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BANKING SECTOR NEWSLETTER

An upheaval is coming for Australian Banks

Hayne directed some of his sharpest criticism at the regulators, lambasting them for favouring negotiation over litigation, then reaching settlements that tend to favour the banks and extracting penalties that don't have a deterrent effect.

<https://www.bloomberg.com/news/articles/2019-02-02/upheaval-coming-for-australian-banks-as-misconduct-probe-reports>

IN THE MEDIA

ASIC requires Commonwealth Financial Planning Limited to stop charging fees for ongoing services

Commonwealth Financial Planning Limited (CFPL) has failed to provide ASIC with an attestation and with an acceptable Final Report from the independent expert, both of which were required under a Court Enforceable Undertaking (EU) entered into with ASIC in April 2018 in relation to CFPL's fees for no service conduct.

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-018mr-asic-requires-commonwealth-financial-planning-limited-to-stop-charging-fees-for-ongoing-services/>

Royal Commission response: Challenger banks warn of unintended consequences

Ahead of the release of the Financial Services Royal Commission's final report, the Customer Owned Banking Association is urging Australia's politicians to remember the critically important role of competition in delivering positive customer outcomes.

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1346-royal-commission-response-challenger-banks-warn-of-unintended-consequences->

AFSA: Personal insolvencies fall in most capital cities in December quarter 2018

New personal insolvencies fell in most capital cities in the December quarter 2018 compared to the previous quarter. The exceptions were Greater Darwin and Greater Hobart.

<https://www.afsa.gov.au/about-us/newsroom/personal-insolvencies-fall-most-capital-cities-december-quarter-2018>

APRA applauds its own efforts to derisk mortgage market

The prudential regulator has said that lending curbs imposed to address systematic risks in the mortgage market have had no "undue" impact on the flow of credit, releasing an information paper outlining its assessment of the effect of its macro-prudential measures on residential mortgage risks.

<https://www.investordaily.com.au/regulation/44346-apra-applauds-its-own-efforts-to-de-risk-mortgage-market>

FSC: Asia Region Funds Passport open for business

The Asian Region Funds Passport (ARFP), which recently came into operation has the potential to become Australia's ticket to a financial services export boom. The passport is a multilateral framework which allows eligible managed funds to be marketed to retail investors across participating countries, however in order to maximise this potential, tax reforms need to take place.

<https://www.fsc.org.au/resources/resource-detail/?documentid=d420f706-d425-e911-a969-000d3ae13a46>

ASIC calls audit quality into question

ASIC has found auditors may not be guaranteeing financial statements are free of misinformation, with a review by the watchdog showing a lack of justification for greenlighting reports across a number of audit areas.

<https://www.investordaily.com.au/regulation/44334-asic-calls-audit-quality-into-question>

AFCA's submission to the Senate Economics References Committee

The AFCA said consideration be given to the introduction of a standalone enforceable standard requiring financial firms to treat consumers fairly. The submission to the Committee further details the benefits of using the UK-based Financial Conduct Authority's Principles for Businesses as a model for reforms imposing the standards.

<https://www.afca.org.au/news/media-releases/afcas-submission-to-the-senate-economics-references-committee/>

ASIC warns on equity raising conflicts

ASIC's review of allocation in equity raising transactions has highlighted areas of improvement for both financial services licensees and issuers when raising equity on listed markets.

<https://www.investordaily.com.au/regulation/44198-asic-highlights-needed-equity-improvements>

Customer owned banking institutions become Australia Post's latest target

Australia's customer owned banking institutions are being pressured to agree to an unfair pricing policy by Australia Post as it targets smaller institutions to pay excessive charges for access to Bank@Post.

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1345-customer-owned-banking-institutions-become-australia-posts-latest-target>

Protecting privacy at the forefront of Consumer Data Right reform

Its submission to the first Privacy Impact Assessment of the Consumer Data Right released Australia's banks back strong privacy settings to protect customers and have identified the pilot, due to commence this year, as an important test

<http://www.ausbanking.org.au/media/media-releases/media-release-2019/protecting-privacy-at-the-forefront-of-consumer-data-right-reform>

New banks to provide Australians with more choice

The Coalition Government's reforms to increase competition in the banking sector are working, with Volt Bank becoming the first bank to transition from a restricted licence to a full licence today

<http://jaf.ministers.treasury.gov.au/media-release/005-2019/>

Customer Owned Banking Association appoints Phil Khoury to review Code of Practice

The Customer Owned Banking Association has appointed former Australian Securities and Investments Commission official Phil Khoury to conduct the review of the Customer Owned Banking Code of Practice (the Code). It is anticipated that the review will be completed mid-way through 2019.

<http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1343-customer-owned-banking-association-appoints-phil-khoury-to-review-code-of-practice>

Government makes move on CCIV reform

The Government has released two bills implementing the tax and regulatory components of the Corporate Collective Investment Vehicle (CCIV) regime and their related explanatory materials for consultation.

Amendments to other legislation to support the implementation of CCIVs (such as amendments to the *Australian Securities and Investments Commission Act 2001* and the *Personal Properties Securities Act 2009*).

<https://www.moneymanagement.com.au/news/policy-regulation/gov-makes-move-cciv-reform>

Some home loan customers 'will be paying less this time next year'

Even as several smaller lenders are raising certain home loan interest rates, some analysts are tipping most mortgage borrowers will have lower repayments in 12 months' time.

<https://www.abc.net.au/news/2019-01-17/interest-rates-on-mortgages-could-be-even-lower-in-a-year/10719672>

FASEA releases Standard Blueprint

The Financial Adviser Standards and Ethics Authority (FASEA) has today released details of its revised standards framework for financial advisers following stakeholder consultation. Approximately 800 submissions were received during the consultation process.

<https://www.fasea.gov.au/fasea-releases-standards-blueprint/>

FASEA releases Policy for the Foreign Qualification Standard

FASEA has published the Policy for its Foreign Qualification Standard. The policy was informed through consultation with stakeholders in August 2018 and through 8 formal submissions during FASEA's consultation process in November 2018

<https://www.fasea.gov.au/fasea-releases-policy-for-the-foreign-qualification-standard/>

Has FASEA devalued prior experience?

With key elements of the Financial Adviser Standards and Ethics Authority (FASEA) regime, including continuing professional development (CPD) having come into force on 1 January, the industry is still warning of inconsistencies around which degrees are being recognised and the status of prior learning. <https://www.moneymanagement.com.au/news/policy-regulation/has-fasea-devalued-prior-experience>

Low and middle-income Australian victims of tighter lending standards, business leaders warn

Banks are already behaving more conservatively and potential further changes to the rules around qualifying for a loan could impact those on low and middle incomes. <https://www.abc.net.au/news/2019-01-03/business-leaders-warn-against-even-tighter-lending-standards/10683046>

ASIC warns of equity raising conflicts

ASIC's review of allocations in equity raising transactions has highlighted areas of improvement for both financial services licensees and issuers when raising equity on listed markets. <https://www.investordaily.com.au/regulation/44198-asic-highlights-needed-equity-improvements>

A landmark code monitoring cooperation agreement announced by professional associations

Six major professional associations representing the financial planning/advice sector have signed a historic cooperation agreement to develop a code of monitoring solution for their members. The compliance scheme will enable compliance with the Financial Adviser Standards and Ethics Authority (FASEA) code of ethics to be monitored and enforced. <https://fpa.com.au/news/a-landmark-code-monitoring-cooperation-agreement-announced-by-professional-associations/>

IN PRACTICE AND COURTS

ABA: New Credit Card Legislation in force

The Australian Banking Association has also introduced a new obligation in the [Banking Code of Practice](#) requiring banks to warn people when their introductory rates are going to expire, which will apply from 1 July 2019

AFSA: review of PPSR registrations

On 30 January 2019, the Personal Property Securities Register (PPSR) turned seven years old. This is an important date, as seven-year registrations will soon start to expire. And once a registration lapses, it cannot be extended—only current registrations can be amended or renewed.

FPA Submissions

[Pre-Budget Submission](#) - Treasury - 1 February 2019

ASX Public Consultations

On 30 January 2019, ASX released a consultation paper outlining potential changes to the contract specifications and order management functionality for the [Australian 90 Day Bank Bill Futures](#). The consultation paper has been published in response to customer feedback requesting a number of changes to the Bank Bill Futures. The following potential changes are outlined in the consultation paper. Written submissions close on 30 April 2019

[APRA licenses new authorised deposit-taking institution](#)

The APRA has licensed Lutheran Laypeople's League of Australia as an authorised deposit-taking institution (ADI) under the Banking Act 1959. An updated list of all APRA-authorized ADIs can be found on the APRA website

ASIC Audit inspection findings for 2017-18

ASIC has issued a report on the results from its audit firm inspections for the period 1 January 2017 to 30 June 2018. Directors are primarily responsible for the quality of the financial report. Audit quality supports financial reporting quality, and it is in the interests of directors and audit committees to support the audit process.

[Read the full Audit inspection program report for 2017-18](#)

[IFAC: Amendments to IPSAS 36, Investments in the Associates and Joint Ventures, and IPSAS 41, Financial Instruments](#)

Amendments to IPSAS 36 and IPSAS 41, 2018 comprises: Part I: Long-term Interests in Associates and Joint Ventures (Amendments to IPSAS 36); and Part II: Prepayment Features with Negative Compensation (Amendments to IPSAS 41). Amendments in Part I and II arise from consideration of the annual improvements and narrow scope amendments projects of the IASB

AASB: Fatal-flaw review draft: Proposed Standard AASB 2019-X Amendments to Australian Accounting Standards - References to the Conceptual Framework

Consequential amendments to support the AASB issuing the Conceptual Framework for Financial Reporting are set out in the proposed Standard AASB 2019-X. [Comments](#) to the AASB on any fatal flaw with the consequential amendments are due by 22 March 2019

API: Exposure Draft - Valuations for Mortgage and Loan Security Purposes

The API has issued an exposure draft Technical Information Paper (TIP) on Valuations for Mortgage and Loan Security Purposes. The purpose of this TIP is to impart advice to Members who provide valuation services for mortgage and loan security purposes

[Please click here to access the Exposure Draft](#). For more information please visit our [Exposure Drafts page](#)

Consultation: Mutually-owned financial institutions tax changes

The draft regulations seek to rectify a current disadvantage arising as existing rules provide different tax treatment for certain financial instruments issued by banks, compared with similar instruments issued by mutually-owned financial institutions. The draft regulations and explanatory material is available on the Treasury website.

Royal Commission Update - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: interim report

Note: This report covers policy related issues arising from the first four rounds of hearings. Additional topics, including superannuation and insurance in the final report released on 04 February 2019

A copy of the report is available [here](#)

In brief:

- recommended a complete overhaul of the sales culture and conflicts of interest rife in the financial services sector.
- makes 76 recommendations, which, if implemented, will lead to massive disruption of the business models of several industries, including mortgage broking and financial planning.
- Commissioner Kenneth Hayne referred potential criminal breaches by several banks, superannuation trustees and insurers to the corporate regulator ASIC but did not name names of those who may end up being charged.

ABA: Upon release the ABA will be reviewing the Commissioner's Report and will examine the Report's recommendations and their implications for the future of the Australian banking industry. Copies of the ABA's submissions to the Royal Commission are available [here](#).

AASB: Exposure Draft: Onerous Contracts - Cost of Fulfilling a Contract

[ED 287](#) Onerous Contracts – Cost of Fulfilling a Contract proposes to amend AASB 137 to specify that the costs of fulfilling a contract include both incremental costs, such as the costs of materials, and an allocation of other costs directly related to the contract, such as the depreciation charge for equipment the company uses to fulfil contracts. Please submit your comments to the AASB by 22 March 2019 via the [AASB website](#)

[Credit and financial services targeted at Australian at risk of financial hardship](#)

Status: Submissions Closed Date Referred: 17 October 2018 Reporting Date: 22 February 2019

IFRS: New Standard on leases now effective

IFRS 16 Leases were issued in January 2016 and is effective for annual reporting periods starting on or after 1 January 2019. It replaces IAS 17 and related Interpretations. IFRS 16 changes the accounting substantially for lessees. Access the [Standard](#) and [materials](#) prepared to support implementation of IFRS 16.

Australia's Personal Property Securities Register - PPSR searches and registrations rise in the December quarter 2018

Personal Property Securities Register (PPSR) statistics for the December quarter 2018. Access the statistics [here](#).

FASEA Legislative Instruments on Financial Planning released

[FASEA releases Legislative Instrument for Relevant Providers Degrees, Qualifications and Courses Standard](#)

[FASEA releases Legislative Instrument for Continuing Professional Development Standard](#)

[FASEA releases final Legislative Instrument for Work and Training \(Professional Year\) Standard](#)

[FASEA releases final determination for Provisional Relevant Provider Expressions](#)

[FASEA releases Examination Legislative Instrument](#)

[APRA removes interest-only benchmark or residential mortgage lending](#)

The introduction of the benchmark has led to a marked reduction in the proportion of new interest-only lending, which is now significantly below the 30 percent threshold. ADIs that are no longer subject to the investor loan growth benchmark will also no longer be subject to the benchmark on interest-only lending from 1 January 2019. For other ADIs, it will be removed concurrently with the removal of the investor loan growth benchmark.

AFCA: financial firms with unpaid fees are now in breach of their legal obligations

Due to outstanding fees - either from membership with the Credit and Investment Ombudsman (CIO), or from an unpaid AFCA membership levy - the AFCA membership application of the listed organisations have now been cancelled. ASIC will be notified of this breach of legal obligations.

[Download the full list of organisations](#) (list updated 21 December)

[2018 Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services](#)

The latest edition of the handbook includes: ISA 540 (Revised) Auditing Accounting Estimates and Disclosures. The revisions ensure that the standard continues to keep pace with the changing market and fosters a more independent and challenging mindset in auditors. ISA 540 (Revised) is effective for audits of financial statements for periods beginning on or after December 15, 2019.

Royal Commission Update - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: interim report

Note: This report covers policy related issues arising from the first four rounds of hearings. Additional topics, including superannuation and insurance, will be covered in the final report due 1 February 2019

APRA Monthly Banking Statistics for November and December 2018

[Monthly Banking Statistics](#) for November 2018

[Monthly Banking Statistics](#) for December 2018

World Development Report 2019: The changing nature of work

World Bank: 01 January 2019

Technology brings a further wave of uncertainty as the pace of the innovation continues to accelerate, both creating opportunities. View the report [here](#).

CASES

[Australian Securities and Investments Commission v CFS Private Wealth Pty Ltd \(No 2\) \[2019\] FCA 24](#)

CORPORATIONS – application by the Australian Securities and Investments Commission (ASIC) to wind up the three respondent companies on the just and equitable ground under s 461(1)(k) of the Corporations Act 2001 (Cth) (the Act) – the relevant principles for such winding up orders – where one of those companies is deregistered, whether it should first be reinstated under s 601AH(2) of the Act – whether ASIC is an aggrieved person for the purposes of s 601AH(2) of the Act

CORPORATIONS – application by ASIC to permanently restrain the fourth respondent from providing financial services under s 1324(1)(e) of the Act and to disqualify him from managing corporations under s 206E(1) of the Act – where the fourth respondent was a financial advisor engaged in the investment of his clients' superannuation savings – where ASIC's investigations determined that the fourth respondent frequently misappropriated investor funds for personal purposes over a number of years – where the fourth respondent, as the director of the first respondent, failed to ensure that the first respondent lodged its annual financial statements on time or at all – the principles relevant to

disqualification and restraint orders – the appropriate restraint and disqualification periods to be imposed

[Gas Sensing Technology Corporation v Prox Pty Ltd \[2019\] WASC 10](#)

Practice and procedure - Interlocutory injunction - Undertaking - Monies in one side's lawyers' trust account - Rival claims - De facto interpleader - USA parent company with other co-plaintiff - Secured lender - Restraint on security enforcement sought by injunction - Inglis v Commonwealth Trading Bank security given - Interim undertakings from respondent undertakings accepted before hearing of contested interlocutory injunction hearings - Interlocutory injunction refused - Claim to money made by former plaintiff (in liquidation) - Claim by interlocutory injunction respondent to monies in trust account as Inglis security - Claim by USA parent on Quistclose trust - Interpleader stance by lawyers holding funds. Corporations Act 2001 (Cth); Personal Property Securities Act 2009 (Cth)

[Warrington Management Pty Ltd v Kingslane Property Investments Pty Ltd \[2019\] WASC 2](#)

Restitution - Provision of services - Whether agreement between the parties that remuneration payable for services performed Contract law - Recovery of loan - Terms of repayment - Whether parties agreed repayment terms other than payment on demand Equity - Breach of fiduciary duty - Whether fiduciary duties were relevantly owed - Whether actions taken constitute a breach of fiduciary duty - Whether loss and damage suffered as a result of breach - Accessorial liability - Whether party liable under first limb of Barnes v Addy as 'knowing recipient'

Corporations law - Breach of fiduciary duty - Director's liability - Whether an order should be made under s 1318 of the Corporations Act 2001 (Cth)

[McKenzie v Cash Converters International Ltd \(No 3\) \[2019\] FCA 10](#)

PRACTICE AND PROCEDURE – application for disqualification of judge on the basis of apprehended bias – whether hypothetical lay observer might apprehend that a settlement approval application pursuant to s 33V of the Federal Court of Australia Act 1976 (Cth) might be determined otherwise than on its merits – disqualification application dismissed
PRACTICE AND PROCEDURE – observations on appropriate procedure for raising the issue of apprehended bias; Evidence Act 1995 (Cth) s 144; Federal Court of Australia Act 1976 (Cth) Pt IVA, Pt VAA s 33V; Class Actions Practice Note (GPN-CA)

[Watson and Australian Securities and Investments Commission \[2018\] AATA 4677](#)

TAXATION AND COMMERCIAL DIVISION – Application for Limited Australian Financial Services Licence s 913B(1) – Corporations Act 2001 (Cth) – was the application made in accordance with s 913A – s

913B(1)(a) – no reason to believe applicant likely to contravene obligations if the AFSL is granted – s 913B(1)(b) – financial services covered by the licence provided efficiently, honestly and fairly – conditions on the licence – financial services laws – available adequate financial resources – knowledge of the financial services covered by the licence – good fame and character – decision under review affirmed

[White \(Trustee\) v MWL Financial Group Pty Ltd, in the matter of MWL Financial Group Pty Ltd \[2018\] FCA 2018](#)

CORPORATIONS – application for leave to bring proceedings on behalf of a company under s 237 of the Corporations Act 2001 (Cth) – whether applicants acting in good faith – whether breakdown of relationship between parties evidences lack of good faith – whether grant of leave in best of interests of company – asserted breaches of statutory and fiduciary duties – asserted constructive trust for benefit of company – capacity of company to fund litigation – whether serious question to be tried – threshold for demonstrating serious question to be tried – disputes as to factual matters a triable issue – whether appropriate that applicants indemnify company for costs of proceeding

[Bentleys \(Sunshine Coast\) Pty Ltd & Ors v Thomson \[2018\] QCA 358](#)

Allow the appeal. PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – where the plaintiff claimed damages pursuant to s 588M of the Corporations Act 2001 (Cth) – where the defendant/respondent brought a third party claim against four third parties – whether the primary judge erred in refusing to strike out the entirety of the pleadings – whether the pleadings disclosed no reasonable cause of action. At all material times the First Third Party held itself out as possessing expertise in respect of accounting, taxation, business structuring and financial planning (“expertise”) including by: Advertising it’s expertise on its website <http://www.pwafinancial.com.au>, which was automatically redirected to <http://bentleyssunshinecoast.com.au/web/index.php> on or about 15 October

[Kings & Ors v Australian Securities and Investments Commission \[2018\] QCA 352](#)

CORPORATIONS – MANAGEMENT AND ADMINISTRATION – DUTIES AND LIABILITIES OF OFFICERS OF CORPORATION – OFFENCES – CONTRAVENTION OF PROVISIONS OF ACT – where the Australian Securities and Investments Commission (“ASIC”) commenced a civil penalty case against MFS Investment Management Ltd (“MFSIM”) and various directors, officers and employees of the MFS Group of companies – where the proceedings against MFSIM were resolved by consent but the trial proceeded against each of Mr King, Mr White, Mr Hutchings, Mr Anderson and Ms Watts – where the primary judge found that MFSIM, the responsible entity for the Premium Income Fund (“PIF”), caused payments of \$130 million and \$17.5 million to be made from PIF’s funds for no purpose or benefit of PIF; the payments were made for the purposes of other entities within the MFS Group

LEGISLATION

Commonwealth

Regulations

[ASIC Corporations \(Asia Region Funds Passport\) Instrument 2019/75](#)

01/02/2019 - This instrument determines information in documents lodged under sections 1212 and 1213 of the Corporations Act 2001 that will not be publicly available for inspection or copying

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

23/01/2019 - Act No. 135 of 2009 - 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

[Accounting Standard AASB 20188 Amendments to Australian Accounting Standards - Right-of-Use Assets of Not-for-Profit Entities](#)

08/01/2019 - This instrument amends 5 Accounting Standards to provide a temporary option for NFP entities to not apply the fair value initial measurement requirements for right-of-use assets arising under leases with significantly below-market terms and conditions principally to enable the entity to further its objectives.

[Accounting Standard AASB 2018-7 Amendments to Australian Accounting Standards - Definition of Material](#)

07/01/2019 - This instrument amends 6 AASB Standards to clarify the definition of material and its application.

[Accounting Standard AASB 2018-6 Amendments to Australian Accounting Standards - Definition of a Business](#)

07/01/2019 - This instrument amends the AASB 3 - Business Combinations - August 2015 to clarify the definition of a business, to assist entities to determine whether a transaction should be accounted for as a business combination or an asset acquisition.

[Auditing Standard ASA 2018-1 Amendments to Australian Auditing Standards](#)

03/01/2019 - This instrument amends ten auditing standards to provide consequential and conforming changes arising from the issuance of ASA 540 Auditing Accounting Estimates and Related Disclosures.

[Auditing Standard ASA 540 Auditing Accounting Estimates and Related Disclosures](#)

03/01/2019 - This instrument deals with the auditor's responsibilities relating to accounting estimates and related disclosures in an audit of a financial report. Specifically, it includes requirements and guidance that refer to, or expand on, how ASA 315, ASA 330, ASA 450, ASA 500 and other relevant Auditing Standards are to be applied in relation to accounting estimates and related disclosures.

[Corporations \(Relevant Providers Degrees, Qualifications and Course Standard\) Determination 2018](#)

24/12/2018 - The instrument approves a number of bachelor and higher degrees, and equivalent qualifications, for the purposes of the first education and training standard that relevant providers must meet under subparagraph 921B(2)(a) of the Corporations Act 2001 (financial planning)

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