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ISSUE 6



BANKING SECTOR NEWSLETTER

Cyber risks the biggest threat to banks: Westpac

The "biggest single risk" to security in the banking sector is cyber risk, according to Westpac's CEO. Cyber security has been on increasing importance to the banking sector as the industry increasingly relies on cloud computing and online banking.

<https://www.mortgagebusiness.com.au/breaking-news/11899-cyber-risks-the-biggest-threat-to-banks-westpac>

IN THE MEDIA

ABA: Banking Code signals new era of rebuilding trust

The new Banking Code of Practice, developed by Australia's banks, signals a new era in rebuilding that trust with the Australian community. Australian banks have recognised and spent the past two years reworking the industry's code of practice to make it easier to understand, friendly to small business and fair for all customers.

<http://www.bankers.asn.au/media/aba-blog/banking-code-signals-new-era-of-rebuilding-trust>

Cryptocurrency regulation in 'embryonic state'

The Australian Treasury and members of the ATO have been "informally" looking into regulation and taxation of cryptocurrencies, according to federal minister Michael Sukkar.

<https://www.investordaily.com.au/regulation/42524-cryptocurrency-regulation-in-embryonic-state-treasury>

APRA releases CBA Prudential Inquiry Progress Report

The Australian Prudential Regulation Authority (APRA) today released the Progress Report by the Panel appointed by APRA to conduct a Prudential Inquiry into the Commonwealth Bank of Australia (CBA).

http://www.apra.gov.au/MediaReleases/Pages/18_01.aspx

ABA: Debit card revolution continues!

Debit card usage continues to outstrip all other cards, with 6 billion transactions over the year ending November 2017.

<http://www.bankers.asn.au/media/media-releases/media-release-2018/debit-card-revolution-continues>

Are Aussie banks susceptible to fake news?

The big bank CEOs are threatening to fallout from bank levy including impacts on suppliers and media. The reputational damage incurred by Australia's major banks may be such that they will be more susceptible to the impacts of fake news, according to a new white paper released by the Actuaries Institute.

<http://www.moneymanagement.com.au/news/policy-regulation/are-aussie-banks-susceptible-fake-news>

ASIC commences action against CBA over BBSW

The new chief executive of Commonwealth Bank (CBA), Matt Comyn will be confronted with an early challenge, with the ASIC commencing legal proceedings against the bank for unconscionable conduct and market manipulation in relation to the Bank Bill Swap Reference Rate (BBSW).

<http://www.moneymanagement.com.au/news/policy-regulation/asic-commences-action-against-cba-over-bbsw>

See the ASIC statement [here](#).

Aussies face credit card bill totalling almost \$30bn

Australian credit card holders collectively owe almost \$30 billion following rampant credit card spending over the holiday period.

<https://www.mortgagebusiness.com.au/breaking-news/11888-aussies-face-credit-card-bill-totalling-almost-30bn>

Financial industry slammed for outdated risk management

A new paper from Actuaries Institute has warned that financial institutions are applying ineffective and outdated risk management strategies.

<https://www.mortgagebusiness.com.au/breaking-news/11886-financial-industry-slammed-for-outdated-risk-management>

FSC and FOS name Life Code Compliance Committee chair

The Financial Services Council (FSC) and the Financial Ombudsman Service (FOS) have jointly appointed Anne Brown to chair the Life Code Compliance Committee (LCCC), the independent body responsible for administering the FSC Life Insurance Code of Practice. https://www.fsc.org.au/_entity/annotation/6b0f98c7-a504-e811-812d-480fcff12ac1

Fresh fears over bank leverage and risk-taking

The Bank for International Settlements fears that the longer-term profitability of the global banking sector could encourage lenders to engage in risk-taking and excessive leverage.

<https://www.mortgagebusiness.com.au/breaking-news/11877-fresh-fears-over-bank-leverage-and-risk-taking>

Mortgage arrears fall in November

According to S&P Global Ratings, Australian mortgage arrears fell nationwide in November, with arrears in New South Wales and Victoria the lowest they've been in two years.

<https://www.mortgagebusiness.com.au/breaking-news/11875-mortgage-arrears-fall-in-november>

ASIC seeks court order to wind up lenders

The corporate regulator has commenced proceedings for recovery of unpaid fines against a number of Queensland-based payday lending companies.

<https://www.mortgagebusiness.com.au/breaking-news/11874-asic-seeks-court-order-to-wind-up-lenders>

Royal Commission submission takes aim at mortgage lending

A submission to the Royal Commission into misconduct in the banking, superannuation and financial services industry has taken aim at "irresponsible lending"

<https://www.mortgagebusiness.com.au/breaking-news/11871-royal-commission-submission-takes-aim-at-mortgage-lending>

Lending growth and home prices to fall: Fitch

Lending growth is set to slow, home prices will fall and first home buyers will ease their interest in the Australian property market, according to a new report from Fitch Ratings.

<https://www.mortgagebusiness.com.au/breaking-news/11873-lending-growth-and-home-prices-to-fall-fitch>

Appointment of members to the Australian Government Financial Literacy Board

The Minister of Revenue and Financial Services, the Hon Kelly O'Dwyer MP, has announced reappointments to the Australian Government Financial Literacy Board (the Board), commencing on 1 February 2018.

<http://kmo.ministers.treasury.gov.au/media-release/008-2018/>

FSC response to ASIC Report 562, "Financial advice: Vertically integrated institutions and conflicts of interest"

ASIC's review shows there is still work to be done to address community and regulator concerns about the quality of advice in Australia.

https://www.fsc.org.au/news/2018-media-releases/2018_0124_FSC%20responds%20to%20ASIC%20report%20562.pdf

ASIC reports on how large financial institutions manage conflicts of interest in financial advice

An ASIC review of financial advice provided by the five biggest vertically integrated financial institutions has identified areas where improvements are needed to the management of conflicts of interest. The review looked at the products that ANZ, CBA, NAB, Westpac and AMP financial advice licensees.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-019mr-asic-reports-on-how-large-financial-institutions-manage-conflicts-of-interest-in-financial-advice/>

Best interest test failures show banks still putting profit before customer analysis

The banking royal commission is just three weeks away, but the corporate regulator's survey of conflicts of interest with the 'big five' finds 75 per cent of files its reviewed which recommended making a switch to an 'in-house' product failed the 'best interests test' <http://www.abc.net.au/news/2018-01-24/banks-continuing-to-put-own-interest-ahead-of-customers-survey/9358724>

IN PRACTICE AND COURTS**ABA: Newsletter**

The ABA newsletter for 25 January is available [here](#).

AFSA: Personal insolvencies December quarter 2017

The Australian Financial Security Authority released the [personal insolvency activity statistics](#) for the December quarter 2017. There were 7,578 new personal insolvencies in the December quarter 2017. This is an increase of 7.4% compared to the December quarter 2016 (30 January 2018).

AUSTRAC: Are you a digital currency exchange provider?

Draft AML/CTF Rules and a new DCE information page are available [here](#).

AML/CTF Rules updates - Regulatory relief for correspondent banking services

Proposed changes to the [AML/CTF Rules](#) resulting from the AML/CTF Amendment Act will ensure that due diligence requirements for correspondent banking services only apply to vostro accounts. Currently the requirements apply to both vostro and nostro accounts.

This will benefit reporting entities by clarifying their obligations and broadening the scope of these relationships. It is also consistent with the Financial Action Task Force's (FATF) international standards, as well as international banking practice.

CBA Prudential Inquiry Progress Report

The Progress Report provides an update on the status of the Inquiry and outlines the methodology that the Panel has adopted to address the Terms of Reference. The Panel comprises Dr John Laker AO, Professor Graeme Samuel AC and Jillian Broadbent AO. The Panel is due to provide a final report to APRA by 30 April 2018. The Progress Report is available [here](#).

APRA policy priorities for 2018

APRA has released a paper outlining its policy priorities for 2018. For an outline of APRA's planned policy initiatives, see the [Information Paper: APRA's policy priorities](#) – released 31 January 2018 and [APRA has released a paper outlining its policy priorities for 2018](#)

APRA: Monthly Banking Statistics

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

ASIC Report 562 Financial advice: Vertically integrated institutions and conflicts of interest

Released 24 January 2018. The review found that, overall, 79% of the financial products on the firms' approved products lists (APL) were external products and 21% were internal or 'in-house' products. However, 68% of clients' funds were invested in in-house products. ASIC will consult with the financial advice industry (and other relevant groups) on a proposal to introduce more transparent public reporting on approved product lists, including where client funds are invested, for advice licensees that are part of a vertically integrated business.

View the report [here](#).

Reminder: 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 including self-managed superannuation funds). The proposed terms of reference will form the basis of the Letters Patent, terms of which will be recommended to His Excellency, pursuant to the Royal Commissions Act 1902.

<https://financialservices.royalcommission.gov.au/Pages/default.aspx>

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

[Consumer protection in the banking, insurance and financial sector](#)

Status: Submissions Closed Date Referred: 29 November 2016 Reporting Date: 28 March 2018

CASES

[Commonwealth Bank of Australia v The Law Debenture Trust Corporation PLC \[No 2\] \[2017\] WASC 61](#)

Jurisdiction - Action between a State and the Commonwealth - Whether Court has jurisdiction - Order to be made on finding of no jurisdiction - Corporations Law (Cth), s 564; Rules of the Supreme Court 1971 (WA), O 23 r 2(3); Judiciary Act 1903 (Cth), s 38(d), s 44(2) Result: Counterclaim permanently stayed

[Commonwealth Bank of Australia v The Law Debenture Trust Corporation PLC \[No 3\] \[2017\] WASC 382](#)

Procedure - Dismissal of action - Leave to discontinue action - Where issues substantially overlap with other proceedings - Where plaintiffs have not brought application to discontinue or dismiss - Where parties may wish to seek release from undertakings given in the action after dismissal or discontinuance

Procedure - Abuse of process - Rules of the Supreme Court 1971 (WA) O 20 r 19(1)(d) - Inherent jurisdiction - Where no relief sought - Where no intention to prosecute action - Where application to release undertakings likely to be made - Where no substantial prejudice from action remaining on foot for the time being

Summary enforcement of settlement agreement - Where substantial questions to be determined - Where assessment of surrounding circumstances required - Where not all parties to settlement agreement are parties to the action

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