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BANKING SECTOR NEWSLETTER

RBA warns a spike in interest rates could unhinge financial markets

Record low interest rates, accelerating asset prices and a growing appetite for risk could catch investors by surprise and spark a sharp correction across financial markets, the Reserve Bank says.

<http://www.abc.net.au/news/2018-04-13/rba-financial-stability-review/9652772>

IN THE MEDIA

Mortgage delinquencies set to rise: Moody's

Home loan arrears are expected to increase "moderately" through 2018, driven by a "softening" housing market, according to Moody's analysis.

<https://www.mortgagebusiness.com.au/breaking-news/12136-mortgage-delinquencies-set-to-rise-moody-s>

Reform of the Financial Sector (Shareholdings) Act 1998

The Turnbull Government is releasing exposure draft legislation to relax the restriction of ownership of banks and insurers as well as introducing a new streamlined approval path under the Financial Sector (Shareholdings) Act 1998 (FSSA) as part of this Government's commitment to improving competition in the financial sector.

<http://sjm.ministers.treasury.gov.au/media-release/034-2018/>

ASIC accepts enforceable undertaking from Commonwealth Bank subsidiaries for Fees For No Service conduct

ASIC has accepted an enforceable undertaking (EU) from Commonwealth Financial Planning Limited (CFPL) and BW Financial Advice Limited (BWFA), both wholly owned subsidiaries of the Commonwealth Bank of Australia (CBA). ASIC found that CFPL and BWFA failed to provide, or failed to locate evidence regarding the provision of, annual reviews to approximately 31,500 'Ongoing Service' customers.

<http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-102mr-asic-accepts-enforceable-undertaking-from-commonwealth-bank-subsidiaries-for-fees-for-no-service-conduct/>

New Australian laws to regulate cryptocurrency providers

New laws for digital currency exchange (DCE) providers operating in Australia have just been implemented by AUSTRAC, Australia's financial intelligence agency and anti-money laundering and counter-terrorism financing (AML/CTF) regulator. The new AML/CTF laws cover for the first time regulation of service providers of cryptocurrencies, including bitcoin.

<http://www.austrac.gov.au/media/media-releases/new-australian-laws-regulate-cryptocurrency-providers>

Consultation on ASIC fees-for-service draft legislation

The Turnbull Government is committed to ensuring that ASIC has the resources and powers it needs to be combat misconduct in Australia's financial services industry and bolster consumer confidence in the sector. The Government has released draft legislation on the second phase of the ASIC industry funding model - the introduction of ASIC fees-for-service.

<http://kmo.ministers.treasury.gov.au/media-release/036-2018/>

ASIC reveals 6 key aspects of a 'good' financial system

The financial services regulator has outlined what it believes are the six "key components of a good financial system".

<https://www.mortgagebusiness.com.au/breaking-news/12120-asic-reveals-6-key-aspects-of-a-good-financial-system>

Consultation on Banking Executive Accountability Regime

The Turnbull Government is progressing action to hold back banks and senior executives to account, releasing more information on how legislation will be implemented. The Banking Executive Accountability Regime (BEAR), legislated by the Turnbull Government in February, imposes higher standards of behaviour on banks and their senior executives and directors.

<http://sjm.ministers.treasury.gov.au/media-release/032-2018/>

Government consults on BEAR regime

Treasurer Scott Morrison has now announced the release of a new legislative instrument within the Banking Executive Accountability Regime bill, which will be used to determine compliance obligations and the size of penalties imposed on non-compliant banks. <https://www.mortgagebusiness.com.au/breaking-news/12112-government-consults-on-bear-regime>

FPA gathers member feedback on FASEA's new guidance on proposed education standards and Code of Ethics

The Financial Adviser Standards and Ethics Authority (FASEA) provided new guidance on its proposed education standard and Code of Ethics for financial planners on Tuesday 20 March. FASEA has now started the consultation period. <https://fpa.com.au/news/fpa-gathers-member-feedback-faseas-new-guidance-proposed-education-standards-code-ethics/>

New AUSTRAC boss shocked by 'depth and breadth' of money laundering

Australia's new financial intelligence czar says she is shocked at the depth of money laundering in the economy and banking system involving organised crime, child exploitation and drug importation. <http://www.abc.net.au/news/2018-04-05/new-austrac-boss-shocked-by-money-laundering/9621428>

ASIC releases updated guidance on client money

ASIC has released updated guidance for Australian financial services (AFS) licensees that hold client money for trading in over-the-counter (OTC) derivatives. <http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-089mr-asic-releases-updated-guidance-on-client-money/>

APRA seeks improvement in executive remuneration practices

The Australian Prudential Regulation Authority (APRA) has released the results of a review of remuneration practices at large financial institutions which found considerable room for improvement in the design and implementation of executive remuneration structures. http://www.apra.gov.au/MediaReleases/Pages/18_15.aspx

IN PRACTICE AND COURTS**ASIC fees-for-service: Consultation**

Under the new fees-for-service regime, fees for activities such as processing a licence application will be revised to reflect ASIC's actual costs. This is the final aspect of the ASIC Industry Funding Model and will commence from 1 July 2018. Consultation is open from 11 April to 1 May 2018. Stakeholders are invited to provide their feedback on the [Treasury website](#).

Banking Executive Accountability Regime (BEAR): Consultation

Where these obligations are not met, APRA will be empowered to issue substantial fines or disqualify the individuals responsible. It is part of a broader suite of financial services reforms delivering on our commitment to put consumers first. For large authorised deposit-taking institutions (ADIs), the BEAR will commence on 1 July 2018. The government will begin seeking feedback on how to define small, medium and large ADI's. The draft legislative instrument is available on the [Treasury website](#). Submissions are due by 20 April 2018.

ASIC RG 212: Client money relating to dealing in OTC derivatives

RG 212 has been updated to reflect the changes to the law as a result of new reforms. The changes mean that the circumstances in which an AFS licensee may use 'derivative retail client money', within the meaning of the Corporations Act, have been significantly restricted. The reforms also impose new record-keeping, reconciliation and reporting requirements on the AFS licensees that hold derivative retail client money. See [Regulatory Guide 212](#)

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's [website](#). Consultation will close on 29 June 2018. <http://kmo.ministers.treasury.gov.au/media-release/026-2018/>

Consultation: 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). The Government encourages interested stakeholders to make a written submission on the matters raised in the consultation paper by 23 April, 2018. The Consultation Paper and details of the consultation process are available on the [Treasury consultation hub](#).

ABA Newsletter

See the update [here](#).

CASES**[Smithson & Baye Pty Ltd and Australian Securities and Investments Commission \[2018\] AATA 857](#)**

ASIC - Contravention of National Consumer Credit Protection Act 2009 - Australian Securities and Investments Commission - purchase of properties - asset buying activities - top up loans - regulation of loans - loan agreements - breaches - suspension and cancelling of licence - not a fit and proper person - cancellation of Australian credit licence.

[Peter Hillig in his capacity as liquidator of ACN 092 745 330 Pty Ltd \(in Liquidation\) & Anor v Battaglia & Ors \[2018\] NSWCA 67](#)

(1) Appeal allowed. APPEAL - new trial - whether substantial miscarriage - whether remittal of whole or part of proceedings

CORPORATIONS - directors and officers - where payments made by company to senior employee's wife and their family company - whether employee caused the relevant payments to be made in breach of statutory and fiduciary duties owed to the company - whether the employee was a de facto director - whether a cogent commercial explanation for making relevant payments - whether payments related to employee's remuneration package.

EVIDENCE - documentary evidence - application to adduce further evidence on appeal - where evidence raises issues of credit - business records exception to hearsay rule - whether exclusion in s 69(3)(b) of the Evidence Act 1996 (NSW) applies - whether the evidence should be excluded on discretionary grounds under s 135 of the Evidence Act - bank accounts and loans

LEGISLATION**Commonwealth****Bills assented****[ASIC Supervisory Cost Recovery Levy Amendment Bill 2017](#)**

Assent Act no: 24 11 April 2018 - Introduced with the Treasury Laws Amendment (2017 Measures No. 5) Bill 2017, the bill amends the ASIC Supervisory Cost Recovery Levy Act 2017 to add benchmark administrator licensees to the list of entities from which the Australian Securities and Investments Commission may recover regulatory costs.

[Treasury Laws Amendment \(2017 Measures No. 5\) Bill 2017](#)

Assent Act no: 27 1 Apr 2018 - The bill amends the Assent Corporations Act 2001 to: establish a new licensing regime requiring administrators of designated significant financial benchmarks to obtain a benchmark administrator licence from the *Australian Securities and Investments Commission (ASIC)*; enable ASIC to make rules imposing a regulatory framework for licensed benchmark administrators and related matters; and create offences and penalties for manipulation of financial benchmarks; and other amendments.

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

04/04/2018 - A Bill for an Act to provide for mandatory comprehensive credit reporting. This Bill amends the Credit Act to mandate a comprehensive credit reporting regime (the mandatory regime). Under the regime eligible licensees, who on 1 July 2018 are large ADIs, must provide credit information on consumer credit accounts to credit reporting bodies. Date of effect: 1 July 2018

THIS EDITION'S EDITORS**Julie Callea-Smyth**

Partner

+61 3 8080 3625

+61 411 600 945

jcallea-smyth@tglaw.com.au**Jessica Andreacchio**

Special Counsel

+61 3 8080 3631

+61 439 370 081

jandreacchio@tglaw.com.au**Michelle Lykiardopoulos**

Special Counsel

+61 3 8080 3567

+61 410 778 698

mlykiardopoulos@tglaw.com.au

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SYDNEY | Level 25, 1 O'Connell Street | Sydney NSW 2000**MELBOURNE** | Level 39, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000**BRISBANE** | Level 16, Waterfront Place, 1 Eagle Street | Brisbane QLD 4000**ADELAIDE** | Level 7, 19 Gouger Street | Adelaide SA 5000www.tglaw.com.au

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