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## BANKING SECTOR NEWSLETTER

### IN THE MEDIA

#### COBA: New report warns about impact of regulatory costs on banking competition & consumers

A new report has identified problems with one-size-fits-all regulation in banking and warned of the impact more regulation flowing from the Royal Commission could have on consumers, competition and smaller banking institutions.

Note: The Grant Thornton Report, A case for proportionate regulation, is available [here](#).

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1292-new-report-warns-about-impact-of-regulatory-costs-on-banking-competition-a-consumers>

#### Banks face criminal charges and \$1b bill in fee-for-no-service scandal

A bad week for the big banks and AMP gets a whole lot worse, with confirmation ASIC is likely to pursue them through the courts over the fee-for-no-service scandal and demand they refund around \$1 billion worth of fees already charged.

<http://www.abc.net.au/news/2018-08-17/apra-under-fire-for-failing-to-police-superannuation-industry/10129612>

#### Government consults on open banking draft legislation

The government has released exposure draft legislation, the *Treasury Laws Amendment (Consumer Data Right) Bill 2018*, which will give users the ability to grant third party providers access to their data and enable open banking. The government is accepting submissions to the draft legislation until 7 September 2018.

<https://www.investordaily.com.au/regulation/43460-government-consults-on-open-banking-draft-legislation>

#### ACCC tasked with drawing up new open banking rules

It will be the role of the ACCC to determine how a new Consumer Data Right (CDR) will apply to a particular sector of the economy, under draft legislation released by the government. The introduction of an open banking regime for Australia is the initial focus of the CDR.

<https://www.computerworld.com.au/article/645250/accc-tasked-drawing-up-new-open-banking-rules/>

#### Banking Royal Commission releases ASIC report accusing NAB of breaking the law

NAB's troubles at the Banking Royal Commission just got worse, with the tabling of a detailed ASIC report into the fee-for-no-service scandal which finds serious and systemic breaches dating back 15 years.

<http://www.abc.net.au/news/2018-08-15/banking-royal-commission-damning-asic-report-into-nab-released/10124024>

#### Small Business and Family Enterprise Ombudsman: Banking Code of Practice offers small business a safeguard

When the Australian Securities and Investments Commission (ASIC) approved the revised version of the Australian Banking Association's Banking Code of Practice, it was a significant milestone. The New Banking Code of Practice puts into practice most of the recommendations in our Small Business Loans Inquiry report.

<https://www.smh.com.au/business/small-business/banking-code-of-practice-offers-small-business-a-safeguard-20180814-p4zxfo.html>

#### Two men sentenced after Serious and Financial Crimes Taskforce investigation

Two New South Wales men have been sentenced for their role in a significant money laundering and tax evasion scheme after an investigation by the Serious Financial Crimes Taskforce (SFCT).

<http://kmo.ministers.treasury.gov.au/media-release/095-2018/>

## ASIC's latest enforcement report highlights outcomes from the first half of 2018

ASIC has released its enforcement outcomes report for the period 1 January 2018 to 30 June 2018. The report presents key actions taken over the past six months to enforce the law and support our enforcement objectives. These matters relate to several ongoing areas of focus, presented by the areas we enforce: Corporate governance, Financial services, Market integrity and Small business.

18-237MR ASIC's latest enforcement report highlights outcomes from the first half of 2019.

<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-237mr-asics-latest-enforcement-report-highlights-outcomes-from-the-first-half-of-2018/>

## CBA executives hit with \$100 million pay cut in wake of bank scandals

CBA's annual report shows around 400 executives were held accountable for the scandals that have so far cost the bank \$1.1 billion in penalties, compliance costs and legal fees  
<http://www.abc.net.au/news/2018-08-08/cba-executive-pay-hit-with-damaged-reputation/10090128>

## Turnbull Government expands ASIC's armoury

The Turnbull Government is injecting a further \$70.1 million into the ASIC to ensure the corporate regulator has the resources and powers it needs to combat misconduct in the financial services industry and across all corporations for the protection of the Australian consumers.  
<http://kmo.ministers.treasury.gov.au/media-release/092-2018/>

## Consultation on the proposed establishment of a Global Financial Innovation Network

ASIC is in collaboration with 11 international financial regulators, and related organisations, consulting on the proposed creation of the Global Financial Innovation Network (GFIN). The working group is asking for feedback on the consultation questions by 14 October 2018.  
<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-232mr-consultation-on-the-proposed-establishment-of-a-global-financial-innovation-network/>

## Update on financial advice institutions' fees for no service refund programs

AMP, ANZ, CBA, NAB and Westpac have now paid or offered customers \$222.3 million in refunds and interest for failing to provide advice to customers while charging them ongoing advice fees. In addition, ASIC is overseeing FFNS remediation programs by other Australian financial services (AFS) licensees that have identified potential FFNS failings  
<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-229mr-update-on-financial-advice-institutions-fees-for-no-service-refund-programs/>

## IN PRACTICE AND COURTS

### [AFSA: PPSR registrations - is it time to review them](#)

You can access a FREE PPSR report called registrations due to expire which enables users to simply run a report that lists registrations due to expire in a specified date range (ie, the month of January 2019) for your secured party group

### [AFSA: Australia's Personal Property Securities Register - AFSA statistics release June quarter 2018](#)

Personal Property Securities Register (PPSR) statistics have been released for the June quarter 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

### ABA Newsletter

The newsletter can be found [here](#) and covers the new code of banking practice.

## CASES

### [Australian Securities and Investments Commission v Linchpin Capital Group Ltd \[2018\] FCA 1104](#)

CORPORATIONS – managed investment scheme – ASIC application to appoint receivers – nature and extent of contraventions – scope of assets over which receiver appointed

Australian Financial Services Reform Act 2001 (Cth); Australian Securities and Investments Commission Act 2001 (Cth); Corporations Act 2001 (Cth); Personal Property and Securities Act 2009 (Cth)

Held: Again, save for ASIC's concession which I apprehend is appropriately given so as to prevent loss being suffered by other persons, I would have been prepared to grant the injunctions preventing Endeavour from engaging in the provision of all financial services

### [In the matter of Psyche Holdings Pty Limited \[2018\] NSWSC 1254](#)

CORPORATIONS – application under s 588FM of the Corporations Act 2001 (Cth) to fix registration time for security interests registered in the register established under the Personal Property Securities Act 2009 (Cth) – whether failure to register security interest was accidental or due to inadvertence – whether failure to register interest earlier prejudiced the position of creditors or shareholders

Corporations Act 2001 (Cth) ss 436A, 436B, 436C, 588FL, 588FM; Personal Property Securities Act 2009 (Cth) ss 21, 166, 293

[Bendigo and Adelaide Bank Ltd Anor v Haque \[2018\] VSC 406](#)

PRACTICE AND PROCEDURE – Deeds and other instruments – Enforcement of deed of settlement – Whether summary procedure appropriate

COURTS AND JUDICIAL SYSTEM – Consequences of being a group member

[Bendigo and Adelaide Bank Ltd v Ratana \[2018\] NSWSC 1227](#)

(1) Dismiss the plaintiff's notice of motion filed on 19 April 2018.

(2) Make no order as to costs.

PRACTICE AND PROCEDURE – application for transfer – related proceedings in Victorian Supreme Court – hearing date already allocated and imminent in this Court – application refused. Terms of loan deed

COSTS – reason to depart from general rule – no order as to costs

**LEGISLATION**

[ASIC Corporations \(Banking Code of Practice\) Instrument 2018/700](#)

10 August 2018 - This instrument approves the Banking Code of Practice, published in August 2018 by the Australian Banking Association Incorporated, as existing at the date of the instrument.

**THIS EDITION'S EDITORS**



**Julie Callea-Smyth**

Partner

+61 3 8080 3625

+61 411 600 945

[jcallea-smyth@tglaw.com.au](mailto:jcallea-smyth@tglaw.com.au)



**Jessica Andreacchio**

Special Counsel

+61 3 8080 3631

+61 439 370 081

[jandreacchio@tglaw.com.au](mailto:jandreacchio@tglaw.com.au)



**Michelle Lykiardopoulos**

Special Counsel

+61 3 8080 3567

+61 410 778 698

[mlykiardopoulos@tglaw.com.au](mailto:mlykiardopoulos@tglaw.com.au)

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