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BANKING SECTOR NEWSLETTER

IN THE MEDIA

A mortgage as long as your working life

Australians are the second most indebted households in the world, and a handful of lenders will let borrowers spread that large debt burden over a 40-year repayment period, allowing them to borrow more but also pay for the privilege. <https://www.abc.net.au/news/2019-06-22/you-can-get-a-mortgage-as-long-as-your-working-life/11234796>

AUSTRAC orders audit of Afterpay's compliance with financial crime legislation

AUSTRAC has ordered the appointment of an external auditor to Afterpay Pty Ltd to examine its compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. The audit will be used to determine the extent of any compliance issues and whether further regulatory action concerning Afterpay is required. <http://www.austrac.gov.au/media/media-releases/austrac-orders-audit-afterpay%E2%80%99s-compliance-financial-crime-legislation>

ASIC commences civil penalty proceeding against Westpac for poor financial advice

In Court documents filed yesterday, ASIC alleges that, in four sample client files selected by ASIC, Mr Sinha breached the 'best interests' duty under the Corporations Act ('the Act'), provided inappropriate financial advice, and failed to prioritise the interests of his clients. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-175mr-asic-commences-civil-penalty-proceeding-against-westpac-for-poor-financial-advice>

ABA: Bank fees drop following abolition of ATM withdrawal fees

While the cost of living for Australian families continues to rise, bank fees charged to households have dropped by 6.5% over the last 12 months. ABA CEO says the dramatic drop is largely due to the abolition of ATM withdrawal fees by several banks, a reduction in home loan and deposit account fees and reducing overdrawn and dishonour fees. <https://www.ausbanking.org.au/bank-fees-drop-following-abolition-of-atm-withdrawal-fees/>

The Framework for Monetary Policy Implementation in Australia

The Reserve Bank of Australia's domestic market operations are designed to ensure that the cash rate is consistent with the target set by the Reserve Bank Board (20 June 2019). The RBA also ensures that there is sufficient liquidity in the cash market for it to function smoothly. This article provides an overview of the RBA's operational framework for implementing monetary policy.

<https://www.rba.gov.au/publications/bulletin/2019/jun/the-framework-for-monetary-policy-implementation-in-australia.html>

RBA: Bank Fees in Australia

The Reserve Bank has conducted a survey on bank fees each year since 1997. The removal of ATM withdrawal fees by a number of banks reduced total fees charged to households. However, this was largely offset by the continued increase in fee income from small businesses, reflecting strong growth in credit card and debit card transactions. This article summarises the results from the latest survey, covering banks' financial years ending in 2018. <https://www.rba.gov.au/publications/bulletin/2019/jun/bank-fees-in-australia.html>

A Decade of Post-crisis G20 Financial Sector Reforms

The global financial crisis resulted in significant disruption to markets, financial systems and economies. It also led to comprehensive reform of the financial sector by the G20 group of countries. This article looks at the main financial sector reforms developed in the immediate post-crisis period, their implementation in Australia and the more recent shift in international bodies' focus to assessing whether these reforms have met their intended objectives. <https://www.rba.gov.au/publications/bulletin/2019/jun/a-decade-of-post-crisis-g20-financial-sector-reforms.html>

Consumers choosing customer owned banking institutions over 'Big Four'

Australians are continuing to look beyond the 'Big Four' with new data showing consumers are choosing customer owned banking institutions over the investor owned banks. Australia's customer owned banking institutions now hold more than \$119 billion in asset. <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1378-consumers-choosing-customer-owned-banking-institutions-over-big-four>

Bank cartel case claims high-profile scalp at ASX

The cartel scandal that has rocked the Australian banking industry has claimed another scalp with the resignation of former JP Morgan Australia CEO Robert Priestley from the board of ASX Ltd. <https://www.businessnewsaus.com.au/articles/bank-cartel-case-claims-high-profile-scalp-at-asx.html>

ASIC foreshadows 'novel' instances from legacy complaints

As financial planning firms brace for the possibility of having to deal with client complaints dating back to 2008, the Australian Securities and Investments Commission (ASIC) has acknowledged the likelihood of "novel" issues arising which may require further regulatory tweaks. <https://www.moneymanagement.com.au/news/financial-planning/asic-foreshadows-%E2%80%98novel%E2%80%99-instances-legacy-complaints>

AFCA welcomes ASIC approval for legacy complaints

The Australian Financial Complaints Authority (AFCA) has welcomed the Australian Securities and Investments Commission's (ASIC) announcement that it has approved a change to AFCA's Rules to allow it to investigate certain complaints dating back to 1 January 2008. <https://www.afca.org.au/news/media-releases/afca-welcomes-asic-approval-for-legacy-complaints/>

New Payments Platform: Conclusions Paper

The Reserve Bank today released a report on the functionality of, and access to, the New Payments Platform. The report presents 13 recommendations from the public consultation that the Bank has undertaken with input and assistance from the ACCC. See the [report](https://www.rba.gov.au/media-releases/2019/mr-19-17.html). <https://www.rba.gov.au/media-releases/2019/mr-19-17.html>

IN PRACTICE AND COURTS

AFSA: PPSR registration management guide

The PPSR Business Guide has recently been released and is "plain English" publication which is intended to help Australian businesses who are not familiar with the practical implications of the Personal Property Securities Act.

Court fees to increase from 1 July

From 1 July, court fees will increase for the [Family Court of Australia](#) and the [Federal Circuit Court of Australia—Family Law](#). General federal law fees will also increase in the [Federal Circuit Court of Australia](#) on the same date.

[APRA Report: quarterly authorised deposit-taking institution statistics for March 2019](#)

Data released today by the Australian Prudential Regulation Authority has shown that over the past 12 months the customer owned banking sector's housing loans have increased by 8 per cent while the major banks grew by just 2.6 per cent.

[CCMC submission to ABA vulnerability consultation](#)

The Banking Code Compliance Monitoring Committee (CCMC) has made the following submission to the Australian Banking Association's consultation about a new industry Guideline on supporting customers experiencing vulnerability.

[ASIC REP 574 Overview of decisions on relief applications \(October 2017 to March 2018\)](#)

The report notes that between 1 October 2017 and 31 March 2018, ASIC granted relief from provisions of the Corporations Act 2001 (Corporations Act) or the National Consumer Credit Protection Act 2009 (National Credit Act) in relation to 766 applications.

[ASIC REP 620: Overview of decisions on relief applications \(Oct 2018 to March 2019\)](#)

Outlines decisions on relief applications and highlights ASIC's efforts to reduce red-tape. The report also provides examples where ASIC has exercised, or refused to exercise, its exemption and modification powers under the Corporations Act and the licensing and responsible lending provisions of the National Credit Act.

[Financial Adviser Standards and Ethics Authority \(FASEA\): draft guidance on education pathways for existing financial advisers](#)

Under the professional standards reforms, existing financial advisers have until 1 January 2024 to meet the degree-equivalent requirements set by the Standards Authority. The draft guidance is available on the Standards Authority's website: www.fasea.gov.au.

Current Inquiries - Economics Legislation Committee

[Consumer protection in the banking, insurance and financial sector](#). On 14 February 2018, the Senate granted an extension of time to report by 26 June 2018.

Australian Financial Complaints Authority (AFCA) reminder

From 1 July 2019, Australian consumers and small business will be able to lodge complaints with AFCA about the conduct of financial firms dating back to 1 January 2008. AFCA will accept complaints from 1 July 2019 and follow the usual practice of referring them back to the financial firms to resolve them.

[Exposure Draft ED 289: Annual Improvements to Australian Accounting Standards 2018–2020](#)

ED 289 proposes to amend AASB 1 First-time Adoption of Australian Accounting Standards, AASB 9 Financial Instruments, AASB 16 Leases and AASB 141 Agriculture. Annual improvements are limited to changes that either clarify the wording in the Standard or correct relatively minor unintended consequences, oversights or conflicts between requirements in the Standards. Submit your comments to the AASB by 31 July 2019 via the [AASB website](#).

[IFAC: Global Consultation on Quality Management for Firms and Engagements Now Open](#)

The International Auditing and Assurance Standards Board (IAASB) seeks public comment by July 1, 2019 on three interrelated standards that address quality management. The proposals bring important changes to the way professional accountancy firms are expected to manage quality—for audits, reviews, and other assurance and related services engagements.

[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.

[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 Standards No 1 and No 2 of 2016.

CASES

[Bendigo and Adelaide Bank Limited v Boothbuck International Pty Ltd & Ors; Bendigo and Adelaide Bank Limited v Irongrow Corporation Pty Ltd \(in liq\) & Ors \[2019\] QSC 153](#)

CORPORATIONS – LEGAL CAPACITY AND RELATIONS WITH OUTSIDERS – EXECUTION OF DOCUMENTS – GENERALLY – where a husband and wife entered into a loan with a bank – where the bank procured a guarantee and mortgage from the husband and wife's company, which owned the family home as trustee – where the trustee company was the subject of a winding up order – where, following the winding up order, the husband lodged for registration a transfer of the family home to another company as incoming trustee – where the husband signed the transfer on the outgoing trustee's behalf as its sole director

and secretary – where the transfer was registered – whether the outgoing trustee executed the transfer – whether the transfer was void and of no effect. REAL PROPERTY – TORRENS TITLE – REGISTRATION – AMENDMENT OR VARIATION OF TITLE RECORD – RECTIFICATION GENERALLY – where the bank seeks declarations to facilitate the registrar's exercise of the discretion to correct the freehold land register – where the husband and wife were also the directors of the incoming trustee – where the husband and wife controlled and managed the affairs of the incoming trustee – where they received letters from the bank notifying them that the outgoing trustee was the subject of a winding up order – where, prior to the purported execution of the transfer, the husband ceased being a director of the incoming trustee – whether the incoming trustee is taken to have had actual or constructive knowledge that the outgoing trustee was in liquidation and that it did not execute the transfer and that the transfer was invalid – whether the incoming trustee would be prejudiced if the freehold land register was corrected.

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – SUMMARY JUDGMENT FOR PLAINTIFF OR APPLICANT – GENERALLY – where the bank applies for summary judgment to recover possession of the family home on the ground that the winding up order constituted a default under the mortgage – where the outgoing trustee has not filed a defence – where the husband and wife, as occupiers of the family home, have filed a defence – where the husband and wife raise arguments in their capacity as borrowers and not as occupiers – where the husband and wife argue that the National Credit Code applies to the mortgage – where the mortgagor, the outgoing trustee, is incorporated under the Corporations Act 2001 (Cth) – whether summary judgment should be granted.

[Australian Securities and Investments Commission v Kobelt \[2019\] HCA 18](#)

Trade practices – Consumer protection – Unconscionable conduct – Where s 12CB(1) of Australian Securities and Investments Commission Act 2001 (Cth) relevantly prohibited "unconscionable" conduct in trade or commerce in connection with supply or possible supply of financial services – Where respondent provided "book-up" credit to Anangu customers of general store – Where book-up credit allowed deferral of whole or part of payment for goods subject to respondent retaining customer's debit card and personal identification number – Where respondent used debit card to withdraw whole or nearly whole of wages or Centrelink payments shortly after credited to prevent customers having practical opportunity to access monies – Where respondent applied part of withdrawn funds to reduce customer's indebtedness and made remainder

available for provision of future goods and services – Where respondent's record-keeping inadequate and often illegible – Where customers vulnerable due to remoteness, limitations on education, impoverishment and low levels of financial literacy – Where book-up system "tied" Anangu customers to general store – Where customers had understanding of basic elements of book-up system – Where withdrawals authorised by customers – Where customers generally supportive of book-up and respondent's business – Where book-up protected customers from cultural practices requiring sharing of resources with certain categories of kin – Where book-up ameliorated effects of "boom and bust" cycle of expenditure and allowed purchase of food between pay days – Whether respondent's conduct unconscionable within meaning of s 12CB(1) of Act.

[Hume Plasterboard Pty Limited v Brilliant Interiors Pty Limited \[2019\] NSWSC 679](#)

In this case, the court declared that the guarantee executed by Ms Sun on 30 May 2016 is void and unenforceable as against Ms Sun. GUARANTEE – action by creditor against guarantor – whether guarantor knew force and effect of document which she signed – credit of guarantor in issue – whether guarantor a volunteer – significance of relationship between guarantors – guarantor a witness of truth – guarantor did not understand force and effect of guarantee – guarantor deceived by a friend – guarantee unenforceable against guarantor.

[Bendigo and Adelaide Bank Limited v Boothbuck International Pty Ltd & Ors; Bendigo and Adelaide Bank Limited v Irongrow Corporation Pty Ltd \(in liq\) & Ors \[2019\] QSC 153](#)

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[Tweed and Australian Securities and Investments Commission \[2008\] AATA 514](#)

CORPORATIONS – FINANCIAL SERVICES AND MARKETS – banning order – whether power to make a banning order – whether not complied with a financial services law – whether director of corporation can fail to comply on the basis that it is the controlling mind of a corporation that has failed to comply – whether other circumstances in which director can fail to comply when corporation failed to comply – relevance of finding that director involved in corporation's contravention – whether banning order would protect public from certain unsolicited off-market offers to purchase shares – purpose of banning order – decision set aside.

[Australian Securities and Investments Commission v Vocation Limited \(In Liquidation\) \[2019\] FCA 807](#)

CORPORATIONS – whether ASX announcement made by company relating to funding contracts and withholding of payments was misleading or deceptive or likely to mislead or deceive – whether company contravened s 1041H by making such announcement. CORPORATIONS – whether completed due diligence questionnaire (DDQ) provided by company to proposed underwriter of proposed equity capital raising was misleading or deceptive or likely to mislead or deceive – whether company contravened s 1041H of the Act by providing DDQ to proposed underwriter. Section 1041H of the Act relevantly provides that "a person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive" (s 1041H(1)). Securities in a company such as Vocation constitute financial products for this purpose.

[KOONARA MANAGEMENT PTY LTD \(RECEIVERS AND MANAGERS APPOINTED\) v FABRIANO PTY LTD \[2019\] SASC 99](#)

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - COSTS - GENERAL RULE: COSTS FOLLOW EVENT - GENERAL PRINCIPLES AND EXERCISE OF DISCRETION

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - COSTS - DISCONTINUANCE OF OR WITHDRAWAL FROM PROCEEDING

Applications for costs. Personal Property Securities Act 2009 (Cth) ss 73, 73(1); Corporations Act 2001 (Cth) s 420A, referred to. <http://www.austlii.edu.au/au/cases/sa/SASC/2019/99.html>

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