.net.au/news/2017-11-15/sa-government-dumps-bank-tax/9152614>

Melbourne man charged over role in loan fraud conspiracy
ASIC alleges that Mr Cameron conspired with others to defraud his employer, the Commonwealth Bank of Australia (CBA), by providing false documents and information in support of home loan applications.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-380mr-melbourne-man-charged-over-role-in-loan-fraud-conspiracy/>

Majors called out after ING axes transaction fees

ING DIRECT will no longer charge fees for international credit, debit and ATM transactions, a move that has placed pressure on the four major banks to follow suit.

<https://www.mortgagebusiness.com.au/breaking-news/11668-majors-called-out-after-ing-axes-transaction-fees>

Morrison backs customer-owned banking reforms

Treasurer Scott Morrison has backed the entire proposed reform package for the banking co-ops and mutuals sector in an effort to further increase competition in banking and financial services. The Hammond Review found a widespread lack of recognition and understanding of co-operatives, customer-owned banks and mutuals, which contributed to the sector's significant barriers to growth and access to capital to invest, innovate, grow and compete.

<http://www.financialstandard.com.au/news/morrison-backs-customer-owned-banking-reforms-106729507>

Mortgage demand tumbles as market turns

The latest housing finance data from the Australian Bureau of Statistics (ABS) reports that mortgage demand has suffered its largest decline in two years.

<https://www.mortgagebusiness.com.au/breaking-news/11667-mortgage-demand-tumbles-as-market-turns>

Citibank refunds \$3.3 million to credit card customers

Citibank will refund more than \$3.3 million to around 39,500 current and former customers for failing to refund customers when credit card accounts were closed with an outstanding credit balance. Citibank will provide refunds for Citibank, Virgin Money, Bank of Queensland, Suncorp and Card Services branded credit cards and for Citibank Ready Credit loan customers.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-377mr-citibank-refunds-33-million-to-credit-card-customers/>

Citibank refunds \$1 million following misleading statements made to customers about their rights under the ePayments Code

Citibank has refunded around 4,000 current and former customers more than \$1 million after misstating the bank's obligations around unauthorised transactions on customers' accounts. Citibank had refused customers' requests to investigate unauthorised transactions because it claimed the requests were made outside the time period permitted under the Visa and MasterCard scheme chargeback protections.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-376mr-citibank-refunds-1-million-following-misleading-statements-made-to-customers-about-their-rights-under-the-epayments-code/>

Backing co-ops, mutuals and customer owned banks to increase competition

The Turnbull Government has decided to further increase competition in our banking system by backing all eleven recommendations of the inquiry into Reforms for Cooperatives, Mutuals and Member-owned Firms, conducted by Greg Hammond OAM. Cooperatives, mutuals and member-owned firms make a significant contribution to GDP in Australia.

<http://sjm.ministers.treasury.gov.au/media-release/113-2017/>

IN PRACTICE AND COURTS**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.

<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](#)

Australia's Personal Property Securities Register statistics - AFSA September quarter 2017

Personal Property Securities Register (PPSR) statistics for the September quarter 2017. There were 506,601 non-transitional registrations created on the PPSR in the September quarter 2017. The number of non-transitional registrations created in the September quarter 2017 fell 5.9% compared to the June quarter 2017.

<https://www.afsa.gov.au/about-us/newsroom/media-release-australias-personal-property-securities-register-statistics-afsa-5>

Opening Statement - BEAR Bill

COBA Opening Statement - Senate Economics Legislation Committee inquiry into the BEAR Bill

COBA is the industry association for Australia's customer owned banking institutions: mutual banks, credit unions and building societies.

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1264-opening-statement-bear-bill>

Queensland: National Mortgage Form transition period extended to 2 March 2018

The National Mortgage Form was introduced in Queensland on 27 May 2017 for paper mortgages. The Registrar of Titles has announced that the transition period during which Form 2 Mortgages can still be lodged has been extended until 2 March 2018. More information is available on the Titles Registry Alerts website.

https://www.vision6.com.au/em/message/email/view.php?id=1164483&u=63446&k=2uAZWj-xkAQ3uQVYFiHxdoahzPraqrDI0U-KqoouMUU&utm_source=QLS+newsletters+list+%7C+2017&utm_campaign=f2c70dee52-QLS_Update_8Nov2017&utm_medium=email&utm_term=0_e21c5fd41e-f2c70dee52-194587545

CASES**[Australian Securities and Investments Commission v National Australia Bank Limited \[2017\] FCA 1338](#)**

CORPORATIONS LAW – banking – financial services – failure to deal with financial products in an efficient, honest and fair manner – attempts to manipulate the Bank Bill Swap Reference Rate by Prime Banks – unconscionable conduct – contravention of financial services laws pursuant to Australian Securities and Investments Commission Act 2001 (Cth) ss 12CB, 12CC

BANKING AND FINANCIAL INSTITUTIONS – penalties – contravention of financial services laws – penalty imposed pursuant to s 12GBA Australian Securities and Investments Commission Act 2001 (Cth) – general and specific deterrence - Australian Securities and Investments Commission Act 2001 (Cth) ss 12BA, 12BAB, 12CC, 12CB, 12GBA, 93AA; Banking Act 1959 (Cth) s 11AF

[Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Limited \(No 3\) \[2017\] FCA 1296](#)

STATUTES – Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) – where admitted contraventions by Respondents of statute

PRACTICE AND PROCEDURE – civil penalties – whether agreed penalty appropriate in circumstances

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) Parts 2, 3, 3A, 7, ss 3, 32, 41, 41(2)(a), 51B, 51B(1), 51B(1)(a), 51C(1), 51E(1), 81, 81(1)(a), 81(1)(b), 82, 83, 83(1)(b), 85, 85(2)(c), 85(3)(b), 175(3), 175(3)(a), 175(3)(b), 175(3)(c), 175(3)(d), 175(3)(e), 175(3)(f), 175(3)(g), 175(4), 175(6), 229

Crimes Act 1914 (Cth) s 4AA

Financial Transaction Reports Act 1988 (Cth)

[Australian Securities and Investments Commission v Westpac Banking Corporation \[2017\] FCA 1331](#)

PRACTICE AND PROCEDURE – corporations and securities – financial markets – prime bank bills – bank bill swap reference rate (BBSW) – alleged financial market manipulation concerning artificial prices – ss 1041A and 1041B of the Corporations Act 2001 (Cth) – application to amend originating process and statement of claim – application allowed

Australian Securities and Investments Commission Act 2001 (Cth) ss 12CA, 12CB, 12CC; Corporations Act 2001 (Cth) ss 1041A, 1041B; Federal Court of Australia Act 1976 (Cth) s 37M

[Gleeson v Bank of Queensland \[2017\] FCA 1302](#)

PRACTICE AND PROCEDURE - Cross-vesting - application to transfer proceedings to the Supreme Court of Queensland - Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth) s 5(4)(iii) - Australian Securities and Investments Commission Act 2001 (Cth) s 12GK - whether Supreme Court of Queensland a more appropriate forum.

[Bendigo and Adelaide Bank Limited v Rathbone \[2017\] NSWSC 1547](#)

CIVIL PROCEDURE - application to cross-vest proceeding to Supreme Court of Victoria - consent application - proceeding relates to earlier class action – pleaded defences also raised in similar proceedings before Supreme Court of Victoria – transfer clearly in the interests of justice.

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[Perpetual Trustee Co Ltd v Hodge \[2017\] QSC 268](#)

INTERPRETATION – GENERAL RULES OF CONSTRUCTION OF INSTRUMENTS – COMMERCIAL AND BUSINESS TRANSACTIONS – PARTICULAR TRANSACTIONS – where the defendants' company was advanced a loan under a principal deed – where as a condition precedent to the loan, the defendants executed a deed of guarantee and indemnity and a registered mortgage in the lender's favour as security – where the defendants' company was later wound up – where a new company was set up by the defendants, which assumed operation of the prior entity's business and continued to make repayments to the lender under the loan – where the defendants sought refinance and entered into a supplementary deed with the lender – where the supplementary deed named the new company as the borrower – where the defendants' company was subsequently wound up and the defendants defaulted on the loan – whether the defendants' guarantees and mortgage done in relation to the principal deed extend to, and are available as security for, the indebtedness of the new company under the supplementary deed

ESTOPPEL – ESTOPPEL BY CONDUCT – GENERAL PRINCIPLES – where the lender entered into the supplementary deed of loan under certain assumptions – where the lender's assumptions arose from conduct on the defendants' part – whether it would be unconscionable to permit the defendants to depart from the assumption that the guarantee and the mortgage would be available as collateral security for indebtedness under the supplementary deed - Commonwealth v Verwayen (1990) 170 CLR 394

LEGISLATION

Commonwealth

[High Court Amendment \(Fees\) Rules 2017](#)

10/11/2017 - These rules amend Schedule 2 of the High Court Rules governing the schedule of fees for work done or services performed.

[ASIC Corporations \(Amendment\) Instrument 2017/571](#)

09/11/2017 - This instrument amends the ASIC Corporations (Division 4 Financial Products) Instrument 2015/1030 to apply the provisions that regulate and facilitate transfers of products through ASX Settlement Pty Ltd to transferable custody receipts. This instrument also removes the application to transferable custody receipts of certain subregulations that deal with circumstances under which transferable custody receipts would be taken to have ceased quotation on a financial market.