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## BANKING SECTOR NEWSLETTER

### IPOs must disclose royal commission exposure: ASIC

ASIC has warned companies seeking to raise money through IPOs that they must tell investors how they are likely to be affected by the royal commission, including the disclosure of risks associated with the royal commission into misconduct in the banking, superannuation and financial services industry.

<https://www.investordaily.com.au/regulation/43544-ipos-must-consider-royal-commission-asic>

### IN THE MEDIA

#### ASIC requires Morgan Stanley Wealth Management Australia to amend false claim of independence

ASIC has required Morgan Stanley Wealth Management Australia Pty Ltd to amend a false claim of independence that could mislead consumers and investors. The ASX announcement included a quote from MSWMA which described its business as featuring an 'independent advice offering'

<https://www.investordaily.com.au/regulation/43514-morgan-stanley-wealth-management-called-out-for-false-claims>

#### Reverse mortgage risks not being explained to seniors: ASIC

A review by ASIC has found that reverse mortgages are allowing older Australians to achieve their immediate financial goals - improving their lifestyles in retirement - but there are also long-term risks that lenders are failing to explain to retirees.

<https://www.mortgagebusiness.com.au/breaking-news/12600-reverse-mortgage-risks-not-being-explained-to-seniors-asic>

### Combined Industry Forum: No more volume-based bonuses for mortgage brokers

Australia's mortgage broking industry has ended the use of volume-based bonus commissions, campaign-based commissions, and other volume-based bonus payments. This is one of the main findings of an interim report prepared by the Combined Industry Forum

<http://www.customerownedbanking.asn.au/media-a-resources/media-releases-download-releases-and-sign-up-for-alerts>

### CBA, World Bank settle \$110m blockchain bond

The first public bond to have reportedly been created, allocated and managed using blockchain technology has raised \$110 million, exceeding the previously expected \$50 million.

<https://www.mortgagebusiness.com.au/breaking-news/12586-cba-world-bank-settle-110-million-blockchain-bond>

### Banks launch campaign in plea for 'proportionate regulation'

A banking association has taken its fight to Canberra, calling for a "proportionate regulatory regime" through the launch of a new campaign

<https://www.mortgagebusiness.com.au/breaking-news/12579-banks-launch-campaign-in-plea-for-proportionate-regulation>

### Government launches program to boost 'financial capability'

The Minister for Revenue and Financial Services Kelly O'Dwyer has officially launched the 2018 National Financial Capability Strategy, a nationwide initiative designed to improve the financial capabilities of Australians.

<https://www.mortgagebusiness.com.au/breaking-news/12572-government-launches-program-to-boost-financial-capability>

### Small banks call for 'proportionate' regulation

A new Grant Thornton report commissioned by the Customer Owned Banking Association (COBA) has made the case that extra regulation in the financial services sector must consider the diversity of the banking sector <https://www.investordaily.com.au/regulation/43480-small-banks-call-for-proportionate-regulation>

## IN PRACTICE AND COURTS

### [Report 589: ASIC regulation of corporate finance](#)

Released on 31 August 2018, the report covers ASIC's regulation of fundraising activities, M&A and other corporate governance transactions throughout the first six months of 2018. ASIC raised disclosure concerns with 19 per cent of the prospectuses filed in the period. The top concern was that the business model was not fully or adequately disclosed.

### [ASIC Report 586 Review of reverse mortgage lending in Australia](#)

Released on 28 August, the report found borrowers had a poor understanding of the risks and future costs of their loan, and generally failed to consider how their loan could impact their ability to afford their possible future needs ASIC reviewed data on 17,000 reverse mortgages, 111 consumer loan files, lender policies, procedures, and complaints

### APRA Publications

APRA has released its [Monthly Banking Statistics](#) for August 2018

### [Australian Payments Network: Fraud Statistics Jan 17-Dec 17](#)

The Australian Payment Card Fraud report shows that card-not-present fraud accounted for 85% of all fraud on Australian cards

### [\[Draft\] Treasury Laws Amendment \(Consumer Data Right\) Bill 2018](#)

The Government is seeking views on the exposure draft legislation and accompanying explanatory materials, which implement this measure. The Treasury Laws Amendment (Consumer Data Right) Bill 2018 will primarily amend the Competition and Consumer Act 2010 but will also consequentially amend the Privacy Act 1988 and the Australian Information Commissioner Act 2010. Consultation closes on 7 September 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

### APRA proposes updates to related parties framework for ADIs

*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 345 \(Revised\)](#), Identifying and Assessing the Risks of Material Misstatement.

### ABA Newsletter

This newsletter covers the new code of banking practice. Read it [here](#).

## CASES

### [Tindall and Australian Securities and Investments Commission \[2018\] AATA 3101](#)

CORPORATIONS – banning order from providing financial services for five years – contravention of financial services law – whether conduct misleading or deceptive – whether conduct dishonest – whether length of banning order is appropriate – decision under review affirmed

Australian Securities and Investments Commission Act 2001 (Cth) – ss 1, 1(2)(g), 1(2)(b)

Corporations Act 2001 (Cth) – ss 760A, 920A, 920A(1), 920A(1)(d), 920A(1)(da), 920A(1)(e), 920A(1)(f), 920B, 920B(2)(b), 1041E, 1041F(1)(a), 1041G(1), 1041H

### [John Bridgeman Limited v Dreamscape Networks FZ-LLC \[2018\] FCA 1279](#)

PRACTICE AND PROCEDURE – application for preliminary discovery to ascertain description of prospective respondent – where allegedly untrue representations were made online by an unknown publisher – whether legal professional privilege applies to a person's communication of their name to a solicitor whom they wish to engage

The prospective applicants submit that making misleading or deceptive comments about investing in the shares of public companies falls within the scope of s 1041H of the Corporations Act. The publisher's solicitors submit that the provision applies only where the target of the representations is a consumer and the representations are made by someone with responsibility for the financial product or financial service. They argue that the scope of the provision does not extend to the present situation where the publisher is engaged in journalistic discussion of companies operating in the market and the prospective applicants are operators of those companies.

[DOQ17 v Australian Financial Security Authority \(No 2\) \[2018\] FCA 1270](#)

PRACTICE AND PROCEDURE – recusal application – apprehended bias and actual bias on the ground of pre-judgment alleged based on interlocutory decision refusing leave to amend pleadings and joinder of additional respondents – observations as to potential dangers in receiving sworn evidence in support of disqualification applications – observations as to judge’s duty to sit where no proper basis for recusal – discussion of relevant principles including attributes of fair-minded lay observer in applying test for apprehended bias - where part of the judge’s duty and function is to separate the relevant from the irrelevant, to disregard allegations without evidentiary foundation, and to ensure a fair trial for all parties - where no findings of fact or credit made in interlocutory decision – where no apprehended bias by reason of findings which put aside assertions without evidentiary foundation – where no final opinion expressed in the interlocutory decision on any ultimate fact or issue - where Court’s duties to unrepresented litigants do not extend to obtaining legal representation - application dismissed

[Squadron Resources Pty Ltd v Highlake Resources Pty Ltd, in the matter of Highlake Resources Pty Ltd \[2018\] FCA 1292](#)

CORPORATIONS – consideration of an application seeking an order pursuant to s 588FM of the Corporations Act 2001 (Cth) for an extension of time for registration for the purposes of s 588FL(2)(b)(iv) – whether it is just and equitable to make an order granting an extension of time for registration for the purposes of s 588FL(2)(b)(iv) – where the failure to register was ‘accidental’ or ‘due to inadvertence’ pursuant to s 588FM(2)(a)(i) and that the relief sought is otherwise just and equitable in the circumstances Held: relief granted

Personal Property Securities Act 2009 (Cth) ss 62, 75

[Commonwealth Bank of Australia v Invest Pty Limited \(in liquidation\) \(No 9\) \[2018\] NSWSC 1276 Judgement for the plaintiff](#)

CONTRACT – Formation – offer and acceptance – agreement – remedies – debt – lawful termination – no service of default notice – express right to possession

GUARANTEE AND INDEMNITY – guarantee agreement – maximum liability – whether the right to realise security is engaged – mortgage – finance agreement – terms and conditions – banks discretion – no obligation to loan If borrowers financial position has changed – act of default – winding up company – absence of financial default is irrelevant – without notice – bills matured account – obligation for borrowers to pay interest – banks remedies – amount due and payable and taking possession of property

LAND LAW – Seeking possession of rural properties – company liquidated – default – mortgaged to the bank – bank enforcing security – cross-claim – guarantee – alterations – maximum liability – extension

[McNally v Commonwealth Bank of Australia \[No 2\] \[2018\] WASC 248](#)

Practice and procedure - Leave to amend indorsement on writ of summons - New cause of action pleaded - Application to extend limitation periods - Where application does not relate to new cause of action - Whether new cause of action barred by limitation legislation

In this action the plaintiff seeks damages from the defendant for losses he alleges he suffered as a consequence of the defendant refusing to loan him the funds he required to complete the construction of a house on a residential block of land in Secret Harbour, the defendant having advanced him the funds required to commence construction

[Bendigo and Adelaide Bank Ltd v Redmond \[2018\] VSC 458](#)

PRACTICE AND PROCEDURE – Application for recusal on the basis of apprehended bias – Re JRL; ex parte CJL [1986] HCA 39; (1986) 161 CLR 342; Helljay Investments Pty Ltd v Deputy Commissioner of Taxation [1999] HCA 56; (1999) 166 ALR 302 – Ebner v Official Trustee in Bankruptcy [2000] HCA 63; (2000) 205 CLR 337.

These proceedings both concern the same subject matter - to enforce an alleged loan to Mr Paul Burkett, and another alleged loan, said to have been guaranteed by Mr Burkett, to DSP Group Pty Ltd. Both loans are said to have been made for the purpose of the respective borrowers investing in the Great Southern 2007 High Value Timber Project

[Fuji Xerox Australia Pty Ltd v Thoi \[2018\] VSC 483](#)

CONTRACT – Interpretation – Principles of construction of commercial contract – What was the amount of the debt assigned under a deed of assignment?

PROPERTY – Whether the assignment of a mortgage also vests rights under separate loan agreements in the assignee – Effect of s 46 of Transfer of Land Act 1958 (Vic) - French v Queensland Premier Mines Pty Ltd [2006] VSCA 287 considered.

CONVEYANCING – Whether mortgagee entitled to recover interest for period between settlement and clearance of cheque.

DEBTOR and CREDITOR – Principles to be applied when a cheque is accepted in payment of a debt.

**LEGISLATION****Commonwealth****[Treasury Laws Amendment \(Financial Sector Regulation\) Bill 2018](#)**

Senate Introduced and read a first time 21 August 2018 ;  
Second reading moved 21 August 2018

Amends the: Financial Sector (Shareholdings) Act 1998 to: increase from 15 per cent to 20 per cent the ownership restriction applying to life insurance and general insurance companies, authorised deposit-taking institutions (ADIs) and relevant holding companies; and create a streamlined path for owners of qualifying domestically incorporated companies with assets less than the relevant threshold applying to become a financial sector company; and Banking Act 1959 to: enable the Australian Prudential Regulation Authority to grant a new entrant to the banking sector a time limited ADI licence; and correct a drafting error.

**Regulation****[Accounting Standard AASB 2018-3 Amendments to Australian Accounting Standards – Reduced Disclosure Requirements](#)**

22/08/2018 - This standard amends AASB 16 - Leases - February 2016 and AASB 1058 - Income of Not-for-Profit Entities - December 2016 to identify Reduced Disclosure Requirements for entities applying Australian Accounting Standards – Reduced Disclosure Requirements.

**[ASIC Credit \(Amendment\) Instrument 2018/665](#)**

22/08/2018 – No longer in force - This instrument amends the ASIC Credit (AFCA transition) Instrument 2018/448 to extend transitional disclosure relief for updating external dispute resolution scheme details in National Credit Code Forms 5, 9 and 17.

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