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ISSUE 10



## BANKING SECTOR NEWSLETTER

### ABA: New Banking Code of Practice will be compulsory, binding and enforceable

In a first for the industry, retail banks in Australia will be required to sign up to the new Banking Code of Practice as a condition of membership to the Australian Banking Association.

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/new-banking-code-of-practice-will-be-compulsory-binding-and-enforceable>

### IN THE MEDIA

#### Big banks expand owner-occupied loan book

Australia's big four banks have recorded rises in their owner-occupied residential mortgage book, according to the Australian Prudential Regulation Authority's latest Monthly Banking Statistics.

<https://www.mortgagebusiness.com.au/breaking-news/12102-big-banks-expand-owner-occupied-loan-book>

#### Government broadens ASIC's hiring rules

The corporate regulator will have greater scope to hire and incentivise people in the financial services industry as part of new legislation introduced by the government.

<https://www.investordaily.com.au/regulation/42780-government-broadens-asic-s-hiring-rules>

#### Strengthening financial regulation

Financial institutions that manipulate financial benchmarks will now be hit with specific civil and criminal penalties - thanks to amendments legislated by the Turnbull Government. The manipulation of any financial benchmark, or product used to determine such a benchmark, is now a specific offence and subject to civil and criminal penalties.

<http://sjm.ministers.treasury.gov.au/media-release/028-2018/>

### Government hikes market manipulation penalties for financial sector

Financial institutions found guilty of rigging financial benchmarks or a product used to determine benchmarks will be slapped with civil and criminal penalties of up to \$9.45 million under new legislative reforms.

<https://www.mortgagebusiness.com.au/breaking-news/12090-government-hikes-market-manipulation-penalties-for-financial-sector>

### Review of financial hardship arrangements

Hardship arrangements are currently regulated under the National Credit Code in the National Consumer Credit Protection Act 2009. The new review will respond to concerns raised by industry and consumer-advocacy groups around how hardship arrangements are treated and will make recommendations on whether reforms are required.

<https://www.attorneygeneral.gov.au/Media/Pages/Review-of-financial-hardship-arrangements-28-March-2018.aspx>

### Getting Australians better deals on their loans

The Turnbull government is ensuring Australians can get better deals on their loans - introducing legislation to enact Mandatory Comprehensive Credit Reporting. This will ensure lenders have access to a deeper, richer set of data, encouraging new entrants and small lenders, including innovative FinTech firms, to compete for small business and retail consumers with positive credit histories.

<http://sjm.ministers.treasury.gov.au/media-release/027-2018/>

### CCR legislation introduced into Australian Parliament

Legislation to enforce mandatory comprehensive credit reporting (CCR) has been introduced into the Australian Parliament by Assistant Minister to the Treasurer Michael Sukkar.

<https://www.mortgagebusiness.com.au/breaking-news/12085-ccr-legislation-introduced-into-australian-parliament>

**Media comment: ABA warns of data security integrity for open banking**

Following on from the news that an analytics firm breached data security permissions, the Australian Banking Association is calling for more time to implement the open data regime to address data sharing standards.

<https://www.mortgagebusiness.com.au/breaking-news/12079-aba-warns-of-data-security-integrity-for-open-banking>

**Media comment: ABA to require banks to sign new code of practice**

Retail banks wishing to join the Australian Bankers' Association will be required to sign up to the new code of practice before becoming a member, the association has revealed.

<https://www.mortgagebusiness.com.au/breaking-news/12081-aba-to-require-banks-to-sign-new-code-of-practice>

**How the banking royal commission could drag down the entire economy**

Tougher lending regulations could dry up credit, drive down house prices and force up unemployment, UBS investment bank analysts warn.

<http://www.abc.net.au/news/2018-03-24/banking-royal-commission-cause-a-credit-crunch-and-hit-economy/9579654>

**Banking royal commission highlights the conflict of interest at heart of mortgage broking**

Half of Australia's mortgages are written by brokers, and the banks have now publicly admitted they knew these customers have been getting a raw deal.

<http://www.abc.net.au/news/2018-03-23/banking-royal-commission-highlights-mortgage-broking-conflict/9581330>

**RBA supports 'crucial' duty of care obligations for brokers**

Conflict of interest disclosure should apply to "all brokers", the central bank has noted in support of Productivity Commission's recommendations.

<https://www.mortgagebusiness.com.au/breaking-news/12061-rba-supports-crucial-duty-of-care-obligations-for-brokers>

**Consultation open on consumer guarantee reforms**

The Turnbull Government has called on businesses and consumers to have their say on proposed reforms that have come out of the Australian Consumer Law Review, including proposals to clarify, simplify and modernise the consumer guarantee framework in the Australian Consumer Law (ACL).

<http://mss.ministers.treasury.gov.au/media-release/006-2018/>

**Payments System Issues: Exchange Settlement Account Policy**

The Reserve Bank has amended its Exchange Settlement Account (ESA) policy to remove the requirement that all banks must have an ESA, whether or not they use an agent to settle their real-time gross settlement (RTGS) transactions. The change follows amendments to the Banking Act 1959 that will allow all authorised deposit-taking institutions (ADIs) to use the term 'bank'.

<http://www.rba.gov.au/media-releases/2018/mr-18-06.html>

**IN PRACTICE AND COURTS****AUSTRAC: Digital currency exchange providers: register online with AUSTRAC**

From 3 April 2018 all businesses providing DCE services in Australia are regulated under new anti-money laundering and counter-terrorism financing (AML/CTF) laws. Existing businesses providing DCE services will need to register by 14 May 2018

<http://www.austrac.gov.au/news/digital-currency-exchange-providers-register-online-austrac>

**Financial Adviser Standards and Ethics Authority (FASEA): draft guidance on education pathways for existing financial advisers**

Under the professional standards reforms, existing financial advisers have until 1 January 2024 to meet the degree-equivalent requirements set by the Standards Authority. The draft guidance is available on the Standards Authority website: <https://www.fasea.gov.au/> Consultation will close on 29 June 2018.

<http://kmo.ministers.treasury.gov.au/media-release/026-2018/>

**ASIC consults on updated guidance for its oversight of the Australian Financial Complaints Authority (AFCA)**

ASIC has released draft updated Regulatory Guide 139, Oversight of AFCA (updated RG139) for public consultation. The Bill to establish AFCA passed on 14 February 2018, and Minister for Financial Services, the Hon. Kelly O'Dwyer has announced that AFCA will commence operations no later than 1 November 2018. Responses to the consultation close on 6 April 2018. [Download](#) the consultation paper and draft regulatory guide.

**AFSA: The amendment demand process - working with our clients to ensure the PPS Register is accurate**

The amendment demand process is one tool which is used to help parties ensure the Register accurately reflects what's been agreed between the parties—or even if the registration should be on the Register <https://www.ppsr.gov.au/blog-speeches/amendment-demand-process%E2%80%94working-our-clients-ensure-register-accurate>

**APRA banking statistics for February 2018**

APRA released [monthly banking statistics](#) for February 2018 on 29 March 2018

**CCMC Banking Code Compliance Monitoring Committee Bulletin - 03 April 2018**

In this edition: The revised Banking Code and Banking Code Compliance Committee; Breach reporting Inquiry, Financial difficulty Inquiry, 2017–18 Annual Compliance Statement, Direct debits, Stakeholder engagement, and CCMC Investigations – Key statistics <http://www.ccmc.org.au/2018/04/03/banking-code-compliance-monitoring-committee-bulletin-april-2018/>

**ABA Newsletter**

See the update [here](#).

**CASES****[In the matter of Huizhong Investment Group Pty Ltd \[2018\] NSWSC 390](#)**

CORPORATIONS – winding up – abuse of process – where creditor’s statutory demand issued in respect of contingent claim – where person who swears affidavit verifying creditor’s statutory demand did not have direct knowledge of the relevant facts – where a more suitable alternative remedy was available to the issuing of creditor’s statutory demand – whether Court will declare creditor’s statutory demand an abuse of process

**[Bendigo and Adelaide Bank Limited v Zipevski \[2018\] NSWDC 54](#)**

Judgment for the first plaintiff against the defendant; Contract – action in debt - loans for the purposes of investments in agricultural schemes – transaction documents completed pursuant to power of attorney – effect of approval of settlement in class action proceedings in the Supreme Court of Victoria of a deed of settlement – whether accountant who introduced defendant to the investments was the agent of either plaintiff – whether Loan Deeds unjust under the Contracts Review Act 1980 (NSW).

Conflict of laws – proper law of the contract – relevance to the Contracts Review Act 1980, section 17.

Assignment – assignment of rights under future deeds – whether there was a legal assignment.

**[Civil Mining & Construction Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd \(No 3\) \[2019\] QSC 060](#)**

INTEREST – RECOVERABILITY OF INTEREST – AWARD OF INTEREST ON DEBTS AND SUMS CERTAIN – INTEREST ON MONEYS SECURED BY BANK GUARANTEE – MONEY – GENERALLY AND WHAT CONSTITUTES – whether interest was payable on moneys secured by bank guarantee pursuant to section 58 of the Civil Proceedings Act 2011 (Qld) – the meaning of ‘money’ in section 58 – the purpose of an award of interest

INTEREST – RECOVERABILITY OF INTEREST – AWARD OF INTEREST AS DAMAGES – IN QUEENSLAND – where the Court had previously held interest to be payable under section 67P of the Queensland Building and Construction Commission Act 1991 (Qld) – whether section 67P provided for ‘penalty interest’, entitling the plaintiff not only to interest under the QBCC Act, but also contractually agreed interest – the meaning of ‘penalty rate’ in section 67P

INTEREST – RATE OF INTEREST – RATE IN OTHER CASES – where the parties had agreed the plaintiff was entitled to interest under the Contract – where the defendant later submitted that neither the contractual rate of interest, nor the statutory rate of interest under the QBCC Act, was applicable – whether the plaintiff’s claims were more accurately characterised as claims for unliquidated damages, or as moneys owed under the Contract – whether, if a determination of a court or arbitrator results in an adjustment of a claimed sum, interest accrues retrospectively or only from the date of the determination – the effect of certification of a claim under the Contract

**[Secure Loans Solutions Pty Ltd v Smith \[2018\] VSCA 71](#)**

MORTGAGES – Entitlement to surplus proceeds from mortgagee sale of land – Where respondent was registered proprietor and applicant was second mortgagee – Where respondent owed debt to applicant – Where affidavit evidence only – Whether judge correct to find on evidence that respondent had established that debt had been discharged – Leave to appeal refused.

**[Farah KKA Investments Pty Ltd & Ors v Bullion Wealth International Pty Ltd & Anor \[2018\] VSC 146](#)**

JUDGMENTS AND ORDERS – Plaintiffs’ case of false and misleading representations preceding making of contract – Failure to file a defence – Default judgment – Damages assessed – Belated application to set aside default judgment – Absence of any opposing evidence concerning the alleged misrepresentations – Real dispute over the resultant contract – Case to be investigated – Default judgment set aside

Loan agreements - The first agreement was between the first plaintiff Farah KAA Investments Pty Ltd (identified as the ‘the Lender’) and Bullion Wealth (identified as ‘the Borrower’)

**LEGISLATION****Commonwealth****[National Consumer Credit Protection Amendment \(Small Amount Credit Contract and Consumer Lease Reforms\) Bill 2018](#)**

House of Representatives Second reading debate 26/03/2018 - Amends the National Consumer Credit Protection Act 2009 to: impose a cap on the total payments that can be made under a consumer lease (known as rent-to-buy schemes); require small amount credit contracts (SACCs) (known as payday loans) to have equal repayments and payment intervals; remove the ability for SACC providers to charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early; prevent lessors and credit assistance providers from undertaking door-to-door selling of leases at residential homes; introduce anti-avoidance protections; and increase penalties

**[National Consumer Credit Protection Amendment \(Mandatory Comprehensive Credit Reporting\) Bill 2018](#)**

House of Representatives Second reading moved 28/03/2018 - The Bill requires the four major banks to supply 50 per cent of their comprehensive credit reporting data to credit reporting bodies by 1 July 2018, increasing to 100 per cent a year later

**[Anti-Money Laundering and Counter-Terrorism Financing \(Prescribed Foreign Countries\) Regulations 2018](#)**

Tabled Senate 20/03/2018 - These regulations repeal the Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulation 2016, which is due to sunset on 1 April 2018, and continue to declare Iran and the Democratic People's Republic of Korea (DPRK) to be prescribed foreign countries for the purposes of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

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