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BANKING SECTOR NEWSLETTER

IN THE MEDIA

ASIC updates responsible lending guidance

ASIC has published updated guidance on the responsible lending obligations that are contained in the National Consumer Credit Protection Act. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-342mr-asic-updates-responsible-lending-guidance/>

Consumers to get better deals under Comprehensive Credit Reporting

The National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 has been updated to include the Government's recently announced changes to the reporting of hardship arrangements. <http://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/consumers-get-better-deals-under-comprehensive-credit>

ABA calls for public views on credit card use in gambling

Today the Australian Banking Association has released a consultation paper on the use of credit cards for gambling and is seeking views from the public. <https://www.ausbanking.org.au/aba-calls-for-public-views-on-credit-card-use-in-gambling/>

APRA proposes major uplift in transparency around banking data

The APRA has proposed substantially increasing the volume and breadth of data it makes publicly available on authorised deposit-taking institutions (ADIs), including banks, credit unions and building societies. <https://www.apra.gov.au/news-and-publications/apra-proposes-major-uplift-transparency-around-banking-data>

Regulators circle as scandal engulfs Westpac

APRA chair Wayne Byres told a parliamentary hearing on Monday that the watchdog would confirm by the end of the month whether it would launch legal proceedings under the Banking Executive Accountability

Regime (BEAR) against the besieged bank. <https://www.financialstandard.com.au/news/regulators-circle-as-scandal-engulfs-westpac-150561560>

ASIC and APRA issue updated MoU

The ASIC and Australian Prudential Regulation Authority (APRA) have committed to strengthen engagement, deepen cooperation and improve information sharing, publishing today an updated Memorandum of Understanding (MoU). <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-328mr-asic-releases-updated-rg-97-on-fees-and-cost-disclosure/>

ABA: Mandatory national Power of Attorney register a win for older Australians

Today's decision by the Council of Attorneys General in Adelaide to set baseline minimum standards for Powers of Attorney and create a mandatory national online register is a big leap forward to combating elder financial abuse. <https://www.ausbanking.org.au/mandatory-national-power-of-attorney-register-a-win-for-older-australians/>

RBA Review of Retail Payments Regulation – Issues Paper released

The Issues Paper discusses and seeks stakeholder views on a number of potential issues that could be covered by the Review, including some recommendations made in reports by the Productivity Commission and the Black Economy Taskforce in relation to interchange fees, merchant service fees and least-cost routing of dual-network debit card transaction. <https://www.rba.gov.au/media-releases/2019/mr-19-32.html>

ASIC reports on compliance with financial advice fee disclosure obligations

A new report about fee disclosure obligations released by ASIC has found that consumers receiving financial advice could be at risk of receiving wrong information

about advice fees, or in some cases, being charged fees after ongoing fee arrangements have terminated. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-325mr-asic-reports-on-compliance-with-financial-advice-fee-disclosure-obligations/>

Westpac heads to face accountability law

Treasurer Josh Frydenberg has confirmed Westpac's leadership team will be examined against the Banking Executive Accountability Regime (BEAR). <https://www.investordaily.com.au/regulation/46126-westpac-heads-to-face-accountability-law>

Independent KPMG Report recognises strong growth of customer owned banking sector

An independent report by KPMG has found the customer owned banking sector has performed strongly despite the economic headwinds and challenges facing the retail banking market. <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1402-independent-kpmg-report-recognises-strong-growth-of-customer-owned-banking-sector>

ASIC outlines approach to advice licensee obligations for the financial adviser code of ethics

As announced on 14 November 2019, ASIC has taken action to provide certainty to Australian financial services (AFS) licensees that they will not be in breach of the law because their financial advisers were not able to register with an ASIC-approved compliance scheme by 1 January 2020, as originally required. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-319mr-asic-outlines-approach-to-advice-licensee-obligations-for-the-financial-adviser-code-of-ethics/>

FPA welcomes ASIC statement on FASEA Code of Ethics

The Financial Planning Association of Australia (FPA) welcomes today's statement from the Australian Securities and Investments Commission (ASIC) that outlines its approach to advice licensee obligations for the financial adviser code of ethics. <https://fpa.com.au/news/fpa-welcomes-asic-statement-on-fasea-code-of-ethics/>

IN PRACTICE AND COURTS

[APRA releases letter to ADIs on the capital treatment of investments in the Australian Business Growth Fund](#)

The APRA has published a letter to authorised deposit-taking institutions outlining the regulatory capital treatment of their equity investments in the Australian Business Growth Fund. The letter can be found on the APRA website.

[FASEA Code of Ethics and Guide reminder](#)

The Code of Ethics that is applicable to the conduct of all advisers who provide financial services to retail

clients. Compliance with the Code which comprises five (5) values and twelve (12) Standards will come into effect on 1 January 2020. (To assist stakeholders in understanding, interpreting and applying the Code, FASEA is releasing a Code of Ethics guide ([FG002 Code of Ethics Guidance](#))

[ABA: Industry Guideline: Sale of unsecured debt](#)

This voluntary Industry Guideline complements the provisions of the Banking Code of Practice (the Code) set out in Chapter 14 (Customers who may be vulnerable), Chapter 41 (Financial Hardship) and Chapter 43 (Recovering a Debt). This guideline reflects good industry practice and the ABA encourages members to use this guideline to set internal processes, procedures and policies. The Guideline will commence operation from 1 March 2020.

ABA Parliamentary update

The Government introduced omnibus bills in the House of Representatives this Parliamentary fortnight in response to Royal Commission recommendations: *Mortgage broking remuneration and best interests duty* Recommendations 1.2 and 1.3 - requiring mortgage brokers to act in the best interests of consumers when providing consumer credit assistance; reforming mortgage broker remuneration by requiring the value of upfront commissions to be linked to the amount drawn down by borrowers instead of the loan amount; banning campaign and volume-based commissions and payments; and capping soft dollar benefits. These measures will apply from 1 July 2020.

[ASIC RG 97 on fees and cost disclosure](#)

The updated version of Regulatory Guide 97 Disclosing Fees and Costs in PDSs and Periodic Statements (RG 97) explains how product issuers and platform operators should disclose fees and costs. Also, the guidance and associated legislative instrument have been drafted to make the regime more practical for industry and promote compliance by issuers with their legal obligations.

[IFRS: Interest-rate benchmarks amendments](#)

Amendments issued today focus on the accounting effects of uncertainty in the period leading up to the reform. The amendments come into effect from 1 January 2020 but companies may choose to apply them earlier. Interest Rate Benchmark Reform, which amends IFRS 9, IAS 39 and IFRS 7, can be accessed here (subscription required).

CASES

[BMW Australia Ltd v Brewster; Westpac Banking Corporation v Lenthall \[2019\] HCA 45](#)

Appeal allowed. Practice and procedure – Representative action – Orders – Where s 33ZF of Federal Court of Australia Act 1976 (Cth) and s 183 of Civil Procedure Act 2005 (NSW) provide that in

representative proceeding court may make any order court thinks appropriate or necessary to ensure justice is done in proceeding – Where representative proceedings commenced in Federal Court of Australia and Supreme Court of New South Wales – Where proceedings funded by litigation funders – Where litigation funders entered into litigation funding agreements with small number of group members – Where representative parties in each proceeding applied for common fund order – Whether s 33ZF of Federal Court of Australia Act and s 183 of Civil Procedure Act empower Federal Court of Australia and Supreme Court of New South Wales to make common fund order.

Words and phrases – “access to justice”, “appropriate or necessary to ensure that justice is done in the proceeding”, “award of damages”, “book building”, “common fund”, “common fund order”, “distribution of moneys recovered”, “equitable sharing of costs”, “fair and reasonable to all group members”, “free riding”, “funding commission”, “funding equalisation order”, “interests of justice”, “litigation funding”, “representative proceeding”, “risk”, “unfunded group members”.

[Bank of Queensland Limited v Star Trek Pty Ltd \[2019\] NSWSC 1712](#)

PERSONAL PROPERTY – property secured by finance agreement – default entitling bank to seize collateral – bank’s rights under s 123 of Personal Properties Securities Act 2009 (Cth) – declaration and associated orders made.

LEGISLATION

Commonwealth

[National Consumer Credit Protection Amendment \(Mandatory Credit Reporting and Other Measures\) Bill 2019](#)

HR 05/12/2019 - Under this mandatory regime, large ADIs must provide comprehensive credit information on consumer credit accounts to certain credit reporting bodies. Schedule 1 to this Bill expands ASIC’s powers so it can monitor compliance with the mandatory regime. Schedule 1 to the Bill also imposes additional requirements on where data held by a credit reporting body must be stored.

THIS EDITION’S EDITORS



David Murray-Nobbs

Partner

+61 2 9225 2714

+61 405 183 587

dmurraynobbs@tglaw.com.au



Marc Saadie

Partner

+61 2 9225 2752

mssaadie@tglaw.com.au

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SYDNEY | Level 25, 1 O’Connell Street | Sydney NSW 2000

MELBOURNE | Level 39, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000

BRISBANE | Level 28, Waterfront Place, 1 Eagle Street | Brisbane QLD 4000

PERTH | Level 27, Exchange Tower, 2 The Esplanade | Perth WA 6000

ADELAIDE | Level 7, 19 Gouger Street | Adelaide SA 5000

tglaw.com.au

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@ThomsonGeer