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## BANKING SECTOR NEWSLETTER

### FOS: AFCA consults on draft Rules to enhance dispute resolution

The AFCA will commence on 1 November 2018, providing consumers and small businesses with easy access to a single scheme to resolve complaints about products and services provided by financial firms. AFCA has drafted proposed Rules governing its jurisdiction and process for resolving complaints. The Rules, when finalised and approved by ASIC, will apply from the commencement of AFCA on 1 November 2018.

<http://www.fos.org.au/news/media/afca-consults-on-draft-rules-to-enhance-dispute-resolution/>

### IN THE MEDIA

#### Commonwealth will not pay Royal Commission compensation

The Federal Treasurer, Scott Morrison has strongly signalled the Commonwealth will have no part in paying compensation resulting from the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry.

<https://www.moneymanagement.com.au/news/liferisk/commonwealth-will-not-pay-royal-commission-compensation>

**Refinancing difficulties affecting mortgage payments:** Fitch Borrower repayment rates are dropping as a result of tighter underwriting standards, which have made it harder for mortgage holders to refinance, Fitch Ratings has reported.

<https://www.mortgagebusiness.com.au/breaking-news/12329-refinancing-difficulties-affecting-repayment-rate-fitch>

#### Step in the right direction, but more to be done

The agreement by the nation's top lawmakers to identify options to standardise Power of Attorney orders across the country is a significant step in tackling the issue of elder financial abuse however there remains more work to be done.

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/step-in-the-right-direction-but-more-to-be-done>

### Bankers call for urgent financial protections to prevent abuse of elderly Australians

Federal, state and territory attorneys-general are meeting in Perth to discuss a range of measures, including bolstering the nation's protections against elder abuse.

<http://www.abc.net.au/news/2018-06-08/bankers-call-for-added-protections-for-elderly-australians/9848056>

### ABA: Time for action on Elder Financial Abuse

The banking industry, along with COTA Australia and National Seniors, are calling on all the nation's Attorneys General to agree their COAG meeting to key changes which will empower bank staff to help detect and prevent elder financial abuse.

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/time-for-action-on-elder-financial-abuse>

### ASIC gives no credit to debt repairers

The ASIC has launched a month-long campaign to warn consumers about companies that claim they can fix a poor credit rating. The campaign, which also involves other Commonwealth, State and Territory Agencies, will inform consumers that by using credit repair and debt management firms they may end up paying high fees.

<https://psnews.com.au/2018/06/07/asic-gives-no-credit-to-debt-repairers/>

### ASIC warns consumers about paying high fees for credit repair and debt advice services

ASIC is warning consumers about companies that claim they can fix a poor credit rating. Consumers should be aware these companies often fail to fix credit and debt issues, which can leave people in a worse financial situation.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-163mr-asic-warns-consumers-about-paying-high-fees-for-credit-repair-and-debt-advice-services/>

**Statement by Philip Lowe, Governor: Monetary Policy Decision**

At its meeting, the Board decided to leave the case rate unchanged at 1.50 per cent.

<http://www.rba.gov.au/media-releases/2018/mr-18-14.html>

**Consultation begins on new regulations so Australians can get better loan deals**

The Turnbull Government is ensuring Australians can get better deals on their loans - releasing an exposure draft so interest parties can have their say on the new Mandatory Comprehensive Credit Reporting Regulations.

<http://sjm.ministers.treasury.gov.au/media-release/058-2018/>

**RC brings banking code quarrel to light**

The Australian Securities and Investments Commission and the Australian Banking Association are yet to agree on terms of the new Code of Banking Practice, the financial services royal commission has revealed.

<https://www.mortgagebusiness.com.au/breaking-news/12314-rc-brings-banking-code-quarrel-to-light>

**Consultation on class action reform a welcome first step**

The AICD welcomes the Australian Law Reform Commission (ALRC) discussion paper on reforms to Australia's class action regime, including regulation of litigation funders.

<http://aicd.companydirectors.com.au/media/media-releases/consultation-on-class-action-reform-a-welcome-first-step>

**ASIC consults on foreign financial services providers relief proposals**

ASIC has released a consultation paper proposing a modified licensing regime for foreign financial service providers carrying on a financial services business in Australia with wholesale clients.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-162mr-asic-consults-on-foreign-financial-services-providers-relief-proposals/>

**ASIC gives disclosure relief during transition to AFCA**

ASIC has announced it will give financial firms, including superannuation trustees, transitional relief until 1 July 2019 to allow them time to update mandatory disclosure documents and periodic statements with the contact details of the Australian Financial Complaints Authority (AFCA).

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-158mr-asic-gives-disclosure-relief-during-transition-to-afca/>

**Strengthening our financial regulator**

The Treasurer announced the reappointment of Helen Rowell as Deputy Chair of the Australian Prudential Regulation Authority (APRA); and his intention to nominate John Lonsdale for the Governor-General's consideration as an additional Deputy Chair of APRA if Parliament agrees to the legislation introduced on 24 May to amend the APRA Act.

<http://sjm.ministers.treasury.gov.au/media-release/056-2018/>

**IN PRACTICE AND COURTS****Australia's Personal Property Securities Register statistics - ASFA March quarter 2018**

There was 479,617 registrations created on the PPSR in the March quarter 2018. The number of registrations created in the March quarter 2018 fell by 4.9% compared to the March quarter 2017, when there was 504, 105 registrations created.

<https://www.afsa.gov.au/about-us/newsroom/media-release-australias-personal-property-securities-register-statistics-afsa-7>

**Consultation on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Regulations 2018* exposure draft**

The Mandatory Comprehensive Credit Reporting Bill will require the major banks to supply comprehensive credit information to credit reporting bodies from 1 July 2018. The proposed new Regulations in the exposure draft will give effect to a number of provisions within the Bill. The draft Regulations and explanatory materials are available on the [Treasury website](#). Consultation closes on 13 June 2018.

**ASIC consultation: foreign financial services providers relief proposals**

[CP 301](#) sets out a proposal to enable foreign providers to apply for a modified form of Australian financial services (AFS) license (foreign AFS license). This follows ASIC's review of the regulatory settings behind our foreign providers relief. The current foreign provider licensing relief due to sunset on 27 September 2018, will be extended until 30 September 2019 while we consult with stakeholders. SIC invites submissions on the [CP 301](#) by 31 July 2018.

**APRA monthly banking statistics for April 2018**

The [Monthly Banking Statistics](#) publication provides selected information on the banking business of individual banks within the domestic market.

**APRA update on new accounting standards AASB 16 and AASB 17**

APRA releases an update on [new accounting standards](#) AASB 16 and AASB 17

**Reminder: Proposed PPSR fees and charges to apply from 1 July 2018**

Any new fees must be approved by the Attorney-General. If the proposed fees and charges are approved by the Attorney-General they will come into effect on 1 July 2018. You can view the [CRIS](#) on the PPSR website.

**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: [www.fasea.gov.au](http://www.fasea.gov.au). Consultation will close on 29 June 2018

**ABA Newsletters**

The ABA newsletter is sent regularly and the latest issue is available [here](#).

**Current Inquiries - Economics Legislation Committee**  
[Consumer protection in the banking, insurance and financial sector](#). On 14 February 2018, the Senate granted an extension of time to report by 26 June 2018.

**CASES****[Oztech Pty Ltd v Public Trustee of Queensland \(No 15\) \[2018\] FCA 819](#)**

CORPORATIONS – representative proceeding under Pt IVA of the Federal Court of Australia Act 1976 (Cth) – collapse of corporate group – debentures (notes) issued – trustee for debenture holders (noteholders) – whether trustee breached his duty under s 283DA(a) of the Corporations Act 2001 (Cth) to exercise reasonable diligence – discussion of the content of the duty – whether trustee breached his duty in equity to exercise reasonable care – whether trustee breached a fiduciary duty to act bona fide in the interests of the applicant and group members, and engaged in unconscionable conduct, by resigning as trustee – whether case on causation of damage established

EVIDENCE – tendency evidence – whether drawing inferences from proven facts as to the time when, in hypothetical circumstances, documents might or could have been created, infringes the tendency rule under s 97 of the Evidence Act 1995 (Cth)

The company now called Octaviar Administration Pty Ltd (in liquidation) (OA) and the company now called Octaviar Financial Services Limited (in liquidation) (OFS) entered into separate deeds poll guaranteeing OIN's payment obligations under the notes (the Guarantee Deed Poll). Bridging loans and guarantee

**[Lewis Securities Ltd \(in liq\) v Carter \[2018\] NSWCA 118](#)**

CORPORATIONS ACT - claim in equity against third parties involved in director's dishonest and fraudulent breach of duty - whether claim limited by analogy with 6 year limitation period under Corporations Act 2001 (Cth) s 1317K against persons involved in breach of directors' duties under s 79 of that Act - loans

EQUITY - fiduciary duty - Barnes v Addy claim for knowing receipt - money taken from client account and used to contribute to purchase price of property - liquidator contended money taken from company in breach of duty - no error in finding by primary judge that money borrowed from client - no claim for breach of duty owed to client pleaded

EQUITY - fiduciary duty - Barnes v Addy claim for knowing assistance - fraudulent scheme by director to create appearance that his personal indebtedness to the company had been repaid - scheme involved dishonestly created letter referring to commercial opportunity, the creation of companies unbeknownst to their directors, and a "round robin" of cheques - primary judge held that transactions although fraudulent had no legal effect and thus caused no loss to company - held on appeal that effect of transactions was to replace claim in debt against director by more complicated claim against third parties - consideration of direct application of limitation statute, and application by analogy in equity

LIMITATION PERIODS - definition of "trust" and "trustee" in s 11 of Limitation Act 1969 - whether limitation period of 6 years applied to Barnes v Addy claim for knowing assistance by analogy with Corporations Law s 1317K - whether direct application of Limitation Act - whether defences of laches and informed consent made out

**[Securicom \(NSW\) Pty Ltd v Charter Pacific Corporation Ltd \[2018\] QSC 109](#)**

The Applicant is to bring in minutes of order reflecting these reasons.

CORPORATIONS – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – GENUINE DISPUTE AS TO INDEBTEDNESS – where applicant has been served with statutory demand – where applicant seeks to set aside statutory demand on the basis that there is a genuine dispute as to the existence or amount of the debt – where source of obligations for certain debts are underlying agreements for loans to the applicant – where applicant disputes the source of those obligations for certain debts – whether each loan is governed by debt facility agreements that are in effect and enforceable – whether there arises a plausible contention requiring investigation – whether the disputes as to the sources of those obligations for certain debts have an element of rational controversy to them – whether certain arguments were raised within the time limitation

[Roth Morgan Kolomanski Pty Ltd v Candlebrush Investments Pty Ltd \[2018\] VSC 288](#)

PRACTICE AND PROCEDURE – Security for costs – Whether jurisdiction enlivened – Whether reason to believe company will be unable to pay costs – Onus in establishing threshold jurisdictional question – Held that threshold jurisdiction not enlivened – Livingspring Pty Ltd v Klinger Partners [2008] VSCA 93; (2008) 20 VR 377 – US Realty Investments LLC No.1 & Ors v Need [2013] VSC 590 – Corporations Act 2001 (Cth), s 1335 – Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 62.02(1)(b).- loan facility agreements

[Sino-Resource Imp & Exp Co Ltd v Oakland Investment Group Ltd \(No 2\) \[2018\] QSC 133](#)

MORTGAGES – MORTGAGES AND CHARGES

GENERALLY – RIGHTS AND LIABILITIES OF MORTGAGOR AND MORTGAGEE – where the first mortgagee asserts the expenses of taking and maintaining possession as mortgagee of the mortgaged property are secured by the mortgage notwithstanding that the mortgagees purported loan to the mortgagor was a sham and did not in fact occur – where the first mortgagee acted in bad faith in taking possession – whether another mortgagee is entitled to an order recovering the first mortgagee’s mortgages in consequence of the sham

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – GENERALLY – OTHER MATTERS – APPLICATION – where the order sought was not included in orders specified in the filed application – whether the orders to be given on an application must be confined to the orders recited in the application filed

[Giannakopoulos & Ors v Bank of Sydney Ltd & George Euripidou \[2018\] VCC 660](#)

The defendant has applied pursuant to rr 23.01 and 23.02 of the County Court Civil Procedure Rules 2008 (Vic) (“Rules”) for orders summarily dismissing, and alternatively striking out paragraphs of, the plaintiffs’ amended statement of claim filed 19 April 2018 (“ASOC”). The ASOC is deficient in a number of respects as discussed below. However, I am satisfied that at least some of the elements of the current claim can potentially form the basis of a sustainable cause of action.

The plaintiffs allege (ASOC at [3]) that “at all material times” Mr Euripidou was a manager, servant or agent of BOS and advised and facilitated the plaintiffs to establish various bank accounts and term deposits in various currencies in Australia and in Greece

The plaintiffs allege in substance: various ancillary matters, including breach by BOS of the Code of Banking Practice (“Banking Code”) (ASOC at [10]-[11]) and unconscionable conduct (ASOC at [21]-[22]).

**LEGISLATION**

**Commonwealth**

[ASIC Financial Benchmark \(Administration\) Rules 2018](#)

07/06/2018 – This instrument imposes certain key obligations on licensed benchmark administrators and require contributors to licensed benchmarks to cooperate with ASIC.

[ASIC Financial Benchmark \(Compelled\) Rules 2018](#)

07/06/2018 - This instrument enables ASIC to compel contributors and licensed benchmark administrators at a significant financial benchmark to do certain things.

[ASIC Corporations \(Significant Financial Benchmarks\) Instrument 2018/420](#)

07/06/2018 - The instrument declares five financial benchmarks as significant financial benchmarks which, in ASIC’s opinion at the time of making the Instrument, meet each of the criteria in subsection 908AC(2) of the Corporations Act

[ASIC Credit \(AFCA transition\) Instrument 2018/448](#)

30/06/2018 - This instrument provides exemptions from various disclosure obligations in the National Consumer Credit Protection Act 2009 relating to the commencement of the Australian Financial Complaints Authority, until 1 July 2019

[ASIC Corporations \(AFCA transition\) Instrument 2018/447](#)

30/06/2018 - This instrument provides exemptions from various disclosure obligations in the Corporations Act 2001 relating to the commencement of the Australian Financial Complaints Authority, until 1 July 2019.

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