



## BANKING SECTOR NEWSLETTER

### IN THE MEDIA

#### Banking Royal Commission could force S&P revision

Standard & Poor's has warned that a Royal Commission into the banks could force the ratings agency to revise its view of the Australian banking sector.

<https://www.mortgagebusiness.com.au/breaking-news/11736-banking-royal-commission-could-force-s-p-revision>

#### ASFA disappointed in Royal Commission scope

The Association of Superannuation Funds of Australia (ASFA) is disappointed the Royal Commission into banks and financial services has included the \$2.5 trillion super system.

<http://www.financialstandard.com.au/news/asfa-disappointed-in-royal-commission-scope-110793422?q=banking>

#### Appointment of Royal Commissioner

The Turnbull Government will, having consulted His Excellency, recommend the Governor General appoint former High Court Judge the Honourable Kenneth Madison Hayne AC as Royal Commissioner into Misconduct in the Banking, Superannuation and Financial Services Industry.

<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FourthQuarter/Appointment-of-Royal-Commissioner-1-December-2017.aspx>

#### Royal Commission- Banks and Financial Services

The Turnbull Government will establish a Royal Commission into the alleged misconduct of Australia's banks and other financial services entities. All Australians have the right to be treated honestly and fairly in their dealings with banking, superannuation and financial services providers.

<http://sjm.ministers.treasury.gov.au/media-release/124-2017/>

#### Australia to join in IMF Financial Sector Assessment in 2018

Australia will participate in the International Monetary Fund's (IMF) Financial Sector Assessment Program (FSAP) in 2018. As a country with an IMF-designated systematically important financial system and a member of the Financial Stability Board, Australia has agreed to undergo an FSAP every five years.

<http://sjm.ministers.treasury.gov.au/media-release/125-2017/>

#### ABA: The Royal Commission

Australia's banks have welcomed the Prime Minister's decision to take action and provide certainty to the Banking industry to the benefit of the national economy and all Australians. Banks will fully co-operate with the Royal Commission.

<http://www.bankers.asn.au/media/media-releases/media-release-2017/royal-commission>

#### Cards dominate as Australians abandon cheques and cash

The milestones report entitled *Digital Economy* released by Australian Payments Network (AusPayNet), the payments industry self-regulatory body, reinforces that individuals and businesses are abandoning cheques and cash at a record rate as they embrace digital payments.

<http://www.apca.com.au/docs/default-source/decline-of-cheques---media/digital-economy-271117.pdf>

#### Climate-related risks will jeopardise stability of banks, insurers: APRA

Banks and insurers are jeopardising their future if they fail to prepare for climate-related risks, warns the industry watchdog, Australian Prudential Regulation Authority (APRA).

<http://www.abc.net.au/news/2017-11-30/climate-related-risks-will-jeopardise-stability-of-banks:-apra/9209912>

**Housing imbalances still exposing banks to risk: S&P**

Standard and Poor's has released a new Australian banking sector update which reveals that both house prices and private sector borrowing imbalances are still exposing the banks to risk.

<https://www.mortgagebusiness.com.au/breaking-news/11729-housing-imbalances-still-exposing-banks-to-risk-s-p>

**Banks make changes to commission structure**

A major lender and a challenger bank have announced changes to their commission structure, which will come into effect starting 1 December 2017 and 5 January 2018, respectively.

<https://www.theadviser.com.au/breaking-news/37116-banks-make-changes-to-commission-structure>

**CBA announces major lending changes**

The big four bank has revealed a raft of changes, including LVR caps and restrictions to rental income serviceability, that will impact mortgage brokers and their clients from next week.

<https://www.theadviser.com.au/breaking-news/37119-cba-announces-major-lending-changes>

**Accessible banking for all**

Former Disability Discrimination Commissioner, Mr Graeme Innes AM, has been appointed by the Australian Bankers' Association to head up a review of existing electronic accessibility standards.

<http://www.bankers.asn.au/media/media-releases/media-release-2017/accessible-banking-for-all>

**AFMA releases 2017 Australian Financial Markets Report**

The Australian Financial Markets Association (AFMA) has released the 2017 Australian Financial Markets Report, its annual review of Australia's over-the-counter and exchange-traded financial markets.

[https://afma.com.au/media/AFMR\\_PR\\_2017.pdf](https://afma.com.au/media/AFMR_PR_2017.pdf)

**APRA is 'uncomfortable' about supervising non-banks**

The chairman of the prudential regulator has suggested that the body is "uncomfortable at the thought of APRA supervising non-ADIs" and is "not seeking to expand [its] supervisory remit" beyond data collection.

<https://www.mortgagebusiness.com.au/breaking-news/11705-apra-is-uncomfortable-about-supervising-non-banks>

**ASIC industry funding model consultation on regulator fees-for-service activities**

Consistent with the commitment ensuring that ASIC has the resources and powers it needs to combat misconduct in Australia's financial services industry, the Government has today released a consultation paper on the next phase of the ASIC industry funding model - the introduction of ASIC fees-for-service.

<http://kmo.ministers.treasury.gov.au/media-release/112-2017/>

**ASIC delivers on commitment to help limited AFS licensees understand their obligations**

The Australian Securities and Investment Commission (ASIC) has released new webpage guidance and information sheets to help limited Australian Financial Services (AFS) licensees and their representatives understand their key obligations.

<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-399mr-asic-delivers-on-commitment-to-help-limited-afs-licensees-understand-their-obligations/>

**Global banking system 'not safe', former BoE governor says**

Not enough has been done since the global financial crisis to ensure banks won't collapse if the economy or market goes pear-shaped, former Bank of England governor Lord Mervyn King says.

<http://www.abc.net.au/news/2017-11-22/global-banking-system-not-safe-says-lord-mervyn-king/9177712>

**Bank regulator hints at high loan-to-income mortgage crackdown**

The banking regulator is warning that household debt remains too high and that Australia's debt binge is on a dangerous trajectory in an era of record low interest rates.

<http://www.abc.net.au/news/2017-11-21/bank-regulator-hints-at-high-loan-to-income-crackdown/9174528>

**IN PRACTICE AND COURTS****Royal Commission into Misconduct in Banking, Superannuation and Financial Services Industry**

The Inquiry will consider the conduct of banks, insurers, financial services providers and superannuation funds (not included self-managed superannuation funds). The proposed terms of reference will form the bases of the Letters Patent, terms of which will be recommended to His Excellency, pursuant to the Royal Commissions Act 1902. See: [Turnbull Government action in Banking and Financial Services](#) and [Draft Terms of Reference](#)

**Reserve Bank of Australia**

[Statement of Liabilities and Assets](#) 1 December 2017

[Financial Aggregates October 2017](#) 30 November 2017

**APRA monthly banking statistics for October 2017**

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

**ASIC report: Overview of licensing and professional registration applications: July 2016 to June 2017**

The report, released on 30 November, provides an overview of ASIC's activity and oversight in relation to applications for Australian financial services licences (ASFL), Australian credit licences (ACL), liquidator registration, company auditor and approved SMSF auditor regulation. View the report [here](#).

### ASIC industry funding model consultation: regulatory fees-for-service activities

The consultation paper released looks at the recovery of ASIC regulatory costs that are directly attributable to a single, identifiable, entity. This is referred to as 'fees-for-service'. This is the final aspect of the ASIC Industry Funding Model and will commence from 1 July 2018. Fees associated with registry activities are excluded from the scope of this proposal. Comments on the consultation paper close 15 December 2017. Stakeholders are invited to provide their feedback on the [Treasury website](#).

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

Feedback from the Consultation Paper will provide the bases 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 [here](#). Interested stakeholders are invited to comment. Submissions on this consultation closed on 20 November 2017.

### ASFA Submissions

21 November 2017 - Submission to The Treasury - Response to consultation paper: Establishment of the Australian Financial Complaints Authority.

See [Full Submission](#)

### FPA Submissions

[Establishment of Australian Financial Complaints Authority Treasury](#) - 21 November 2017

### Current Inquiries - Economics Legislation Committee

[Financial Sector Legislation Amendment \(Crisis Resolution Powers and Other Measures\) Bill 2017 \[Provisions\]](#)

Status: Accepting Submissions, Date Referred: 16 November 2017, Submissions Close: 18 December 2017, Reporting Date: 09 February 2018

### Review into open banking in Australia

Treasury - 2017 - Ongoing - The review will report to the Treasurer by the end of 2017

<https://treasury.gov.au/review/review-into-open-banking-in-australia/>

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### 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](#).

### CASES

#### [Commonwealth Bank of Australia v Daleport Pty Limited \(in receivership\) \(No 3\) \[2017\] NSWSC 1584](#)

CIVIL PROCEDURE - discovery - proceedings to enforce loan facilities - where pleadings raise an issue as to whether by reason of its own shortage of funds or a shortage of funds in its parent company the lender was unwilling or unable to advance or loan funds to commercial borrowers - whether that issue is a "real issue in dispute" - breadth of discovery request - requirement to consider proportionality of costs in assessing relevance or necessity of documents sought - Civil Procedure Act 2005 (NSW), ss 56, 58, 59, 60

#### [Scottish Pacific \(BFS\) Pty Ltd v Registrar of Personal Property Securities \[2017\] FCA 1378](#)

PERSONAL PROPERTY - application to restore data to Personal Property Securities Register under Personal Properties Securities Act 2009 (Cth) ss 186 and 195 - where Personal Properties Securities Registrar not satisfied that data was "incorrectly removed" - where Registrar refused to restore data - where application for an order requiring Registrar to restore data and declarations for that data was "incorrectly removed" - where application not made under Administrative Decisions (Judicial Review) Act 1977 (Cth) - application dismissed

ADMINISTRATIVE LAW - where Personal Property Securities Registrar refused to restore data to the Personal Property Securities Register under Personal Property Securities Act 2009 (Cth) ss 186 and 195 - whether application for orders sought must be made under Administrative Decisions (Judicial Review) Act 1977 (Cth) for Court to order restoration of data to Register - held: application pursuant to Administrative Decisions (Judicial Review) Act 1997 (Cth) required.