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BANKING SECTOR NEWSLETTER

IN THE MEDIA

Bank bosses dispute 'loyalty tax' accusations despite longstanding customers' more expensive loans

The heads of Australia's two biggest banks front a parliamentary inquiry and mount a vigorous defence of the practice of charging longstanding customers higher rates for home loans compared to new customers walking in off the street. <https://www.abc.net.au/news/2019-11-08/bank-bosses-dispute-loyalty-tax-assertions-parliament-inquiry/11685714>

Banks bear brunt of AFCA complaints

AFCA has released a new online comparison tool that allows consumers to view and compare the number and nature of complaints filed against financial institutions. The tool, named Datacube, was designed for consumers to see if their insurer, bank, financial adviser, superannuation fund or other financial firm has received and responded to consumer complaints. <https://www.mortgagebusiness.com.au/breaking-news/13980-banks-bear-brunt-of-afca-complaints>

ASIC calls out accountants

The Australian Securities and Investment Commission said it does not believe accountants provide "more compliant or better financial advice" than financial advisers. <https://www.financialstandard.com.au/news/asic-calls-out-accountants-148464109>

Consultation on legislation for Australian Business Growth Fund

The Morrison Government has released for consultation exposure draft legislation that will give effect to the Government to invest in an Australian Business Growth Fund (BGF) to ensure that small and medium-sized businesses (SME's) have access to the finance they need. <http://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/consultation-legislation-australian-business-growth>

\$185 million in compensation awarded to consumers in AFCA's first 12 months

The Australian Financial Complaints Authority is celebrating 12 months since it opened its doors as the nation's one-stop-shop for complaints about financial firms. <https://www.afca.org.au/news/media-releases/185-million-in-compensation-awarded-to-consumers-in-afcas-first-12-months/>

ASIC extends relief for portfolio holdings disclosure

ASIC has amended ASIC Class Order [CO 14/443] to provide legal certainty about the first reporting day for portfolio holdings disclosure, given the regulations setting out the required

disclosures have not yet been made. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-295mr-asic-extends-relief-for-portfolio-holdings-disclosure/>

ASIC takes civil penalty action against RI Advice and former Melbourne financial adviser, John Doyle: Royal Commission case study

ASIC alleges RI Advice knew, or should have known, that there was substantial risk Mr Doyle was not complying with his obligations under the law and was repeatedly recommending structured products to his clients, bypassing compliance processes. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-297mr-asic-takes-civil-penalty-action-against-ri-advice-and-former-melbourne-financial-adviser-john-doyle-royal-commission-case-study/>

FSC Media Release FSC releases guide to help stop elder financial abuse

The Financial Services Council (FSC) Guide on the Prevention of Elder Financial Abuse (The Guide) was launched today signalling an important step by the financial services sector towards ending the financial abuse of older Australians. <https://www.fsc.org.au/resources/1875-fsc-media-release-fsc-releases-guide-to-help-stop-elder-financial-abuse/file>

ASIC wins appeal against Westpac companies

The Federal Court delivered the corporate regulator a win in its appeal against a previous ruling on Westpac's telephone campaigns. The corporate regulator claimed that the two Westpac companies had breached their FoFA-stipulated best interest duty by advising rollovers to Westpac-related super funds without a proper comparison of options, as required by law. <https://www.financialstandard.com.au/news/asic-wins-appeal-against-westpac-companies-147952340>

IN PRACTICE AND COURTS

APRA commences consultation on standardised submission dates for ADI quarterly reporting

The APRA has commenced consultation on a proposed standardisation of quarterly reporting due dates for authorised deposit-taking institutions (ADIs). The proposed standardised due date is 35 calendar days after the last day of the reference quarter. A letter informing ADIs of the proposed changes and inviting feedback is available at: <https://www.apra.gov.au/consultation-on-proposed-changes-to-due-dates-of-quarterly-reporting-for-adis> (08 November 2019)

APRA releases new Monthly Authorised Deposit-taking

[Institution Statistics for September 2019](#)

The APRA has released its Monthly Authorised Deposit-taking Institution Statistics (MADIS) for September 2019. This is the third edition of the new MADIS publication, which replaced the Monthly Banking Statistics (MBS).

[APRA consults on the capital treatment of mortgages covered by the First Home Loan Deposit Scheme](#)

The APRA has released for consultation its proposed revision to the capital treatment for eligible mortgages covered by the Government's First Home Loan Deposit Scheme (FHLDS).

[ASFA Personal Insolvencies 2019](#)

The Australian Financial Security Authority (AFSA) released regional personal insolvency statistics for the September quarter 2019. Over 61% of new personal insolvencies were in capital cities in the September quarter 2019.

[IFAC: Enhancing Corporate Reporting to Meet the Needs of Investors and Other Stakeholders](#)

To address the future of reporting, and the role accountants must play in it, IFAC has published its Point of View on enhancing corporate reporting. Also published on the Gateway is an [article](#) from IFAC CEO Kevin Dancy and IIRC Interim CEO Charles Tilley that highlights the evolving role of CFOs and finance teams in accounting for value creation.

[Proposed amendment to Chapter 11 of the AML/CTF Rules \(Compliance Report – reporting and lodgment periods\)](#)

AUSTRAC has released proposed amendments to Chapter 11 of the AML/CTF Rules for public consultation.

The proposed amendments remove references to the 2018 reporting and lodgment periods and sets those periods for 2019 and each successive year.

APRA: Consultations on revisions to the capital framework for authorised deposit-taking institutions

APRA is consulting on revisions to the capital framework for authorised deposit-taking institutions (ADIs) to implement 'unquestionably strong' capital ratios and the Basel III reforms.

September 2019 - Round 3- Response paper on interest rate risk in the banking book requirements. Written submissions are requested by 6 December 2019.

[Response to Submissions - Interest rate risk in the banking book for authorised deposit-taking institutions September 2019](#)

[Draft Prudential Standard APS 117 Capital Adequacy Interest Rate Risk in the Banking Book](#)

CASES

[Australian Securities and Investment Commission v Westpac Securities Administration Limited \[2019\] FCAFC 187](#)

CORPORATIONS – where Westpac conducted campaign to encourage customers to roll over funds held in external superannuation accounts into their existing Westpac accounts – whether Westpac's campaign involved the provision of a "recommendation" or "statement of opinion" amounting to "financial product advice" – whether Westpac's campaign involved the provision of "personal advice" or "general advice" within the meaning of s 766B of the Corporations Act 2001 (Cth) (the Act) – where primary judge found that Westpac provided general financial product advice – "personal advice" was given because a reasonable person might expect the callers to have considered the objectives of the customers in making the recommendation to accept the rollover service – consequent contraventions of ss 912A(1)(b) and (c), 946A, 961B(1) and 961K(1) of the Act – appeal allowed.

CORPORATIONS – whether Westpac failed to do all things necessary to ensure financial services provided "efficiently, honestly and fairly" – where primary judge found contraventions of s 912A(1)(a) of the Act – Westpac did not act efficiently, honestly, or fairly in conducting a campaign with the aim of getting its customers to make a decision after the provision of only "general advice" where that decision could only prudently be made having regard to information personal to the customers and the superannuation accounts – whether, if Westpac had been found to have given only "general advice", an alternative case on s 912A(1)(a) was run before the primary judge – no alternative case articulated because the case before the primary judge was predicated on the likelihood or fact of "personal advice" – cross-appeal dismissed.

[Brokenshire Ventures Pty Limited v Commonwealth Bank of Australia \[2019\] NSWSC 1471](#)

Judgment for the defendants. BANKING AND FINANCE – banks – liabilities – negligence – nature of joint accounts – joint account usually operated by husband – sale of shares and withdrawal of proceeds by wife – whether CommSec and bank obliged to prevent transaction – relationship governed by terms of contract – no duty of care imposed.

[Oak Capital Mortgage Fund Limited v Dlakic \[2019\] NSWSC 1538](#)

Judgment for the plaintiff. MORTGAGES AND SECURITIES – mortgages – duties, rights and remedies of mortgagee – default on mortgage – whether mortgagee entitled to possession of land – leave granted to issue writ of execution CONTRACTS – cross-claim – general contractual principles – harsh, unconscionable or oppressive contracts and statutory remedies – whether higher interest rate under loan agreement amounted to a contractual penalty – whether contract unjust for purposes of s 9(1) of the Contracts Review Act – no relief granted.

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