

23 OCTOBER 2018

ISSUE 24



BANKING SECTOR NEWSLETTER

Treasury Laws Amendment (Enhancing ASIC's Capabilities) Bill 2018

Assent Act no: 122 Year: 2018 03 October 2018 - Amends the: Australian Securities and Investments Commission Act 2001 to: require the Australian Securities and Investments Commission (ASIC) to consider the effects that the performance of its functions and the exercise of its powers will have on competition in the financial system; and remove the requirement for ASIC to engage staff under the Public Service Act 1999; and Australian Securities and Investments Commission Act 2001, Business Names Registration Act 2011, Corporations Act 2001 and Mutual Assistance in Business Regulation Act 1992 to make consequential amendments.

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6087

See [Treasury Laws Amendment \(Enhancing ASIC's Capabilities\) Act 2018](#)

05 October 2018 - Act no. 122 of 2018

IN THE MEDIA

Non-bank rise could increase 'stability risks': RBA

The central bank has warned that an increase in the non-bank sector's market share could pose a threat to financial stability

<https://www.mortgagebusiness.com.au/breaking-news/12756-non-bank-rise-could-increase-stability-risks-rba>

ASIC action on compliance breaches with fees disclosure and renewal notices

ASIC has announced a review of compliance with requirements for Fee Disclosure Statements and Renewal Notices in the financial advice sector. ASIC's ongoing work on fee for no service failings in the advice industry has highlighted the importance of FDSs and Renewal Notices

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-306mr-asic-action-on-compliance-breaches-with-fees-disclosure-and-renewal-notices/>

ANZ fires 200 staff for misconduct

The big four bank has revealed that a number of senior executives are included in up to 200 staff whose employment has been terminated as a direct result of misconduct

<https://www.investordaily.com.au/regulation/43781-anz-fires-200-staff-for-misconduct>

Banker to stand trial over involvement in \$170m home loan swindle

A former mobile mortgage broker for the Commonwealth Bank has been committed to stand trial over his alleged role in what is estimated to be Australia's largest-ever home loan swindle which cost a dozen banks more than \$170 million

<https://www.smh.com.au/business/banking-and-finance/banker-to-stand-trial-over-involvement-in-170m-home-loan-swindle-20181012-p509ba.html>

Good culture 'can't be left to regulators alone': APRA

In a speech at the Financial Services Institute of Australasia (FINSIA) Summit, APRA chairman Wayne Byres acknowledged regulatory initiative in the pipeline – accountability statements, remuneration restrictions, strengthened governance requirements, greater attention to organisational culture, and more forceful enforcement – will drive change

<https://www.investordaily.com.au/regulation/43777-good-culture-can-t-be-left-to-regulators-alone-apra>

FPA Conduct Review Commission hands down determination for Sam Henderson case

The FPA independent disciplinary body, the Conduct Review Commission (CRC), has found Sam Henderson breached the FPA's Code of Professional Practice (FPA Code). The CRC's Determination was published and found that nine out of the ten alleged breaches of the FPA Code were proven

<https://fpa.com.au/news/fpa-conduct-review-commission-hands-determination-sam-henderson-case/>

CBA report points to sub-culture

The Commonwealth Bank faces a necessarily long and complex process in addressing the issues raised by the Australian Prudential Regulation Authority (APRA) inquiry into the big banking group, according to the first report of the independent firm overseeing the process <https://www.moneymanagement.com.au/news/policy-regulation/cba-report-points-sub-culture>

ABA: Ending fees for no service, grandfathered payments

Australia's banks will change the Banking Code of Practice to overhaul the way they manage a customer's estate when they have died and end 'fees for no service' across the industry. Further to this they will seek new legislation to end grandfathered payments and trail commissions for financial advisers

<https://www.ausbanking.org.au/media/media-releases/media-release-2018/ending-fees-for-no-service-grandfathered-payments>

ASIC tidies up FASEA regime

The Australian Securities and Investments Commission (ASIC) has tidied up a number of legislative and regulatory anomalies contained within the legislation covering the Financial Adviser Standards and Ethics Authority regime <https://www.moneymanagement.com.au/news/policy-regulation/asic-tidies-fasea-regime>

Drought Finance Taskforce to further support farmers and local businesses

The Liberal-National Government, the National Farmers Federation and banks are set to come together through a new Drought Finance Taskforce designed to leverage resources and share insights on ways in which the Government and banks could further support drought-affected farmers and rural and regional small businesses <http://jaf.ministers.treasury.gov.au/media-release/025-2018/>

Home loan borrowers in the outer suburbs of Australia's capital cities are vulnerable to an economic downturn

Across the country, delinquency rates in these areas are significantly higher in these areas compared to inner-city locations, according to a new report from Moody's Investors Service. "On average across Australian cities, mortgage delinquency rates are lowest in areas within five kilometres of central business districts (CBD) and highest in areas 30-40 kilometres from CBDs <https://www.businessinsider.com.au/home-loan-delinquencies-bad-debts-australia-housing-market-moodys-2018-10>

COBA: Growth opportunity for customer owned banking

A draft bill has been released to lower barriers to capital raising by mutual banks, credit unions and building societies is a significant step forward in promoting competition in banking <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1308-growth-opportunity-for-customer-owned-banking>

IN PRACTICE AND COURTS

[ASIC Corporations \(Professional Standards - Transitional\) Instrument 2018/894 and the explanatory statement](#)

The instrument makes changes to the reporting dates for a number of disclosure obligations in the transition to the new financial adviser professional standards reforms. The reporting changes will simplify licensees' notification obligations and enable ASIC to implement the required systems changes more effectively. These changes do not affect advisers' and licensees' substantive obligations under the professional standards reforms

[Royal Commission Update](#)

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was established by the Government in December 2017, with the first of seven public hearings held in March 2018, and the final round to be held in November 2018

[Draft Legislation: definition for a mutual entity for co-ops, mutuals and customer owned banks](#)

Draft legislation to provide a definition for a mutual entity in the Corporations Act and to clarify the uncertainty around the demutualisation provision of Part 5 Schedule 4 of the Corporations Act has been released by the Government for public consultation Stakeholders are invited to view the draft legislation and lodge submissions via the Treasury website by 1 November 2018

[Reforms to strengthen penalties for corporate and financial sector misconduct - Draft Legislation](#)

The Government is seeking public comment on draft legislation to strengthen penalties for corporate and financial sector misconduct. The proposed changes would double maximum imprisonment penalties and significantly increase financial penalties for some of the most serious 'white-collar' criminal offences.

APRA: Authorisation of foreign ADI ABN Amro Bank NV

The Australian Prudential Regulation Authority (APRA) has announced it has authorised ABN Amro Bank N.V. as a foreign authorised deposit-taking institution (ADI) under the Banking Act 1959. An updated list of all APRA-regulated ADIs can be found [here](#).

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](#)

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. [Read More](#)

ABA Newsletter

The ABA newsletter is sent regularly by our subscribers.

See the latest issue here: [10 October 2018](#)

[Should superannuation funds do more direct lending?](#)

Stephen Anthony; Industry Super Australia: 02 October 2018

In the right circumstances, superannuation funds could provide capital for growth to SME's and business more generally, complementing more traditional capital sources such as banks, according to this discussion paper.

['The future of advice', Address to Association Advisers National Conference, Gold Coast, Queensland](#)

Speech delivered on 12 October 2018

CASES**[Westlawn Finance Limited v Tagg \[2018\] NSWSC 1491](#)**

GUARANTEE AND INDEMNITY – Discharge of guarantor – Creditor releases co-guarantor – Effect of one co-guarantor's consent to release of another co-guarantor

CONTRACTS – Unjust contracts – Contracts Review Act 1980 (NSW) – Whether contracts for a guarantee and mortgage on ordinary commercial terms were unjust – Relevance of independent legal advice – Whether the contracts conferred a benefit

CONTRACTS – Misleading conduct under statute – Misleading or deceptive conduct – s 18 of the Australian Consumer Law – Whether conduct was in trade and commerce – Whether any loss or damage was suffered

CONTRACTS – Misleading conduct under statute – Misleading or deceptive conduct – s 18 of the Australian Consumer Law – Circumstances in which silence may be misleading or deceptive – Whether impugned conduct caused loss or damage

TORTS – Miscellaneous torts – Interference with contractual and other relations – Inducement of breach of contract – Knowledge that conduct would constitute a breach of contract – Intention to persuade or induce breach of contract

TORTS – Miscellaneous torts – Conspiring to injure – Conspiring to injure by unlawful means – Intention to injure – Whether unlawful means include torts and breaches of contract

CONTRACTS – Misleading conduct under statute – Misleading or deceptive conduct – s 18 of the Australian Consumer Law – Involvement in a contravention under s 236 of the Australian Consumer Law – Need for causative conduct and actual knowledge – Whether any loss or damage suffered – Contributory negligence – Limitation of liability under s 87CD of the Competition and Consumer Act 2010 (Cth)

CONTRACTS – Unconscionable conduct – s 21 of the Australian Consumer Law – s 12CB of the Australian Securities and Investments Commission Act 2001 (Cth)

[LM Investment Management Ltd \(in liq\) v EY & Ors \(No 2\) \[2018\] QSC 226](#)

LIMITATION OF ACTIONS – GENERAL MATTERS – AMENDMENT OF ORIGINATING PROCESSES AND PLEADINGS OUTSIDE LIMITATION PERIOD – AMENDMENTS INTRODUCING NEW CAUSE OF ACTION OR PARTICULARISING CAUSE OF ACTION – where a claim for damages against the auditors of a managed investment scheme alleges breach of contract, or negligence, or contraventions of the Trade Practices Act 1974 (Cth), Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth) and Australian Securities and Investments Commission Act 2001 (Cth)

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – FORM OF PLEADING – MATTERS TO BE PLEADED SPECIFICALLY – where plaintiff alleges contraventions of Corporations Act 2001 (Cth) s 601HG(4) and s 601HG(4B) – where awareness required to be pleaded under Uniform Civil Procedure Rules 1999 (Qld) r 150(1)(k) – PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – CASE MANAGEMENT – LISTS – COMMERCIAL LIST – where Uniform Civil Procedure Rules 1999 (Qld) r 378 provides for amendment before request for trial date – alleged ...matters were a breach of the lending policy in the compliance plan, that the loan to value ratios of loans were incorrectly calculated, that loans had been varied or extended without an updated valuation, that security properties or loans had not been revalued and that loan extensions had been granted on the basis of capitalised interest arrangements where there had been defaults by borrowers who were poor credit risks

[Down Town Visuals v Panorama Investments \(No 2\) \[2018\] VSC 584](#)

CONTRACTS – General contractual principles – Interpretation and construction – Legal and equitable security interests - Whether equitable charge arises under loan agreements – Whether loan agreement gives rise to equitable security interest separately to formal Company Charge.

PRACTICE & PROCEDURE – Application to intervene – Present utility of leave – Contingent facts and interests necessary for leave to be of any utility.

LEGISLATION**Regulation****[ASIC Corporations \(Professional Standards - Transitional\) Instrument 2018/894](#)**

10 October 2018 - This instrument makes changes to the earliest reporting dates in the Corporations Act 2001 and makes minor technical modifications to address unintended consequences so the new financial adviser professional standards reforms apply as they were intended to

[Treasury Laws Amendment \(Professional Standards Schemes No.2\) Regulations 2018](#)

02 October 2018 - These regulations provide for capped civil liability for misleading and deceptive conduct for the prescribed professional standards schemes [including legal, accounting and property]. This instrument is made under the following: (a) the Australian Securities and Investments Commission Act 2001; (b) the Competition and Consumer Act 2010; (c) the Corporations Act 2001

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

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SYDNEY | Level 25, 1 O'Connell Street | Sydney NSW 2000**MELBOURNE** | Level 39, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000**BRISBANE** | Level 16, Waterfront Place, 1 Eagle Street | Brisbane QLD 4000**ADELAIDE** | Level 7, 19 Gouger Street | Adelaide SA 5000www.tglaw.com.au [Thomson Geer](#) [@ThomsonGeer](#)