

29 JUNE 2018

ISSUE 16



BANKING SECTOR NEWSLETTER

Banking System Reform (Separation of Banks) Bill 2018

Introduced into the House of representatives, this Bill will separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities.

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6136

IN THE MEDIA

COBA: Trust in customer owned banking on the rise in wake of Royal Commission

Almost half of all Australians have less trust in the big banks because of the Royal Commission into banking.

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1287-trust-in-customer-owned-banking-on-the-rise-in-wake-of-royal-commission>

Fears of housing 'fire sale' as interest-only loans roll into principal plus interest

Over the next three years, interest-only loans worth a combined total of about \$360 billion will roll over to interest plus principal - and that means borrowers will face higher repayments.

<http://www.abc.net.au/news/2018-06-19/fears-as-interest-only-loans-roll-into-principal-plus-interest/9886430>

Royal commission names round four witnesses

The fourth round of public hearings will focus on issues affecting Australians who live in remote and regional communities, which relate to farming finance, natural disaster insurance, and interactions between Aboriginal and Torres Strait Islander people and financial service entities, said a statement from the commission.

<https://www.investordaily.com.au/regulation/43169-royal-commission-names-round-four-witnesses>

RBA: Banking Fees in Australia

The Reserve Bank has conducted a survey on bank fees each year since 1997. The most recent survey suggests that banks' fee income from both households and businesses rose in 2017, due to a combination of growth in the volume of services for which fees are charged and higher unit fees on some products.

<http://www.rba.gov.au/publications/bulletin/2018/jun/banking-fees-in-australia.html>

ASIC releases guidance for its oversight of the Australian Financial Complaints Authority (AFCA)

Ahead of the commencement of the Australian Financial Complaints Authority (AFCA) on 1 November 2018, ASIC has released the Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority (RG 267).

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-180mr-asic-releases-guidance-for-its-oversight-of-the-australian-financial-complaints-authority-afca/>

AUSTRAC welcomes Federal Court orders for CBA penalty

\$700 million civil penalty ordered against CBA by the Federal Court of Australia. This is the largest civil penalty in Australia's corporate history and reflects the magnitude of the serious non-compliance by CBA.

<http://www.austrac.gov.au/media/media-releases/austrac-welcomes-federal-court-orders-cba-penalty>

AFCA appoints Chief Ombudsman

The Australian Financial Complaints Authority (AFCA) has announced the appointment of David Locke as Chief Ombudsman and CEO. The new one-stop dispute resolution service replaces the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman and Superannuation Complaints Tribunal. It will start accepting new disputes from November 1.

<http://www.insurancenews.com.au/regulatory-government/afca-appoints-chief-ombudsman>

Shift to digital economy in Australia accelerating

The latest Digital Economy report released by the Australian Payments Network (AusPayNet), the payments industry self-regulatory body, shows Australia's shift to a digital economy is accelerating, with digital payments increasing rapidly while cash cheques decline.

<https://www.auspaynet.com.au/insights/media-releases/Australia%27s-shift-to-digital-payments>

ASIC reports on decisions to cut red tape - October 2017 to March 2018

ASIC has released its latest report outlining decisions on relief applications, highlighting ASIC's efforts to reduce red-tape. ASIC can modify or set aside certain provisions of the Corporations Act, including 2M (financial reporting and audit), 6D (fundraising) and 7 (financial services) and Chapters 2 (licensing) and 3 (responsible lending) of the National Credit Act.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-176mr-asic-reports-on-decisions-to-cut-red-tape-october-2017-to-march-2018/>

ASIC commences civil penalty proceedings against Westpac for poor financial advice

In Court documents that were filed, ASIC alleges that, in four sample client files selected by ASIC, Mr Sinha breached the 'best interests' duty under the Corporations Act ("the Act"), provided inappropriate financial advice, and failed to prioritise the interest of his clients.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-175mr-asic-commences-civil-penalty-proceeding-against-westpac-for-poor-financial-advice/>

ASIC cites planners in critique of sales culture

The Australian Securities and Investments Commission (ASIC) has drawn parallels between the impact of a sales culture in the financial advice industry and that applying to small business lending, suggesting revenue-based incentives are inappropriate in both cases.

<https://www.moneymanagement.com.au/news/financial-planning/asic-cites-planners-critique-sales-culture>

ASIC implements financial benchmark regulatory regime

ASIC has finalised and published benchmarks rules, a significant benchmarks declaration, and a regulatory guide in a further series of measures towards establishing a comprehensive regulatory regime for financial benchmarks.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-171mr-asic-implements-financial-benchmark-regulatory-regime/>

Note: The rules, declaration and regulatory guide are available on ASIC's [website](#).

ASIC powers over initial coin offerings in Australia

The ACCC's powers under the ACL have recently been delegated, in relation to ICO/token sales only, to ASIC. What this means is that ASIC now has the jurisdiction to raise issues of misleading and deceptive conduct in relation to ICOs without needing to establish that an ICO is the offer of a security.

<https://www.smartcompany.com.au/startupsmart/news-analysis/want-run-initial-coin-offering-australia/>

IN PRACTICE AND COURTS

ASIC Regulatory Guide 267: Oversight of the Australian Financial Complaints Authority (RG 267)

ASIC new guidance in advance of AFCA commencement to provide policy certainty for stakeholders and to support an efficient transition to the new single scheme. See the guidance [here](#).

ASIC Report 574: Overview of decision on relief applications (October 2017 to March 2018)

The report notes that between 1 October 2017 and 31 March 2018, ASIC granted relief from provisions of the Corporations Act 2001 (Corporations Act) or the National Consumer Credit Protection Act 2009 (National Credit Act) in relation to 766 applications.

See the report [here](#).

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 the 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) licence (foreign AFS licence). 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 [CP 301](#) by 31 July 2018.

ASIC CP 300 Approval and oversight of compliance schemes for financial advisers

The proposals in CP 300 Approval and oversight of compliance schemes for financial advisers are outline here. ASIC is consulting for six weeks on the proposals in the paper and we invite responses by 28 June 2018. We intend to release a regulatory guide setting out our final policy by the end of September 2018.

Download [CP 300 Approval and oversight of compliance schemes for financial advisers](#)

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. Consultation will close on 29 June 2018

[New Educational Standards for Financial Advisers Released for Comment](#)**APRA statistics on ADI property exposures for March 2018**

The publication contains information on ADIs' commercial property exposures, residential property exposures and new housing loan approvals.

See the statistics [here](#).

CIO News 14 June 2018

Topics in this issue: AFCA Transition Update; Systemic issues update - Q3 2017/18; Promotion of IDR and EDR; Recent Reviews and Recommendations published; Complaint statistics third quarter 2017/18

Click to view [CIO News - Issue 2 - June 2018](#)

AFSA: Help us improve the PPSR website

AFSA is looking at how we can improve the PPSR website to make it easier to find the information you need.

[Click here](#) to provide your feedback.

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.

CASES**[Australian Securities and Investments Commission v Commonwealth Bank of Australia \[2018\] FCA 941](#)**

CORPORATIONS LAW – banking – financial services – failure to deal with financial products in an efficient and fair manner – attempts to manipulate the Bank Bill Swap Reference Rate by Prime Banks – unconscionable conduct – contravention of financial services laws – ss 12CB and 12CC of the Australian Securities and Investments Commission Act 2001 (Cth)

BANKING AND FINANCIAL INSTITUTIONS – penalties – contravention of financial services laws – penalty imposed pursuant to s 12GBA of the Australian Securities and Investments Commission Act 2001 (Cth) – general and specific deterrence. Australian Securities and Investments Commission Act 2001 (Cth) ss 12CB, 12CC, 12GBA, 93AA; Corporations Act 2001 (Cth) s 91

[Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Commonwealth Bank of Australia Limited \[2018\] FCA 930](#)

STATUTES – Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) – where admitted contraventions by respondent of statute

PRACTICE AND PROCEDURE – civil penalties – whether agreed penalty appropriate in circumstances

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 5, 6, 36, 41, 43, 82, 175, 211; Banking Act 1959 (Cth); Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1) (Cth) r 9.1.5

[Trenfield & Ors v HAG Import Corporation \(Australia\) Pty Ltd \[2018\] QDC 107](#)

Judgment that the defendant pay the first plaintiffs \$473,291, together with interest by statute.

CORPORATIONS LAW – Liquidation – Unfair preferences – whether payments in respect of unsecured debt – whether debt partially secured – value of security – extent of recoverable preference.

CONTRACT – Consideration – whether any consideration given for acknowledgment that certain terms would be incorporated into contracts for the sale of goods.

Defendant registered under the Personal Properties Securities Act 2009 (Cth) ("the PPSA") a financing statement claiming a purchase money security interest in goods supplied and their proceeds, which stated that the registration was transitional

LEGISLATION**Commonwealth****[Banking System Reform \(Separation of Banks\) Bill 2018](#)**

Introduced and read a first time 25 June 2018; Second reading moved 25 June 2018

This Bill will separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities. The Bill provides for such a separation to:

protect deposits;

end vertical integration, to protect depositors from banks trying to lure them into buying services from the banks'

other business;

ensure deposits are only used for normal lending, which will keep more money in the real economy and available for banks to lend to productive enterprises;

stop banks from securitising mortgages – meaning on-selling them to other banks to be bundled into risky derivatives

—which will put a brake on mortgage fraud and excessive mortgage lending to risky borrowers

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

House of Representatives Third reading agreed to 25 June 2018

Amends the: National Consumer Credit Protection Act 2009 to: establish a mandatory comprehensive credit reporting regime to apply from 1 July 2018; and expand the Australian Securities and Investments Commission's powers so it can monitor compliance with the regime; and Privacy Act 1988 to impose additional requirements as to where and how data held by a credit reporting body must be stored.

[Australian Prudential Regulation Authority Instrument fixing charges No. 5 of 2018](#)

15/06/2018 - This instrument fixes charges to be paid in relation to: friendly society rules and rule amendment applications; applications for authorisation as a Private Health Insurer; applications to hold stakes in a financial sector company; transfer of business applications; and applications to hold a Restricted Authorised Deposit-taking Institution (ADI) licence and progression to an ADI

[Australian Prudential Regulation Authority Instrument fixing charges No.4 of 2018](#)

12/06/2018 - This instrument fixes charges to be paid by representative offices of foreign banks in Australia and revokes the Australian Prudential Regulation Authority instrument fixing charges No. 2 of 2013.

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

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.