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ISSUE 34



BANKING SECTOR NEWSLETTER

IN THE MEDIA

Some AFS licensees may be breaking overseas laws

AFS licensees are on notice that in addition to overseas consequences of potential breaches of overseas law, ASIC will consider whether breaching overseas law is consistent with obligations under Australian law to provide services 'efficiently, honestly and fairly' <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-088mr-some-afs-licensees-may-be-breaking-overseas-laws/>

FASEA welcomes new directors

The Financial Adviser Standards and Ethics Authority (FASEA) notes the Government's announcement of the appointment of Elissa Freeman and Louise Lakomy to the Board effective 11 April 2019 <https://www.fasea.gov.au/fasea-welcomes-new-directors/>

FPA appoints Dale Boucher as new Chair of Conduct Review Commission

The FPA has announced the appointment of Dale Boucher as Chair of its Conduct Review Commission (CRC), with outgoing Chair Graham McDonald remaining a CRC member in the role of Deputy Chair <https://fpa.com.au/news/fpa-appoints-dale-boucher-as-new-chair-of-conduct-review-commission/>

ASIC releases final report on CBA's compliance with financial advice licence conditions

ASIC released KordaMentha Forensic's final report on CBA's advice compensation program under its additional licence conditions. ASIC took this action because the licensees did not apply review and remediation processes consistently to customers of 15 financial advisers, disadvantaging some customers <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-085mr-asic-releases-final-report-on-cba-s-compliance-with-financial-advice-licence-conditions/>

ASIC welcomes FRC report on audit enforcement

ASIC has welcomed the release of the report by Australia's Financial Reporting Council (FRC) Auditor Disciplinary Processes: Review and the Federal Government's response to that report. ASIC will re-evaluate its criteria for taking auditor enforcement actions, and the types of outcomes that it may seek, including the use of enforceable undertakings and referrals of matters to the CADB <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-082mr-asic-welcomes-frc-report-on-audit-enforcement/>

ASIC enforcement update July to December 2018

ASIC has released its enforcement update report for the period 1 July 2018 to 30 December 2018. The report also covers ongoing areas for particular focus, including criminal sanctions against banks, their executives and others who have breached corporate and financial services law. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-083mr-asic-enforcement-update-july-to-december-2018/>

FSC: Consumers a step closer to understanding fees and costs

Consumers are another step closer to being able to clearly understand what they are being charged for when it comes to financial products. The FSC's RG 97 Working Group submission, sent to ASIC on 2 April, highlights the need for increased transparency and comparability to help consumers make informed decisions about financial products <https://www.fsc.org.au/news/media-releases>

Financial firms required by law to cooperate with AFCA

The Australian Financial Complaints Authority (AFCA) warmly welcomes the Government's announcement that financial firms will be required by law to cooperate with AFCA to resolve financial complaints <https://www.afca.org.au/news/media-releases/financial-firms-required-by-law-to-cooperate-with-afca/>

Coalition responds to Auditor Discipline Review

The Government has released to release the Financial Reporting Council (FRC)'s [Auditor Disciplinary Processes: Review](#) and the Morrison Government's response to this review. The Government is committed to ensuring that auditors are held to a high standard, and that auditors who fail to discharge their statutory or professional duties are appropriately sanctioned <http://srr.ministers.treasury.gov.au/media-release/048-2019/>

Taking action on the Banking, Superannuation & Financial Services Royal Commission**Going further by paying unpaid determinations: Recommendations 3.11 - Cooperation with AFCA**

Through regulation, the Government has now enabled the payment of legacy unpaid external dispute resolution determinations issued under the Terms of Reference for the Financial Ombudsman Service and the Credit and Investments Ombudsman Rules <http://jaf.ministers.treasury.gov.au/media-release/067-2019/>

COBA: Australia's banking sector on its way to becoming more competitive

Australians will soon enjoy a more competitive banking sector after Parliament passed an important Bill during the busy budget week sitting period. The Treasury Laws Amendment (Mutual Reforms) Bill 2019 includes both tranches of the reforms to address recommendations made in the Hammond Review to improve the ability of credit unions, building societies and mutual banks to take on the 'Big Four' banks <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1359-australias-banking-sector-on-its-way-to-becoming-more-competitive->

ASIC imposes additional licence conditions on AMP Financial Planning

The conditions were imposed when ASIC granted AMPFP's application to vary its AFS licence to provide managed discretionary account (MDA) services, and follows an ASIC surveillance of AMPFP's MDA services and advice business <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-078mr-asic-imposes-additional-licence-conditions-on-amp-financial-planning/>

ASIC welcomes approval of new laws to protect financial service consumers

ASIC has welcomed the passage of key financial services reforms contained in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) legislation. This will require issuers to identify in advance the consumers for whom their products are appropriate, and direct distribution to that target market <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-079mr-asic-welcomes-approval-of-new-laws-to-protect-financial-service-consumers/>

FSC welcomes laws to protect consumers from poor products

The Financial Services Council has welcomed the passage of the Treasury Laws Amendment (Design and Distribution Obligation and Product Intervention Powers) Bill 2019. The changes mean financial services providers are now required by law to take a customer focused approach when offering products <https://www.fsc.org.au/news/media-releases>

FSC welcomes new board members

The Financial Services Council welcomes Alex Wade, CEO of AMP's Australian Wealth Management, Andrew Tobin, CFO Challenger Limited and Jason Yetton, CEO of Commonwealth Bank's NewCo as Directors to the FSC Board <https://www.fsc.org.au/news/media-releases>

General advice should not be labelled advice at all; says FPA

Following the recent research from ASIC that found many consumers are confusing 'general' and 'personal' advice, the Financial Planning Association of Australia (FPA) is once again calling for the separation of financial advice from financial product marketing and product information <https://fpa.com.au/news/general-advice-should-not-be-labelled-advice-at-all-says-fpa/>

ABA: Social Impact Investing Taskforce a welcome first step

The announcement of a Social Impact Investing Taskforce and three trial sites is a welcome step by the Federal Government and answers the banking industry's call for a clear direction on this innovative solution to tackling entrenched disadvantage <http://www.ausbanking.org.au/media/media-releases/media-release-2019/social-impact-investing-taskforce-a-welcome-first-step>

ASIC re-issues practical guidance for foreign financial services providers in information Sheet 157

ASIC has re-issued Information Sheet 157 Foreign financial services providers – practical guidance (INFO 157) for foreign financial services providers (FFSPs) seeking to provide financial services only to wholesale clients in Australia <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-076mr-asic-re-issues-practical-guidance-for-foreign-financial-services-providers-in-information-sheet-157/>

A balanced budget for all Australians, says FPA

FPA welcomes tax cuts for low to middle-income Australian households, more super flexibility, and post-Royal Commission clean-up funds The Financial Planning Association of Australia (FPA) welcomes measures to bring forward tax breaks for low and middle-income workers, introduce greater flexibility into the superannuation system, and an ongoing investment in reducing misconduct in financial services <https://fpa.com.au/news/a-balanced-budget-for-all-australians-says-fpa/>

FSC Response to 2019 Budget

The Financial Services Council (FSC) welcomes the confirmation that the Budget will return to surplus in 2019-20 after a lengthy period of deficits. The improving Budget position means the Budget can afford personal tax reductions, which will help address the growing tax burden, boost household incomes and help Australians create wealth

<https://www.fsc.org.au/news/media-releases>

Rebl Corp contracts under investigation by AFCA

The AFCA is investigating a number of complaints from small businesses who had contracts with Rebl Corp, Digital Rebl and Media Rebl (collectively known as Rebl Corp group) following the collapse of the company. AFCA will investigate whether the credit providers can enforce the rental agreements against the small businesses

<https://www.afca.org.au/news/media-releases/rebl-corp-contracts-under-investigation-by-afca/>

APRA begins consultation on Financial Sector (Shareholdings) Rules 2019

The Australian Prudential Regulation Authority (APRA) has begun a consultation on draft rules that give clarity to owners of new entrant financial sector companies on whether they are likely to be approved under the Financial Sector (Shareholdings) Act 1998 (FSSA)

<https://www.apra.gov.au/media-centre/media-releases/apra-begins-consultation-financial-sector-shareholdings-rules-2019>

IN PRACTICE AND COURTS

[RBA: Monetary Policy Decision](#)

Number 2019-07; Date 2 April 2019

At its recent meeting, the Board decided to leave the cash rate unchanged at 1.50 per cent.

[COBA releases roadmap to fix competition issues in banking sector](#)

COBA's 'Competition Agenda' calls on all incumbents and candidates to adopt a four-step agenda that would boost competition in the banking sector and provide consumers with greater choice in the retail banking market. Each of the four-steps includes a series of recommendations to achieve each agenda item. The list of recommendations is included in Table 1 and full 'Competition Agenda' can be read [here](#)

[Resolution of disputes with financial service providers within the justice system](#)

Senate Legal and Constitutional Affairs Committee; Parliament of Australia: 08 April 2019

This inquiry explored the ability of consumers and small businesses to exercise their legal rights through the justice system, and whether there are fair, affordable and appropriate resolution processes to resolve disputes with financial service providers

APRA Consultation: The Financial Sector (Shareholdings) Rules 2019 (The Rules)

In particular, APRA has proposed Rules setting out the matters that must be considered in determining if a person is "fit and proper" for the purposes of the FSSA. The consultation period on the proposed Rules has now commenced, with APRA accepting submissions until 27 May 2019. Copies of the draft Rules and explanatory material are available [here](#).

[ASIC: Financial advice: Mind the gap report](#)

The results highlight there is significant confusion among consumers, and within industry, media and Government about the definitions and roles of a qualified financial planner who provides personal advice, and institutions and non-qualified individuals who simply sell financial products

[FPA CFP Certification Program first professional designation program accredited by FASEA](#)

The CERTIFIED FINANCIAL PLANNER® or CFP® Certification Program is now the first professional designation education program in Australia that qualifies for recognition of prior learning (RPL) by the Financial Adviser Standards and Ethics Authority (FASEA)

[Consultation on AFCA Rules changes](#)

The AFCA is seeking submissions on proposed changes to its Rules which will expand its jurisdiction to deal with eligible complaints about conduct dating back to 1 January 2008. This expanded jurisdiction would operate for a period of 12 months from 1 July 2019. Submissions close on 12 April 2019.

See further details from afca.org.au/consultations

[ASFA Reminder: Recovering your unclaimed money](#)

From the 27th June 2019 applications for unclaimed monies under s254 of the Bankruptcy Act can be made directly to Australian Financial Security Authority (AFSA) replacing the current Court application process.

An application form and further information about the new process will be published closer to the commencement date

FCA Submissions

10 April 2019 - [FSC Submission - APRA Capability Review](#)

3 April 2019 - [2019_0403_FSC Submission - PYS Regs Final](#)

8 April 2019 - [FSC Submission - ASIC Consultation Paper 308 - Review of RG97](#)

FPA Submissions

[CP308 – RG 97: Disclosing fees and cost in periodic statements and product disclosure statements](#)

[Draft Relevant Providers Degrees, Qualifications and Courses Standard \(Amendment No.1\) Legislative Instrument](#)

AFCA Newsletter

AFCA News contains case studies, articles and information that is relevant to members and consumers. See [Edition 2, 10 April 2019](#)

[APRA Open consultation on determination under paragraph 37EA\(4\)\(b\) of the Banking Act 1959](#)

The Banking Executive Accountability Regime (BEAR), set out in Part IIAA of the [Banking Act 1959](#), establishes accountability obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors. The April 2019 consultation package sets out APRA's proposal to allow a structure-neutral application of the deferred remuneration obligations under the BEAR. Submissions are requested by 30 April 2019

ABA Submissions

[Banking System Reform \(Separation of Banks\) Bill 2019](#)

9 April 2019 - The ABA does not support this Bill and has concerns with the drastic regulatory intervention it proposes. The industry's existing reform program will be more efficient, less costly and less disruptive to the economy and community.

ABA: Raising the bar to help customers doing it tough

The ABA welcomes written responses to this consultation paper which should be submitted to submissions@ausbanking.org.au. Written consultation responses are due by 10 May 2019.

ASIC Consultation: Responsible Lending Guidance

ASIC has issued a consultation paper to update its guidance on responsible lending (CP 309).

ASIC wants to ensure its guidance provides industry with certainty, including as a result of emerging technology and initiatives such as open banking and comprehensive credit reporting. ASIC is currently welcoming submissions from interested parties. The consultation is open for a period of three months, with comments due by 20 May 2019

Current Inquiries Economics Legislation Committee

[Banking System Reform \(Separation of Banks\) Bill 2019](#).
Reporting Date: 13 May 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

CASES

[Hall v Bank of Australia Limited, in the matter of Hall \[2019\] FCA 514](#)

BANKRUPTCY AND INSOLVENCY – interlocutory application for review of a decision of a Registrar setting aside a bankruptcy notice – where substantive applicant had been required to serve originating application, affidavit and orders on the substantive respondent – where substantive applicant gave sworn evidence that he had served the documents on the respondent – whether Court should find substantive applicant not a witness of the truth – interlocutory application dismissed

[In the matter of Harmon International Holdings Pty Ltd \[2019\] NSWSC 413](#)

CORPORATIONS – Winding up – Statutory demand – Genuine dispute about existence of debt – Defendant claims to have been subrogated to mortgagee's rights on discharge of plaintiff's mortgage – Plaintiff disputes defendant's involvement in transaction – Plaintiff disputes entitlement to subrogation – Genuine dispute made out – Demand set aside.

EVIDENCE – Hearsay – Transcript of liquidator's examination – EVIDENCE – Hearsay – Applicability of hearsay rule in application to set aside statutory demand

[Super Vision Resources Ltd v Xu \(No 2\) \[2019\] NSWSC 389](#)

GUARANTEE AND INDEMNITY – enforcement of guarantee – no issue of principle

By a loan agreement entered into on 4 July 2014 (the Loan Agreement), the plaintiff, Super Vision Resources Ltd (Super Vision), agreed to lend the Hong Kong Dollar (HKD) equivalent of AUD43,800,000 to Hua Cheng International Holdings Group Pty Ltd (Hua Cheng) in connection with the development by Hua Cheng of a mixed residential and commercial project

[Rural Bank Ltd v Fels \[2019\] WASC 110](#)

Practice and procedure - Plaintiff's application for summary judgment - Turns on own facts -

Summary judgment entered for the plaintiff. The loan was secured by a mortgage

[Baker v Culvenor \[2019\] VSC](#)

CIVIL CLAIMS – Order of VCAT summarily dismissing civil claim on limitation defence – Plaintiff self-represented – Issue as to when cause of action arose – Tribunal found loan repayable on a date not advanced by the parties – Tribunal decided case on written submissions after limited hearing – Failure to find terms of contract – Appeal allowed – Limitation of Actions Act 1958 s 5(1)(a); Victorian Civil and Administrative Tribunal Act 1998 ss 75, 148

LEGISLATION

Commonwealth

[Treasury Laws Amendment \(Design and Distribution Obligation and Product Intervention Powers\) Bill 2019](#)

Finally passed both Houses - 03 April 2019 - The new law requires financial service providers to design and sell products with a target market in mind. While the vast majority of Australians benefit from quality products, this new regime offers an extra layer of protection

See Act No 50 – 10 April 2019 - [Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Act 2019](#)

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