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BANKING SECTOR NEWSLETTER

ASIC approves the Banking Code of Practice

ASIC has approved the Australian Banking Association's (ABA's) new Banking Code of Practice (the Code). This is the first comprehensive broad-based industry code ASIC has approved under its relevant powers. The Code will commence operation from 1 July 2019

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-223mr-asic-approves-the-banking-code-of-practice/>

IN THE MEDIA

Give the ACCC a competition mandate: Productivity Commission

On Friday 3 August, the Productivity Commission released its final inquiry report into Competition in the Australian Financial System. The Productivity Commission has recommended the ACCC be given an explicit mandate to monitor competition in the financial system.

<https://www.investordaily.com.au/regulation/43409-give-the-acc-c-a-competition-mandate-pc-report>

ABA: Productivity Commission report

Australian banks welcome competition and compete not only through price, but through constant innovations to product features and experiences. The Productivity Commission's report highlights that competition among financial providers is increasing, noting the presence of new market entrants, the positive impact of mortgage broking and the improvement of technology.

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/media-statement>

Royal commission shows no need to water down company laws, say lawyers

The banking royal commission has shown that Australia should not water down its continuous disclosure regime to make it easier for listed companies to avoid class actions, according to the country's biggest class action outfit.

<https://www.smh.com.au/business/banking-and-finance/royal-commission-shows-no-need-to-water-down-company-laws-say-lawyers-20180801-p4zuxx.html>

Interest-only borrowers flock to principal and interest home loan discounts

Thousands of borrowers are switching away from interest-only home loans to escape higher interest rates, and to take advantage of discounts being offered on principal and interest mortgages by many banks.

<http://www.abc.net.au/news/2018-08-01/interest-only-mortgage-borrowers-flock-to-principal-and-interest/10059960>

Professional standards reforms for financial advisers - ASIC update

(ASIC) has announced changes to reporting dates for a number of required notifications in the transition to the new financial adviser professional standards reform. The revised schedule is intended to simplify licensees' disclosure obligations.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-225mr-professional-standards-reforms-for-financial-advisers-asic-update/>

ASIC updated guidance for funds management industry

ASIC has released a suite of seven new and updated regulatory guides to provide comprehensive guidance to the funds management industry. The guidance has been updated for changes arising from the Asia Region Funds Passport.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-222mr-asic-updates-guidance-for-funds-management-industry/>

CCMC welcomes revised Banking Code of Practice

The independent Banking Code Compliance Monitoring Committee (CCMC) acknowledges ASIC's approval of the new Banking Code of Practice and welcomes the wider remit afforded to the renamed monitoring body, the Banking Code Compliance Committee (BCCC), to monitor banks' practices and enforce compliance with the Code.

<http://www.ccmc.org.au/2018/08/01/media-release-compliance-body-welcomes-revised-banking-code-of-practice/>

ABA: A new higher standard in Australian banking

Australian bank customers will be the big winners from the approval of the new Banking Code of Practice by the Australian Securities and Investments Commission. <https://www.ausbanking.org.au/media/media-releases/media-release-2018/a-new-higher-standard-in-australian-banking>

Bankers release new code of conduct with 'stronger commitment to ethical behaviour'

It has taken more than two years, but the Australian Banking Association finally comes up with a code of conduct that is acceptable to ASIC, promising simpler contracts and less hard sell. <http://www.abc.net.au/news/2018-07-31/bankers-release-new-code-of-conduct-after-recent-scandals/10057642>

RC paper notes 'unspecified' industry fund expense

A Royal Commission background paper has noted the 'relatively high proportion' of industry fund expenses are not specifically detailed in publicly available data from the Australian Prudential Regulation Authority <https://www.moneymanagement.com.au/news/superannuation/rc-paper-notes-%E2%80%98unspecified%E2%80%99-industry-fund-expenses>

Finance leaders push for a sustainable finance roadmap

More than 300 finance sector organisations with \$10 trillion in assets have released a joint statement calling for the development of sustainable finance roadmaps for Australia and New Zealand, which include a set of recommendations across policy, regulation and finance practices to help the sector contribute to a more sustainable and resilient economy <https://www.thefifthestate.com.au/business/finance/finance-leaders-push-for-a-sustainable-finance-roadmap/99998>

IN PRACTICE AND COURTS**Statement by Philip Lowe, Governor: Monetary Policy Decision Number 2018-16**

At its meeting today, the Board decided to leave the cash rate unchanged at 1.50 per cent <http://www.rba.gov.au/media-releases/2018/mr-18-16.html>

New financial adviser professional standards reform

The revised schedule is intended to simplify licensees' disclosure obligations. ASIC is also clarifying the process for recognising advisers as 'existing providers'.

Existing providers

Financial advisers who are listed on the Financial Advisers Register (FAR) between 1 January 2016 and 1 January 2019 will be recognised as an 'existing provider' under the new professional standards. If a person is an 'existing provider', they have until 1 January 2021 to pass the exam, and 1 January 2024 to complete an approved qualification. In the meantime, they can continue to work as a financial adviser.

Changes to FAR notifications

A key change is that ASIC will push back the timing for licensees to notify of new advisers who are joining the industry for the first time after 1 January 2019. As a result, new 'provisional relevant providers' can only be added to FAR from 15 November 2019. Further information about the changes to notification dates can be found on ASIC's Professional standards for financial advisers – reforms [website](#)

[AFMA Market Notice: AFS Licensee Notices on Research Independence for Issuers on an IPO](#)

AFMA is making available on its website for member use a one page notices document FS Licensee Notices on Research Independence for Issuers on an IPO (Issuer Notice s) to provide initial notices to issuers regarding research independence requirements set out in ASIC RG 264 (Sell Side Research). Importantly, RG 264 covers ASIC's expectations on how Issuers should interact with Licensees commonly investment banks engaged to act on capital raising and, in particular, their research analysts in connection with a potential IPO

[Productivity Commission - Competition in the Australian financial system: inquiry report](#)

This report looks at the provision of financial services and the interaction of market participants, issues facing the consumers of financial services and the functions and activities of the regulators

[APRA Monthly Banking Statistics June 2018](#)

APRA releases its Monthly Banking Statistics for June 2018

[Draft] Design and Distribution Obligations and a Product Intervention Power

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 the draft legislation, providing an opportunity for stakeholders to have a further say. The consultation on the draft legislation will close on 15 August 2018 and submissions can be made on the [Treasury website](#)

Second tranche of the Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018 (CCIV Bill): consultation.

The second tranche of the CCIV Bill covers: External administration of a CCIV in a winding up situation; The application of the Chapter 7 financial services regime to CCIVs and The liability of the corporate director of a CCIV for contraventions of the law by the CCIV. Stakeholders are invited to lodge submissions online via the [Treasury website](#). Submissions open today and conclude on 10 August .

IFAC: Global Consultation: Identifying and Assessing the Risks of Material Misstatement

Proposed Changes to ISA 315 (Revised) to Advance Audit Quality

The International Auditing and Assurance Standards Board (IAASB) seeks public comment by November 2, 2018 on [Exposure Draft, ISA 315 \(Revised\), Identifying and Assessing the Risks of Material Misstatement](#)

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 can be found [here](#).

Approved PPSR fees and charges commence 1 August 2018

The fees have now been approved by the Attorney-General and will commence on 1 August 2018. The [PPSR website](#) will be updated shortly

Government fees to use the PPSR are commencing

From July 1, the fee to do an online PPSR check will be only \$2—a reduction from \$3.40. Registrations fees have also been reduced, with seven year registration to cost \$6 instead of \$6.80, \$25 for a seven – 25 year registration (down from \$34) and \$115 for a registration with no end date (down from \$119.) You can view the new fees on the [PPSR website](#).

CASES**[GPG Fortitude Valley v Thakral Capital Australia \[2018\] NSWSC 1196](#)**

Plaintiffs entitled to declaratory relief; see at [58].
CONTRACT – interpretation of note deed and associated documents – whether Event of Default occurred – where defendants contend that plaintiffs breached negative pledges contained in the note deed – unnecessary to resolve question of construction and breach – even if plaintiffs breached negative pledges, no evidence that that breach had any material and adverse effect – no Event of Default – plaintiffs entitled to consequential declaratory relief.

Held: For the reasons I have given, GPG is entitled to a declaration to the effect that there has been no Event of Default arising out of the Interstage Loan.

[Bradley Mark Lum v MV Developments \(Lane Cove\) Pty Ltd \(in liquidation\) \(No 2\) \[2018\] NSWSC 1129](#)

COSTS – proceedings for specific performance of contract of sale against company in liquidation - where costs orders sought against company and liquidators personally – where liquidators entered into a settlement deed with creditors – where terms of the deed allowed one creditor to stand in the shoes of the company and defend the claim for specific performance – where

liquidators had filled a submitting appearance in relation to the creditors claim – where liquidators did not file a submitting appearance in relation to the claim for specific performance – where liquidators did not seek judicial advice - whether conduct of the liquidators un reasonable

COSTS— Exceptions to general rule that costs follow the event – Offers of compromise / Calderbank offers - whether failure to accept offer of compromise unreasonable – Mortgages and Mortgagees

[Reliance Financial Services Pty Ltd v Allyma Express Holdings Pty Ltd \[2018\] NSWSC 1163](#)

CIVIL PROCEDURE – leave sought to rely on affidavits and commercial list response filed out of time and on the eve of the hearing – leave refused due to extreme prejudice to plaintiff.

PERSONAL PROPERTY – security interests granted over all property of the relevant defendants in accordance with various loan agreements – loan agreements breached – plaintiff entitled to order for delivery up of the specified propertied interests

[Jafari v 23 Developments Pty Ltd \[2018\] VSC 404](#)

JOINT VENTURE – Nature and extent of agreement – Inability of proposed vendors to perform – Agreement terminated or abandoned – New agreement between purchaser and third party – Whether new or amended agreement between pre-existing parties – No binding agreement.

MISLEADING AND DECEPTIVE CONDUCT – Whether representations made – Whether omission committed – Reliance – Loss – Fair Trading Act 1999 (Vic), s 9.

LEGAL PRACTITIONERS – Sale of property – Joint venture – Solicitor acting for purchaser – Alleged representations – Alleged failure to inform proposed vendors – Whether solicitor liable to proposed vendors – Whether vendors separately represented.

EQUITY – Sale by mortgagee in possession – Registered proprietors provided effective vendor finance for amount of residue – Whether vendor's lien in favour of registered proprietors – Transfer of Land Act 1958 (Vic), s 77(3)(d).

REAL PROPERTY – Sale – Alleged non-disclosure of pre-existing use – Alleged non-disclosure of risk of contamination – Whether misleading or deceptive conduct – Fair Trading Act 1999 (Vic), s 9 – Trade Practices Act 1974 (Cth), s 52. Default mortgages

LEGISLATION

Commonwealth

[National Consumer Credit Protection \(Transitional and Consequential Provisions\) Act 2009](#)

03/08/2018 - Act No. 135 of 2009 as amended, taking into account amendments up to Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018

[National Consumer Credit Protection Act 2009](#)

02/08/2018 - Act No. 134 of 2009 as amended, taking into account amendments up to Treasury Laws Amendment (Banking Measures No. 1) Act 2018

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