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ISSUE 59



BANKING SECTOR NEWSLETTER

IN THE MEDIA

Insurers urged to learn from AFCA decisions

Insurers should examine Australian Financial Complaints Authority decisions to improve their own internal complaints processes and must make clear to consumers that disputes can be taken to the adjudicator, the General Insurance Code of Practice Governance Committee says. <https://www.insurancenews.com.au/local/insurers-urged-to-learn-from-afca-decisions>

ASIC pushes design and distribution out to late 2021

Consistent with the Federal Treasurer, Josh Frydenberg's announcement around the delayed implementation of Royal Commission recommendations, the ASIC has announced it will not be proceeding with mortgage broker best interest duty and remuneration reforms or design and distribution obligations for at least six months. <https://www.moneymanagement.com.au/news/policy-regulation/asic-pushes-design-and-distribution-out-late-2021>

ASIC bans three financial advisers

Three financial advisers have been banned by ASIC: Christopher Harris for 10 years, and Bimaljeet Sekhon and Alan Davies for three years each. <https://www.moneymanagement.com.au/news/financial-planning/asic-bans-three-financial-advisers>

ASIC [20-111MR](#) ASIC bans financial advisers

Update on the implementation of the Banking, Superannuation and Financial Services Royal Commission

The Morrison Government has announced a six month deferral to the implementation of commitments associated with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as a result of the significant impacts of COVID-19. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/update-implementation-banking-superannuation-and>

Fixed term investment marketers in ASIC's sights

Firms marketing fixed term investment products as a substitute for bank term deposits have been placed on notice, with the regulator warning consumers that such offerings are not necessarily comparable with bank term deposits. <https://www.moneymanagement.com.au/news/policy-regulation/fixed-term-investment-marketers-asic%E2%80%99s-sights>

Deferrals, redraws to offset decline in volumes: RBA

Banks are set to retain the current value of their mortgage books despite an expected decline in home loan volumes, according to the Reserve Bank. <https://www.mortgagebusiness.com.au/breaking-news/14522-deferrals-redraws-to-offset-decline-in-volumes-rba>

ASIC releases weekly regulatory tracker

ASIC has launched a new weekly regulatory tracker to assist users during the COVID-19 pandemic. The tracker lists and includes links to all new and updated regulatory guides, information sheets, reports and consultation papers issued by ASIC and published on its website. <https://www.financialstandard.com.au/news/asic-releases-weekly-regulatory-tracker-160119282>

ME Bank responds to customer outcry over missing cash

After thousands of customers reported missing money from mortgage redraw facilities, the bank apologises for not communicating with customers and promises to do better. <https://www.abc.net.au/news/2020-05-08/me-bank-redraw-changes/12229080>

Six-month deferral for Royal Commission commitments

The implementation of recommendations from the Royal Commission will be deferred for six months to allow the industry to deal with the impact of COVID-19. Under the new rules, they would now be introduced by December 2020 and June 2021. <https://www.moneymanagement.com.au/news/policy-regulation/six-month-deferral-royal-commission-commitments>

Government delays banking overhaul recommended by royal commission

Reforms recommended by the Banking Royal Commission, which uncovered widespread financial misconduct, will be delayed so the financial industry can recover from the COVID-19 crisis, Treasurer Josh Frydenberg announces. <https://www.abc.net.au/news/2020-05-08/coronavirus-government-delays-banking-overhaul-royal-commission/12229050>

FPA response to deferral of Royal Commission recommendations due to COVID-19

The FPA welcomes the Government's clarity on the timings around the measures the Government had indicated it would introduce into the Parliament by 30 June 2020. However, given the current uncertain environment, the FPA believes the Government should remain open to reviewing the timeline. <https://fpa.com.au/news/fpa-response-to-deferral-of-royal-commission-recommendations-due-to-covid-19/>

Banks deferred 100,000 extra loans: total more than 643,000

New figures released show Australia's banks have deferred an extra 100,000 loans, including approximately 50,000 home loans, to help customers through the COVID-19 pandemic. <https://www.ausbanking.org.au/banks-deferred-100000-extra-loans-this-week/>

Strong demand for early super access prompts FPA to launch digital Record of Advice solution for members

The Financial Planning Association of Australia (FPA) has announced the availability of digital versions of the Record of Advice (ROA) solution 'template' to support members who have been inundated with requests for advice, following strong demand for early super access. <https://fpa.com.au/news/strong-demand-for-early-super-access-prompts-fpa-to-launch-digital-record-of-advice-solution-for-members/>

Bank regulator asks ME to explain why it took money from customers' redraw accounts

The financial regulator has asked ME Bank to explain why it has taken cash from accounts linked to its customers' home loans to reduce the risk of mortgage default. <https://www.abc.net.au/news/2020-05-04/westpac-will-not-take-cash-from-home-loan-accounts/12213408>

FSC: Australia managed funds world leading despite inferior tax and regulation

Australia's managed funds industry is hamstrung by high taxes and cumbersome regulatory settings, according to a new global study from Morningstar, putting Australia at the bottom of the ranking for investor-friendly markets. Despite this, the same study last year found that Australia's managed funds are global leaders in low levels of fees. <https://www.fsc.org.au/resources/2007-fsc-media-release-australia-managed-funds-world-leading-despite-inferior-tax-and-regulation/file>

About 750,000 customers could pay thousands extra after bank cuts home loan repayments

Commonwealth Bank customers could end up paying tens of thousands of dollars more on their home loans because of changes to repayment levels, a financial expert warns. <https://www.abc.net.au/news/2020-04-30/commonwealth-bank-coronavirus-changes-could-cost-borrowers/12197874>

Fast-tracking of debit cards to help vulnerable customers dependent on cash

Customer owned banking institutions welcome ASIC's approval of regulatory relief to fast track the issuance of debit cards to customers who use passbooks and branch visits to do their banking. These customers face particular impacts from the COVID-19 crisis. <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1416-fast-tracking-of-debit-cards-to-help-vulnerable-customers-dependent-on-cash>

COVID-19 update: AUSTRAC to accept Compliance Report 2019 until 30 June 2020

The global COVID-19 pandemic is impacting all Australians and Australian businesses. AUSTRAC acknowledges that this is an unprecedented and uncertain time for you and your business. We understand the importance of supporting you during this time, while ensuring that we continue to fight financial crime. <https://www.austrac.gov.au/about-us/our-recent-work/covid-19-update-compliance-report>

IN PRACTICE AND COURTS

ASFA: Guidelines for debt agreement administrators

We have made important temporary updates to the certified duties of debt agreement administrators, regarding proposals to vary debt agreements. These changes are currently in affect for six months (until 30 September 2020).

For more information see [Practitioners: COVID-19 and changes to debt agreements](#).

For updated general guidelines for practitioners, see [Practitioners: COVID-19 and updated advice from the Inspector-General](#).

APRA frequently asked questions on loan repayment deferrals and residential mortgage lending

The frequently asked questions (FAQs) cover the following topics: The regulatory capital approach for loan repayment deferrals and Clarification of APRA's guidance for serviceability assessments in Prudential Practice Guide APG 223 – Residential Mortgage Lending.

APRA: Monthly authorised deposit-taking institution statistics for March 2020

Copies of the March 2020 monthly publication are available on the APRA website.

[ASIC REP 660 ASIC Enforcement Update July to December 2019](#)

ASIC's overview of enforcement outcomes, priorities and cases during the period 1 July 2019 to 31 December 2019: see [20-099MR](#).

[ASIC Corporations \(AFCA Regulatory Requirement\) Instrument 2020/0433](#)

Imposes additional conditions on the AFCA scheme relating to 'SMEG Loans' and repayment deferrals for business loans impacted by COVID-19.

[ASIC Instrument 20-0430](#)

Six month conditional relief granted to Macquarie Bank and related entities from the requirement to give customers Form 11A direct debit default notices under s 87 of the National Credit Code, while it sends modified communication and relaxes collection and enforcement processes as a result of COVID-19.

[ASIC draft guidance on the new best interests duty for mortgage brokers](#)

The new obligations were legislated by the Parliament in response to Recommendation 1.2 of the Royal Commission. From 1 July, the obligations will require mortgage brokers to act in the best interests of consumers and to prioritise consumers' interests when providing credit assistance. ASIC intends to publish final guidance before the obligations commence on 1 July 2020. View the [Consultation Paper 327](#).

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

Media Release 2020-13 - Broadening Eligibility of Corporate Debt Securities as Collateral for Domestic Market Operations on 05 May 2020.

[ABA: COVID-19 Debit Card Delivery](#)

For many of us, online banking and phone banking are second nature. For some, it's a whole new world. In this time of crisis, Australians will receive a debit card for the first time. This page is to help new Debit Card users learn about their new Debit Card, and to help answer any questions about using it.

[ABA: Keep yourself safe: be aware of scams and fraud](#)

COVID-19 themed scams and fraud are likely to increase over the coming months. Scammers use fake emails, phone calls or text messages to try and obtain personal information.

[AASB: General Presentation and Disclosures –Proposals to improve the financial statements and the use of non-GAAP measures: Exposure Draft ED 298 General Presentation and Disclosure](#)

Feedback is requested on defining new subtotals, including 'operating profit', as well as requiring more rigorous disclosure of 'management performance measures', also known as 'non-IFRS financial information', in a single note to the audited financial statements. Please send your comments to the AASB by 15 May 2020.

[AASB: Exposure Draft ED 301: Classification of Liabilities as Current or Non-current—Deferral of Effective Date](#)

The AASB is proposing to defer the effective date of recently issued [AASB 2020-1 Amendments to Australian Accounting Standards – Classification of Liabilities as Current or Non-current](#) (March 2020) by one year to annual reporting periods beginning on or after 1 January 2023 via [ED 301 Classification of Liabilities as Current or Non-current—Deferral of Effective Date](#).

Note: [IAASB Publishes Guidance on Auditor Considerations Relating to Going Concern in Light of Changing Environment Due to the COVID-19 Pandemic](#) (04 May 2020)

[AASB: Exposure Draft 300 Amendment to Australian Accounting Standards - COVID-19-Related Rent Concessions](#)

An amendment to [AASB 16 Leases](#) has been proposed to provide relief to lessees when applying the standard to COVID-19-Related rent concessions, such as rent holidays and temporary rent reductions.

[AASB: IPSASB Exposure Drafts: Revenue and Transfer Expenses for public sector entities](#)

The International Public Sector Accounting Standards Board (IPSASB) has recently issued three Exposure Drafts proposing new recognition and measurement requirements for revenue transactions and transfer expenses. Comments are due to the IPSASB by 15 September 2020.

[IASB proposes further amendments to IFRS Standards in response to interest rate benchmark reform](#)

Proposed amendments to IFRS Standards are to assist companies in providing useful information to investors about the effects of interest rate benchmark reform on financial statements. To read and comment on the Exposure Draft, go to the comment letter page. The comment deadline is 25 May 2020. The [Snapshot](#) provides a summary of the project and the proposals.

[IAASB Consults on Extended External Reporting \(EER\) Assurance](#)

Organizations are increasingly reporting about their broader performance or impact ("Extended External Reporting" or "EER") either voluntarily or as required by law or regulation, and there is a growing demand for assurance engagements on such reporting. In response, the IAASB has developed for feedback it's non-authoritative EER Guidance and is requesting public input by July 13, 2020.

[IFRS Standards in 2020: consultations](#)

The first major consultation document, already out for comment, proposes improving the way information is communicated in the financial statements, with a focus on financial performance. Exposure Draft General Presentation and Disclosures, which the Board published in December 2019 as part of its Primary Financial Statements project, is open for comment until 30 June 2020.

Current Inquiries - Economics Legislation Committee
[National Consumer Credit Protection Amendment \(Small Amount Credit Contract and Consumer Lease Reforms\) Bill 2019 \(No. 2\)](#)

Status: Date Referred: 05 December 2019
Reporting Date: 21 September 2020

AFCA Current Matters

[Important information for consumers about MyPlanner Australia Pty Ltd](#) (Updated April 2020)

[Important information for consumers about Equitable Financial Solutions Pty Ltd](#) (Updated April 2020)

[Important information for consumers about Berndale Capital Securities Pty Ltd](#) (Updated April 2020)

CASES

[Eagle, in the matter of Techfront Australia Pty Limited \(administrators appointed\) \(No 2\) \[2020\] FCA 618](#)

CORPORATIONS – Application by administrators of three companies to extend the convening periods for the second meetings of the companies’ creditors

The administrators have negotiated with real property and equipment lessors and have made arrangements for:

- (1) Certain real property leased by Screencorp but in fact occupied by Visibilis to be transferred to Visibilis.
- (2) The return to lessors of certain equipment that the administrators no longer wish to use as part of the Business.
- (3) The retention of other leased equipment.

The administrators have otherwise made efforts to ascertain the balance of other specific personal property security arrangements.

Alternatively, the administrators are proposing to enable creditors with PPSR registrations over specific goods to collect their equipment and assets if they are not required by the administrators in the course of the ongoing trading of the Business. In that way, the administrators are taking all appropriate steps to protect suppliers’ rights until these issues are resolved

[Lo v Huang \[2020\] QCA 97](#)

Appeal allowed. REAL PROPERTY – TORRENS TITLE – MORTGAGES, CHARGES AND ENCUMBRANCES – EQUITABLE MORTGAGES – HOW CREATED – OTHER CASES – where the appellant owned a one-fifth share in a property at Toorbul and the respondent owned the remaining four-fifths share in the same property – where the appellant made a payment, pending settlement, for a one-fifth share in a property at Parkinson – where the parties entered into a deed – where the operative part of the deed related to indemnity – where the recitals to the deed stated the respondent provided their four-fifths share in the Toorbul property as security for the appellants payment regarding the Parkinson property – whether the recitals in the deed recorded a concluded and binding agreement in relation to the security provided by the respondent – whether the appellant had an equitable mortgage over the Toorbul property

[Todd Hadley Pty Limited v Lake Maintenance \(NSW\) Pty Ltd \(No 2\) \[2020\] NSWCA 81](#)

TORTS – Professional negligence – valuers – duty of care – valuation prepared for mortgage security purposes – where mortgage property sold for significantly less than valuation – accrual of cause of action – whether cause of action against valuer for negligent valuation accrues by no later than sale of mortgaged property or only when it becomes reasonably ascertainable that lender will not be able to recover from mortgagor under personal covenant.

LIMITATION OF ACTIONS – Professional negligence – valuer – valuation obtained for mortgage security purposes – whether lender sustained loss or damage for the purpose of its claims against the valuer by the time of entering into contract for sale of mortgaged property or only when it became reasonably ascertainable that shortfall on loan secured by mortgage could not be recovered from borrower.

MORTGAGES AND SECURITIES – Mortgages – valuation of property for mortgage valuation purposes – when causes of action in negligence and for damages for misleading or deceptive conduct arose against the valuer – whether or not any cause of action accrued prior to it becoming reasonably ascertainable that mortgagee would not be able to recover from mortgagor borrower under personal covenant.

VALUERS – duty of care – valuation prepared for mortgage security purposes – where mortgage property sold for significantly less than valuation – accrual of cause of action – whether cause of action against valuer for negligent valuation accrues by no later than sale of mortgaged property or only when it becomes reasonably ascertainable that lender will not be able to recover from mortgagor under personal covenant

[Australia and New Zealand Banking Group Ltd v Whitehall \[2020\] NSWSC 489](#)

Summary judgment to be entered against the Second Defendant.

EQUITY – subrogation – lender advances money on basis that it would receive registered mortgage over property – part of money advanced used to pay out existing registered mortgage over property – due to irregularities in transaction lender unable to have its mortgage registered – lender claims entitlement to be subrogated to existing mortgage – whether unconscionable for mortgagor to deny lender’s claim to have the existing mortgage kept alive for its benefit – claim not defeated by fact that there were no dealings between lender and mortgagor – any negligence on the part of lender not relevant where lender fails to obtain bargained for security – not necessary to show that mortgagor was guilty of any wrongdoing or misconduct – no arguable defence shown

[Chiodo Corporation Pty Ltd v Refresh Finance Pty Ltd \[2020\] NSWSC 453](#)

(1) Allow Chiodo Corporation Pty Ltd's appeal.

APPEAL – contracts – misleading or deceptive conduct – pre-contractual statements and representations – where one party enters into contract relying on certain representations made that presales condition would be removed

CIVIL PROCEDURE – cross-claims – against third party

CORPORATIONS – agency – type of agent – finance broker – liability of agent – for representations – where representations made by director of sub-agent of party to contract – where representations relied on – where party to contract bound by conduct of its agent

Personal Guarantees - proposed loan arrangements

[Esined No. 9 Pty Limited v Moylan Retirement Solutions Pty Ltd; P&S Kauter Investments Pty Ltd ATF the Kauter Superannuation Fund v Moylan Retirement Solutions Pty Ltd; Graeme Manning v Arch Underwriting At Lloyds Limited on Behalf of Syndicate 2012 \(No. 2\) \[2020\] NSWSC 359](#)

Judgment for the defendants.

INSURANCE – a corporate financial planner and holder of an Australian financial securities licence issued under the Corporations Act 2001, gave financial advice to the plaintiffs, who are four separate groups of its clients – based on this financial advice the plaintiffs advanced funds into a series of recommended investments, which failed as a result of the global financial crisis – the licenced entity was deregistered and its principal made bankrupt – the plaintiffs sued the licenced entity's professional indemnity insurers pursuant to Corporations Act, s 601AG on the basis that the deregistered entity had a liability to the plaintiffs and that the professional indemnity insurance policies covered that liability immediately before its deregistration – whether the deregistered licenced entity had a liability to the plaintiffs at the time it was deregistered – whether the deregistered entity's insurance policy with the defendants covered any liability that the deregistered entity had to the plaintiffs – whether exclusion clauses in the insurance contract excluded the defendants' liability to the plaintiffs.

Banking Act 1959 (Cth)

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[Bendigo and Adelaide Bank Limited v Grahame \(No 2\) \(Costs Ruling\) \[2020\] VSC 223](#)

MORTGAGES – Mortgagor defaulted on loan – Action for recovery of possession by mortgagee against mortgagor – Application by successful mortgagee for costs on an indemnity basis pursuant to contractual provision – Whether mortgagee entitled to an award of costs on an indemnity basis – Exercise of discretion as to basis on which costs to be awarded – Mortgagee's costs awarded on the indemnity basis

LEGISLATION**Commonwealth**[Guarantee of Lending to Small and Medium Enterprises \(Coronavirus Economic Response Package\) Act 2020](#)

29/04/2020 - Act No. 29 of 2020

Regulations[ASIC Corporations \(AFCA Regulatory Requirement\) Instrument 2020/0433](#)

07/05/2020 – This instrument requires the Australian Financial Complaints Authority to amend the Australian Financial Complaints Authority (AFCA) Complaint Resolution Scheme Rules without consultation, to include provisions consistent with subsections 10(2), (3), (4) (5) and (6) and subsections 11(2), (3), (4) and (5) of the AFCA Scheme Authorisation 2018.

[Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 \(No. 2\)](#)

07/05/2020 - This instrument amends Part 4.15 of the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) to assist reporting entities to meet their customer identification obligations during the COVID-19 pandemic.

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