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BANKING SECTOR NEWSLETTER

IN THE MEDIA

APRA to focus more on competition

The Customer Owned Banking Association (COBA) key recommendations to the APRA Capability Review have been taken on board. These include for APRA to better balance competition with its other objectives, to accommodate different business models, to ensure approval processes are efficient and to consult about macroprudential measures. <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1383-apra-to-focus-more-on-competition>

APRA statement [APRA welcomes Capability Review report and outlines action plan](#).

FSC [FSC Response - APRA capability review](#).

Smartbank 86 400 granted banking licence from APRA

New 'smartbank' 86 400 has received an ADI licence from APRA, bringing the bank one step closer to its public launch. The APRA licence is a full banking licence, meaning 86 400 can take unlimited customer deposits and that it has met the same regulatory requirements as the Big Four banks. [Smartbank 86 400 granted banking licence from APRA](#).

APRA statement [APRA grants new authorised deposit-taking institution licence to 86400](#)

Finance watchdog finds \$83M for consumers

The Australian Financial Complaints Authority (AFCA) has marked its first six months of operating by claiming it has collected over \$83 million for consumers and small businesses who approached it with financial complaints. The report shows that banks received the most complaints of all financial institutions (12,305). AFCA was established to provide consumers and small businesses with free and independent dispute resolution for financial complaints. <https://psnews.com.au/2019/07/18/finance-watchdog-finds-83m-for-consumers/> AFCA's six-month report can be accessed here [PS News link](#).

Canary in the coal mine': Complaints over big four banks inundating finance watchdog

In its first six-month report, the Australian Financial Complaints Authority said 67 per cent of all complaints received related to the four major banks. <https://www.abc.net.au/news/2019-07-15/financial-services-sector-complaints-investigated/11308312>

Tax Practitioners Board begins new financial year investigating 350 high-risk tax practitioners

At the start of the new financial year, the TPB has revealed that it is currently investigating more than 350 tax practitioners who are suspected of high-risk behaviour. A number of these cases were as a result of referrals from the Australian Taxation Office (ATO). <https://www.businessacumen.biz/news/4115-tax-practitioners-board-begins-new-financial-year-investigating-350-high-risk-tax-practitioners>

Council of Financial Regulators discreetly updates charter

The Council of Financial Regulators has updated its charter for the first time since the council was established in 2004. Of note is the inclusion of the requirement to coordinate engagement with the work of financial institutions, forums and regulators. <https://www.investordaily.com.au/regulation/45294-council-of-financial-regulators-discreetly-update-charter>

ASIC finds unacceptable sales practices, poor product design and significant remediation costs in CCI sold by major banks and lenders

ASIC's review of the sale of consumer credit insurance (CCI) by 11 major banks and other lenders has found that the design and sale of CCI has consistently failed consumers. ASIC's report ([REP 622](#)) highlights the very low value of CCI products and the unfair way they are promoted and sold to consumers. 19-180MR ASIC finds unacceptable sales practices, poor product design and significant remediation costs in CCI sold by major banks and lenders. In response, the Finance Sector Union of Australia has urged government action on consumer credit insurance and bank cultural issues. <https://www.investordaily.com.au/regulation/45304-union-demands-govt-action-on-credit-insurance>

Poor culture costs major banks \$500 million

The culture at three of Australia's biggest banks will cost them \$500 million each after APRA has advised it will increase their minimum capital requirements. The APRA increase follows a decision by the regulator to apply a \$1 billion capital add-on to CBA after the findings of the prudential inquiry. <https://www.investordaily.com.au/regulation/45291-poor-culture-costs-major-banks-500-million>

AUSPAYNET: The move away from cheques accelerates

The rate of decline in the use of cheques is increasing with a record drop of over 25% reached for the period April 2018 to April 2019. <https://www.auspaynet.com.au/insights/blog/cheques-decline>

NAB's wealth arm MLC to face class action over \$100 million in super fees

National Australia Bank's wealth arm faces a \$100 million legal claim that it ripped off superannuation customers by overcharging commissions to financial advisers. <https://www.smh.com.au/business/banking-and-finance/mlc-to-face-class-action-over-100-million-in-super-fees-20190709-p525ng.html>

Rosita borrowed \$250 and then faced debt collectors. Now ASIC is cracking down

Months after being given new powers, corporate watchdog ASIC is taking action against Gold Coast payday lender Cigno Loans, which is accused of exploiting vulnerable Australians. <https://www.abc.net.au/news/2019-07-09/asic-to-use-powers-against-pay-day-lender-cigno/11289224>

ASIC consults on proposal to intervene to stop consumer harm in short term credit

ASIC has released a consultation paper (CP 316) on the first proposed use of its new product intervention power. In its first proposed deployment of this power, ASIC is targeting a model involving a short term credit provider and its associate who charge fees under separate contracts. [19-177MR](https://www.19-177MR) [ASIC consults on proposal to intervene to stop consumer harm in short term credit](https://www.19-177MR)

ASIC boosts AFSL application requirements

ASIC has altered the procedure it uses to assess Australian Financial Services Licence applicants, with many now required to provide more historic information to the corporate regulator. <https://www.financialstandard.com.au/news/asic-boosts-afsl-application-requirements-138790551>

IN PRACTICE AND COURTS

[The effect of mortgage debt on consumer spending: evidence from household-level data](#)

This paper explores the relationship between owner-occupier mortgage debt and spending using detailed panel data on Australian households. It finds evidence consistent with a 'debt overhang effect' – households cut back on their spending when they have higher levels of outstanding mortgage debt.

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](#)

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

[ASIC consultation: foreign financial services providers relief proposals](#)

CP 301 sets out a proposal to enable foreign providers to apply for a modified form of Australian financial services (AFS) licence (foreign AFS licence). This follows ASIC's review of the regulatory settings behind our foreign providers relief. The current foreign provider licensing relief due to sunset on 27 September 2018, will be extended until 30 September 2019 while we consult with stakeholders. SIC invites submissions on CP 301 by 31 July 2018.

[AASB: Exposure Draft: ED 292 Amendments to AASB 17](#)

ED 292 proposes targeted amendments to AASB 17 *Insurance Contracts* relating to the following topics: scope exclusions—credit card contracts and loan contracts that meet the definition of an insurance contract.

The Exposure Draft also proposes to defer the effective date of AASB 17 by one year to annual reporting periods beginning on or after 1 January 2022, as well as extending the AASB 9 *Financial Instruments* temporary exemption in AASB 4 *Insurance Contracts* by one year. Comments to the AASB are due by 30 August 2019, [click here](#) for further information.

[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](#).

CASES

[BENDIGO AND ADELAIDE BANK LIMITED \(ACN 068 049 178\) & ORS v KENNETH ROSS PICKARD & ANOR \[2019\] SASC 123](#)

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS
CONTRACTS - GENERAL CONTRACTUAL PRINCIPLES - CONSIDERATION

DEEDS This is a claim for moneys owed under a guarantee.

Held: 2. The guarantees in the loan deed were not ultra vires or in breach of fiduciary duty.

3. The loan deed was not validly executed as it did not meet the requirements in section 127 of the Corporations Act 2001 (Cth). The guarantees in the loan deed are therefore invalid.

[Petrochemical Commercial Company International Ltd v Commonwealth Bank of Australia \[2019\] NSWSC 849](#)

DISCOVERY – equitable discovery – production of documents and information sought in proceedings in Australia to aid the prosecution of civil proceedings in Malaysia – the Malaysian proceedings seek the recovery of large sums of money alleged to have been misappropriated from the plaintiffs in a fraudulent conspiracy and then distributed from Malaysia to a number of other countries including Australia – the defendant bank in Australia agrees to orders for equitable discovery and will consent to the production of the documents and information sought – once the documents are produced by the defendant bank the plaintiff seeks release from its obligations under Harman v Secretary of State for the Home Department [1983] 1 AC 280 not to use the documents and information for purposes unrelated to these proceedings and specifically to enable their use in the Malaysian proceedings – not all the documents and information produced on equitable discovery relates to or identifies alleged conspirators in the fraud alleged in the Malaysian proceedings – on what terms should the Harman undertaking be released in the circumstances – what steps should be taken to protect the identity and confidential information of potentially innocent third parties.

[In the matter of ACN 150 567 098 Pty Ltd \(in liquidation\) \(formerly known as Organic Response Investors Pty Ltd\) and ACN 151 527 098 Pty Ltd \(in liquidation\) \(formerly known as Organic Response Pty Ltd\) \[2019\] NSWSC 869](#)

Declaration to be made in respect of Note Deed.

Declaration sought in respect of ranking of E.ON Loan Agreement and Constellation Loan Agreement not to be made in present form.

CORPORATIONS – winding up – debt subordination – application for declarations in respect of proper construction of convertible note deed and loan agreements – where loan agreements in substantially same form – whether claims of noteholders under note deed subordinated to claims of ordinary creditors – whether claims under loan agreements rank equally with claims of ordinary creditors – whether declarations sought should be made. Corporations Act 2001 (Cth) ss 436A, 511, 556, 563C.

LEGISLATION

Commonwealth

Acts Compilation

[Banking Act 1959](#)

Act No. 6 of 1959 as amended, taking into account amendments up to Treasury Laws Amendment (2019 Measures No. 1) Act 2019. An Act to regulate Banking, to make provision for the Protection of the Currency and of the Public Credit of the Commonwealth, and for other purposes.

Regulation

[Accounting Standard AASB 2019-1 Amendments to Australian Accounting Standards – References to the Conceptual Framework](#)

This instrument makes amendments to Australian Accounting Standards, Interpretations and other pronouncements to reflect the issuance of the Conceptual Framework (Conceptual Framework) by the Australian Accounting Standards Board.

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