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ISSUE 18



BANKING SECTOR NEWSLETTER

Government consults on second CCIV bill

The government has released the second tranche of its Corporate Collective Investment Vehicle (CCIV) Bill for public consultation. The second tranche covers the application of the Chapter 7 financial services regime to CCIVs. Submission for the second tranche of the CCIV bill opened on Friday and close on 10 August.

<https://www.investordaily.com.au/regulation/43342-government-consults-on-second-cciv-bill>

Read the government statement [here](#).

Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018

19/07/2018 - Exposure Draft - The Tranche 2 Exposure Bill provides for further aspects of regulatory framework for CCIVs, building on the Tranche 1 Exposure Bill that was released for consultation on 13 June 2018. This chapter of the explanatory materials for the Tranche 2 Exposure Bill provides an overview of these further aspects.

https://consult.treasury.gov.au/financial-system-division/c2018-t299864/supporting_documents/ccivExposureDraft.pdf

IN THE MEDIA

Turnbull Government seeks further comment on law to improve outcomes for financial consumers

The Turnbull Government is continuing to progress important reforms to ensure that financial products are targeted and sold to the right consumers. The government is holding a second round of consultation on draft legislation for *Design and Distribution Obligations and Product Intervention Power*, providing an opportunity for stakeholders to have a further say.

<http://kmo.ministers.treasury.gov.au/media-release/087-2018/>

Note: The consultation on the draft legislation will close on 15 August 2018 and submissions can be made on the [Treasury website](#). The legislation is due to be introduced into the Parliament late this year.

ANZ, NAB deny misconduct in agribusiness cases

The major banks have denied that their treatment of agribusiness customers amounted to misconduct.

<https://www.mortgagebusiness.com.au/breaking-news?start=10>

Banks rebuff Government's calls for drought offset accounts for struggling farmers

So far the major banks have not taken up the Federal Agricultural Minister's call to show a "social conscience" on farm offset accounts.

<http://www.abc.net.au/news/rural/2018-07-13/banks-resisting-federal-demand-for-drought-assistance/9990494>

Aussie families default on mortgage repayments after banks underestimate their spend

Australia's banks have been caught fudging their numbers, using a dodgy financial tool to vastly underestimate borrowers' expenditure in order to write loans people will never be able to repay.

<https://www.news.com.au/finance/business/banking/aussie-families-default-on-mortgage-repayments-after-banks-underestimate-their-spend/news-story/1b90666436df05235f420466a19f7320>

Major banks reveal what it means to act 'fairly and reasonably'

The big four banks have responded to the royal commission's call for a definition of what it means to act "fairly and reasonably" towards a customer in a "consistent and ethical manner".

<https://www.mortgagebusiness.com.au/breaking-news/12460-major-banks-reveal-what-it-means-to-act-fairly-and-reasonably>

Consumer Data Right to improve mortgage process: ACCC

The impending Consumer Data Right could iron some of the kinks out of the home loan application process, the chair of the ACCC has suggested.

<https://www.mortgagebusiness.com.au/breaking-news/12452-consumer-data-right-to-improve-mortgage-application-process-acc>

Raising mortgage rates may not be enough to relieve the margin squeeze for Australia's big banks

Australian banks will still face margin pressures even if they pass on higher funding costs to consumers by raising mortgage rates, Morgan Stanley says.
<https://www.businessinsider.com.au/mortgage-rates-australian-housing-market-bank-funding-costs-2018-7>

The crackdown on risky mortgage lending in Australia is now largely complete

The head of Australia's banking regulator says the crackdown on risky mortgage lending in Australia is now largely complete, and that additional tightening of lending standards will now be "at the margin".
<https://www.businessinsider.com.au/risky-mortgage-lending-australia-house-prices-apra-byres-2018-7>

IN PRACTICE AND COURTS

ASIC consultation paper (CP 303) credit card responsible lending assessments

The purpose of this new reform is to make sure that consumers can afford to repay their credit card debts within a reasonable period. Consumers will still retain the flexibility to make low minimum repayments on credit cards. The new reform will apply to credit licensees providing credit or credit assistance in relation to both new and existing credit card contracts from 1 January 2019. The closing date for submissions is 31 July 2018. See consultation paper [here](#).

APRA proposes updates to related parties framework for ADIs

APRA's proposals to modernise the framework include: explicitly addressing 'step-in risk' by incorporating guidance from the Basel Committee on Banking Supervision. A three-month consultation period on the proposed revisions to APS 222 and ARS 222.0 has now commenced, with APRA accepting submissions until 28 September 2018. Copies of the discussion paper are available [here](#).

Draft amendments to Chapters 4 and 15 of the AML/CTF Rules

These amendments exempt reporting entities from certain identification requirements in Chapter 4 and Chapter 15 of the AML/CTF Rules, for customers that are 'custodians'. The definition of 'custodian' in new paragraph 4.4.19(1) limits the exemption to corporate custodians, rather than individuals who provide custodial or depository services. The second public consultation period for these amendments is open to 31 July 2018

Access the draft amendments [here](#).

Approved PPSR fees and charges commence 1 August 2018

AfSA recently undertook a [review of the PPSR fees and charges](#) and released a Cost Recovery Implementation Statement (CRIS) for consultation. The fees have now been approved by the Attorney-General and will commence on 1 August 2018. The [PPSR website](#) will be updated shortly.

AASB Invitation to comment

[ITC 40 Financial Instruments with Characteristics of Equity](#) - The International Accounting Standards Board has recently published Discussion Paper DP/2018/1 *Financial Instruments with Characteristics of Equity*. Submissions to the IASB are due by 7 January 2019.

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 20 September 2019 while we consult with stakeholders. ASIC invites submission on [CP 301](#) by 31 July 2018.

CASES

[Dewar v Ollier \[2018\] WASC 212](#)

Finance broker - Breach of contract - Negligence - Where finance broker included inaccurate statements in documents supporting application for loan - Where broker under duty and obligation to render services with reasonable skill, care and diligence - Whether inclusion of inaccurate statements constitute breach of duty - Whether loan would have been approved if information accurately recorded

Agency - Existence of agency relationship - Where one finance broker arranges for clients to sign agreements with other broker - Where commission sharing arrangement - Where actual authority inferred - Whether first defendant agent of fourth defendant

Contributory negligence - Contract and tort - Whether plaintiff contributorily negligent - Plaintiff's contribution to loss assessed at 60%

Damages - Mitigation - Where plaintiff failed to sell property after falling into arrears with mortgage repayments - Where plaintiff defended possession proceedings - Whether plaintiff failed to mitigate loss

Misleading or deceptive conduct - Whether first defendant made representations to plaintiff regarding loan - Whether representation that defendant would obtain most suitable loan for plaintiff's circumstances misleading or deceptive

Unconscionable conduct under the general law and under Australian Securities and Investment Commission Act 2001 (Cth) s 12CB - Where plaintiff argues special disadvantage on basis of lack of education in financial matters or lack of financial and commercial experience - Whether plaintiff unable to protect her interests in completing loan documentation - Whether plaintiff at a special disadvantage - No special disadvantage made out

Fiduciary duties - Where duty to render finance broking services with reasonable skill and diligence not fiduciary - No conflict rule - Whether defendants breached duty not to act in their own interests in conflict with plaintiff's interests

Limitation periods - Limitation Act 2005 (WA) s 13 - Where limitation periods expired - Where self-represented plaintiff made no application for extension of limitation periods - Where delay in commencing the action not attributable to conduct on part of defendants

Australian Securities and Investments Commission Act 2001 (Cth), s 12BAA, s 12BAB, s 12CB, s 12DA, s 12GF, s 12GH

[Gooley v NSW Rural Assistance Authority \(No 2\) \[2018\] NSWSC 1049](#)

Bank entitled to retain surplus proceeds; plaintiffs to have leave to amend their pleading; there should not be a separate determination of liability

MORTGAGES – mortgages and charges generally – costs and other matters – where mortgaged property sold – where mortgagee paid debt and interest due – whether mortgagee entitled to retain surplus to meet costs of pending proceedings brought by mortgagor

CIVIL PROCEDURE – pleadings – amendment – whether plaintiffs should have leave to amend their defence to cross-claim – whether there should be a separate determination of liability

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