



BANKING SECTOR NEWSLETTER

IN THE MEDIA

CCMC announces Inquiry into banks' conduct when accepting and enforcing Guarantees

The independent Banking Code Compliance Monitoring Committee (CCMC) has announced its Inquiry into banks' compliance with the Guarantee protections set out in the 2013 Code of Banking Practice. The Inquiry was prompted by the increasing number and severity of breaches by banks of the guarantee protections in the Code. <http://www.ccmc.org.au/news-and-publications/latest-news/>

RBA: The Operation of the Interchange Standards: Conclusions and Variation of Standards

After consultation with industry, the Reserve Bank has decided to implement the proposals it put forward in February to vary [Standards No 1 and No 2 of 2016](https://www.rba.gov.au/media-releases/2019/mr-19-14.html) to improve the clarity and operation of the net compensation requirements of the Standards. The Bank will also implement its proposed transitional arrangement to the varied Standards. <https://www.rba.gov.au/media-releases/2019/mr-19-14.html>

Royal Commission continues to sting with million dollar levy

The tail end of the Hayne Royal Commission continues to hit the finance industry with institutions set to pay 10 per cent more in order to fund the work of government bodies including APRA and ASIC. <https://www.investordaily.com.au/regulation/45068-government-seeks-consultation-on-supervisory-levies>

Accountants seek voice in retirement advice provision

Accountants have sought a place at the table when the Government initiates a review of the retirement income system, suggesting an essential element is proving access to affordable financial advice. <https://www.superreview.com.au/news/post-retirement/accountants-seek-voice-retirement-advice-provision>

NAB to remediate thousands of mortgage customers

The major bank will be required to remediate almost 5,000 additional home loan customers that were overcharged interest after it failed to properly link their loans to offset accounts. <https://www.mortgagebusiness.com.au/breaking-news/13497-nab-to-remediate-thousands-of-mortgage-customers>

Two former CBA employees charged with fraud

A former senior manager and a former manager at the major bank have been charged with fraud after allegedly misappropriating nearly half a million dollars from the bank's internal accounts. <https://www.mortgagebusiness.com.au/breaking-news/13478-two-former-cba-employees-charged-with-fraud>

Gold Coast financial adviser banned for five years

ASIC has banned Gold Coast adviser Daniel John Renneberg from providing financial services for five years after a surveillance found that he had failed to act in the best interests of his clients. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-123mr-gold-coast-financial-adviser-banned-for-five-years/>

IN PRACTICE AND COURTS

[Statement by Philip Lowe, Governor: Monetary Policy Decision](#)

At its meeting on 4 June 2019, the Board decided to lower the cash rate by 25 basis points to 1.25 per cent. The Board took this decision to support employment growth and provide greater confidence that inflation will be consistent with the medium-term target.

[RBA: Standards No 1 and No 2 of 2016](#)

The Standards limit interchange fees in designated card payment systems. The variations to the Standards have been approved by the Payments System Board, and will take effect from 1 July 2019. [The Conclusions Paper](#) sets out details of the Bank's consultation on the proposals, stakeholder views and the Bank's assessment and conclusions.

RBA Consultations

31 May 2019 The Reserve Bank and APC are considering the adoption of the ISO 20022 standard for cross border Australian Payments Systems and is now inviting comments from the industry on key strategic decisions for an ISO 20022 migration project. The aim is for this project to be complete by the end of 2024, ahead of the completion of SWIFT's cross-border payments migration and in line with international migrations. [ISO 20022 Migration for the Australian Payments System](#)

[AASB: Conceptual Framework for Financial Reporting](#)

New Conceptual Framework for Financial Reporting: A new Conceptual Framework has been issued for for-profit private sector entities that have public accountability and are required by legislation to comply with Australian Accounting Standards.

IASB proposed amendments to IFRS 3 Business Combinations

The amendments would update a reference to the Conceptual Framework for Financial Reporting without changing the accounting requirements for business combinations. IFRS 3 specifies how a company should account for the assets and liabilities it acquires when it obtains control of a business. View the [Exposure Draft Reference to the Conceptual Framework](#), Submit your [comment letters here](#). Comments close 27 September.

[APRA: Prudential Practice Guide APG 223 Residential Mortgage Lending](#)

The APRA is now proposing to amend Residential mortgage lending for authorised deposit-taking institutions. A four-week consultation will close on 18 June, ahead of APRA releasing a final version of the updated APG 223 shortly afterwards.

[APRA Monthly Banking Statistics for April 2019](#)

APRA releases its Monthly Banking Statistics for April 2019.

Australian Financial Complaints Authority Current Matters

[Digital Rebl Pty Ltd and Media Rebl Pty Ltd](#)

[Forex Capital Trading Pty Ltd](#)

[AGM Markets Pty Ltd](#)

[Berndale Capital Securities Pty Ltd](#)

[Bestjet Travel Pty Ltd \(Bestjet\)](#)

[Viewble Media and the Shoppers Network](#)

CASES

[ACN 601 158 507 Pty Ltd v Damodaran \[2019\] NSWSC 647](#)

Grant leave to the plaintiff, pursuant to section 74O of the Real Property Act 1900 (NSW), to lodge a further caveat in respect of the defendant's property claiming an interest by way of a charge for payment of moneys outstanding and an entitlement to lodge a caveat pursuant to a Loan Agreement and Guarantee between the plaintiff and the defendant.

LAND LAW – caveats – whether caveatable interest arose under Loan Agreement – whether caveat is invalid for lack of description – extension of operation of caveat refused – leave to lodge fresh caveat pursuant to s 74O Real Property Act 1900 (NSW)

[Mansion Building Pty Ltd v Warren \[2019\] NSWCATAP 141](#)

APPEAL – leave to appeal – substantial miscarriage of justice – decision under appeal not fair or equitable loan finance from the National Australia Bank (the "construction loan") to fund those works. The construction loan was for approximately \$700,000 and was secured by a registered mortgage over the land.

[Wickham Hill Investment Pty Ltd v Ding \[2019\] NSWSC 631](#)

MORTGAGES AND SECURITIES – personal property security interests – Personal Property Securities Act 2009 (Cth) ("PPSA") – amendment demands – judicial process for considering amendment demand under PPSA s 182 – nature of the Court's enquiry – whether the Court can finally determine the parties' rights in an application under s 182 – onus of proof – consideration of jurisdiction to restrain threatened registration of further financing statements under s 182(4)(c).

EQUITY – equitable remedies – injunctions – injunctions in the Court's inherent jurisdiction – injunctive relief in aid of the determination of title to property – where injunction sought to restrain further registration of a financing statement of the Personal Property Securities Register – injunction refused in circumstances where no declaratory relief sought to clarify existence of security interest.

CONTRACTS – construction – five agreements entered into between individual shareholders / directors of a company and a third party lender – where agreements written in Mandarin and translated into English – whether the company was a party to the agreements – whether the five agreements create "security interests" arising under the Personal Property Securities Act 2009 (Cth).
CORPORATIONS – capacity to contract by corporation – whether corporation became party to agreement by stamping its corporate seal to a pre-existing agreement – corporate state of mind – stamping of corporate seal not intended to signify accession to agreement but merely to comply with Chinese custom.

[Wilkes & Anor v D.C. Construction Services Pty Ltd \[2019\] QSC 117](#)

MORTGAGES – MORTGAGE CONTRACT – LIABILITIES SECURED – OTHER PARTICULAR CASES – where the applicants entered into a contract with the respondent – where the contract provided for the undertaking of construction works for subdivision of the applicants' land – where the applicants entered into a loan agreement with a third party for the purpose of undertaking the subdivision – where the loan was secured by a number of transactions, including a registered mortgage executed by the applicants over the land subject of the subdivision – where the construction works were carried out by the respondent and the respondent alleges that the applicants have not paid a sum due and payable under the contract for those works – where the loan agreement was assigned to the respondent – where the land was then sold and two sums, paid into court, are alleged by the respondent to be payable by the applicants to it in respect of the loan agreement and the contract – whether the registered mortgage, in respect of which the applicants are mortgagors and the respondent is the assignee of the original mortgage, secures the pre-assignment liability under the contract alleged to be owing by the mortgagors to the assignee – whether money advanced under the loan agreement is so secured by the mortgage

[Lake Laurel Pty Ltd & Ors v Nichols Constructions Pty Ltd & Ors \(No 2\) \[2019\] QSC 145](#)

Judgment for the third plaintiff on his claim against the first and second defendants for payment of the principal sum under the loan agreement and the mortgage in the amount of \$3,775,000.00.

CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – CONSTRUCTION AND INTERPRETATION OF CONTRACTS – IMPLIED TERMS – GENERALLY – where the parties were involved in a project to subdivide land – where the first plaintiff and the first defendant entered into a loan agreement, with the second defendants as guarantors, which was secured by a registered mortgage, under which the first defendant agreed to pay the principal sum of \$3,775,000.00 to the first plaintiff, by incremental instalments on the sale of each lot in the proposed subdivision, with the balance to be repaid 12 months from registration of the plan(s) of subdivision – where the debt under the loan agreement and mortgage were later assigned to the third plaintiff – where the third plaintiff claims the debt has become due and payable, as a consequence of the first defendant's breach of express and implied terms of the loan agreement and mortgage, by allowing the development approval for the land to lapse, and failing to obtain registration of the plan(s) of subdivision within a reasonable time – where the defendants do not challenge the contention that the first defendant breached the loan agreement and/or the mortgage in the ways contended by the third

plaintiff, but argue the principal sum has not become payable because of an earlier breach by the first plaintiff of the implied obligation under the loan agreement and the mortgage to cooperate – whether the implied obligation to cooperate required the first plaintiff to take steps to ensure that plan(s) for subdivision of the land were registered, or not to hinder or obstruct the first defendant's efforts in that regard – whether such a breach, even if established, could be relied upon to defend the claim by the third plaintiff, as assignee, to recover the principal sum – whether the first plaintiff breached the implied obligation to cooperate – whether the principal sum under the loan agreement is due and payable to the third plaintiff.

[Koonara Management Pty Ltd v Rockliff \(No 2\) \[2019\] FCA 808](#)

CONTRACTS – managed investment scheme – claims for payment of outstanding invoices and loans – whether alleged debts proved – whether loan deeds enforceable without registration of power of attorney – whether funds advanced under loan deed – where the scheme constitution makes no provision for payment of invoices following winding up of the project – application dismissed.

CORPORATIONS – cross-claim – unconscionable conduct – whether cross-respondents contravened s 12CA and s 12CB of the ASIC Act 1989 by statements in prospectus – whether cross-claimant was placed in a position of special disadvantage – whether, in all the circumstances, the cross-respondents engaged in unconscionable conduct in connection with the supply of financial services – claim dismissed.

LEGISLATION

Commonwealth

[Standard No. 2 of 2016 The Setting of Interchange Fees in the Designated Debit and Prepaid Card Schemes and Net Payments to Issuers Variation 2019](#)

The objective of this Standard is to ensure that the setting of interchange fees and payments and other transfers of valuable consideration having an equivalent object or effect to interchange fees in each designated debit card scheme and prepaid card scheme is transparent and promotes: efficiency; and competition in the Australian payments system. This instrument commences on 1 July 2019.

[Standard No. 1 of 2016 The Setting of Interchange Fees in the Designated Credit Card Schemes and Net Payments to Issuers Variation 2019](#)

This instrument varies Standard No. 1 of 2016 The Setting of Interchange Fees in the Designated Credit Card Schemes and Net Payments to Issuers, to improve the operation of the Net Compensation Provision in a manner consistent with its original purpose and intent. This Standard as varied with effect from 1 July 2019 must be complied with for the Reporting Period ending on 30 June 2020 and all subsequent Reporting Periods.

Gazetted

[Annual Federal Courts and Tribunals Fee Increases from 1 July 2019](#)

Pursuant to section 16 of the High Court of Australia (Fees) Regulations 2012, from 1 July 2019 the fee prescribed for each item of Schedule 1 to those Regulations will be the amount listed here Annual Federal Courts and Tribunals Fee Increases from 1 July 2019

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