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ISSUE 76



BANKING SECTOR NEWSLETTER

Welcome to Issue 76 of our Banking Sector Newsletter.

The Australian Banking Association welcomed the passage of the new Comprehensive Credit Reporting (CCR) laws through parliament, leading to better deals for customers with a good credit history.

In other news, it has been two years since the release of the Banking Royal Commission Final Report where Commissioner Kenneth Hayne had listed 76 recommendations for reforms across government, regulators and the financial services industry.

This issue of the Newsletter also provides the usual round-up of practice notes, cases and legislation.

IN THE MEDIA

How ASIC spent \$31,000 on consumer advice submissions

ASIC has admitted spending nearly \$31,000 over the past nine years funding submissions specifically on financial advice for its controversial Consumer Advisory Panel (CAP). <https://www.moneymanagement.com.au/news/financial-planning/how-asic-spent-31000-consumer-advice-submissions>

ASIC update: Compensation for financial advice related misconduct as at 31 Dec 2020

Six of Australia's largest banking and financial services institutions have paid or offered a total of \$1.24 billion in compensation, as at 31 December 2020, to customers who suffered loss or detriment because of fees for no service misconduct or non-compliant advice. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-023mr-asic-update-compensation-for-financial-advice-related-misconduct-as-at-31-dec-2020/>

School banking programs banned in Canberra from July

Politicians of all stripes vote in favour of a ban on school banking programs, which were found to be little more than marketing schemes by the regulator. <https://www.abc.net.au/news/2021-02-11/school-banking-programs-to-end-in-canberra-from-july/13141232>

What are neobanks and why are they making the big four a bit nervous?

As NAB makes a \$220 million move for challenger bank 86 400, ACCC chair Rod Sims warns he doesn't want to see all of Australia's neobanks bought up by the big four. <https://www.abc.net.au/news/2021-02-12/accc-wants-to-keep-big-four-from-swallowing-up-all-neobanks/13145256>

Australia's mortgage distress hotspot revealed as end of JobKeeper looms

At the height of the COVID-19 pandemic last year, more than 1 million loans were deferred. Now, as the economy begins to recover, those who still have deferred mortgages are feeling left behind. <https://www.abc.net.au/news/2021-02-11/mortgage-distress-hotspots-revealed-deferrals-jobkeeper-ends/13140720>

Royal Commission showed culture trumps rules: Aus Ethical

The release of the final report from the royal commission marked its second anniversary, where Commissioner Kenneth Hayne had listed 76 recommendations for reforms across government, regulators and the financial services industry. The opposition, legal firms and consumer bodies have criticised the government for failing to implement all of the changes in the time since. <https://www.investordaily.com.au/regulation/48669-royal-commission-showed-culture-trumps-rules-aus-ethical>

Home loan growth for customer owned banking doubles ADI average

Home loan growth for the customer owned banking sector has more than doubled the average increase for the banking system comprising all ADIs, according to the latest quarterly ADI data by APRA (1.32% v 0.57%). <https://www.customerownedbanking.asn.au/news-and-resources/media-releases/home-loan-growth>

APRA releases 2020 Year in Review

The APRA has released its 2020 Year in Review document. In a year that was heavily impacted by COVID-19, the publication provides an overview of how APRA went about fulfilling its mandate as a forward-looking safety regulator for Australia's financial system. <https://www.apra.gov.au/news-and-publications/apra-releases-2020-year-review>

The 2020 Year in Review is available on the APRA website [here](#).

Parliamentary committee questions adviser jail penalty for record-keeping

A Parliamentary Committee has questioned why financial advisers should face the risk of five years' jail for record-keeping failures under legislation flowing from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services due to be debated by the Parliament. <https://www.moneymanagement.com.au/news/financial-planning/parliamentary-committee-questions-adviser-jail-penalty-record-keeping>

Wilson to probe RBA governance concerns

The standing committee on economics will probe the culture and governance of the RBA after a former employee labelled the bank "dysfunctional". The standing committee will also scrutinise the RBA's recent decision to step up its quantitative easing program with the purchase of another \$100 billion in government bonds. <https://www.investordaily.com.au/regulation/48643-wilson-to-probe-rba-governance-concerns>

ABA: New credit reporting laws a win for customers

New Comprehensive Credit Reporting (CCR) laws will lead to better deals for customers with a good credit history and better support for those experiencing financial difficulty. <https://www.ausbanking.org.au/new-credit-reporting-laws-a-win-for-customers/>

ABA takes aim at fresh faces

New players in the Australian financial landscape are ratcheting up the risk for some of its biggest institutions, according to the Australian Banking Association (ABA). While banks are subject to a host of prudential and consumer regulations, many new entrants to the payments landscape – including buy now, pay later (BNPL) players like Afterpay – are not. <https://www.investordaily.com.au/regulation/48633-aba-takes-aim-at-fresh-faces>

Charges laid against Victorian diamond trader who allegedly attempted to defraud creditors

An investigation by the AFSA has resulted in charges against an Australian diamond dealer over allegations he attempted to defraud creditors, failing to fully disclose his financial affairs to his trustee, and provided a false declaration. <https://www.afsa.gov.au/about-us/newsroom/charges-laid-against-victorian-diamond-trader-who-allegedly-attempted-defraud>

Review the escalating ASIC levy says FPA

Amid industry speculation that the Government might raise the so-called "ASIC levy" by as much as 20% to cover off the cost of increased activity by the ASIC, the Financial Planning Association (FPA) has made clear further increases will only add to the cost of financial advice. <https://www.moneymanagement.com.au/news/financial-planning/review-escalating-asic-levy-says-fpa>

FPA calls for review of unsustainable ASIC levy as the regulator seeks guidance on affordable advice

The FPA has made six recommendations in its Budget Submission 2021-22 aimed at addressing the rapidly increasing cost of practicing as a financial planner. <https://fpa.com.au/news/fpa-calls-for-review-of-unsustainable-asic-levy-as-the-regulator-seeks-guidance-on-affordable-advice/>

New Laws to Protect Retirement Village Residents

The Andrews Labor Government is making it easier for former retirement village residents to recover money owed to them, if the owner of the village becomes bankrupt or insolvent. <https://www.premier.vic.gov.au/new-laws-protect-retirement-village-residents>

IN PRACTICE AND COURTS

ASIC Papers open for public comment

[CP 337 Externally administered companies: Extending financial reporting and AGM relief](#)

Comments close 11 March 2021.

[CP 336 Financial requirements: Treatment of lease assets](#)

Comments close 26 February 2021.

[CP 334 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): First consultation](#)

Comments close 1 March 2021.

ASIC CP 335: Consumer remediation guidance

ASIC has released a consultation paper on proposed updates to [Regulatory Guide 256: Client review and remediation conducted by advice licensees](#).

[Consultation Paper 335: Consumer Remediation: Update to RG 256 \(CP 335\)](#) includes clarification of RG 256's application to all financial services licensees, credit licensees and superannuation trustees. Submissions on CP 335 are due by 26 February 2021.

ASIC has also released [Making it Right: how to run a consumer centred remediation](#), a resource that offers immediate help to licensees with the day-to-day design and execution of consumer-centred remediations.

[ASIC Corporations, Superannuation and Credit \(Amendment\) Instrument 2020/99](#)

Amends the [ASIC Corporations and Credit \(Internal Dispute Resolution – Transitional\) Instrument 2019/965](#) to preserve ASIC's existing internal dispute resolution policy in relation to complaints received by financial firms before 5 October 2021.

ASIC Regulatory Documents

11/02/2021 [ASIC Derivative Transaction Rules \(ADI Foreign Subsidiaries\) Class Exemption 2021/51](#)

Exemptive relief under the [ASIC Derivative Transaction Rules \(Reporting\) 2013](#) allowing ADI foreign subsidiaries to apply an alternative test for reportable transactions and reportable positions 'entered into by the reporting entity in this jurisdiction'.

09/02/2021 [CP 338 Remaking ASIC class order on parent entity financial statements](#)

Attachment to CP 338: [Draft instrument](#)

Sets out ASIC's proposals to remake [Class Order \[CO 10/654\] Inclusion of parent entity financial statements in financial reports](#), due to sunset on 1 April 2021.

APRA consultation paper: Implementation of AASB 17 for insurance capital and reporting

The APRA consultation to update the insurance capital and reporting frameworks in recognition of the implementation of Australian Accounting Standards Board 17 Insurance Contracts (AASB 17). The consultation will close on 31 March 2021. The discussion paper is available on the APRA website at: [Integrating AASB 17 into the capital and reporting frameworks for insurers and updates to the LAGIC framework](#).

Information regarding the regulatory responsibilities and approach of ASIC to AASB 17 implementation is available [here](#).

AUSTRAC: Proposed amendments to Chapters 3, 6, 7 and 10 of the AML/CTF Rules

AUSTRAC has released proposed amendments to the following chapters of the Anti-Money Laundering and Counter-Terrorism Financing Rules for public consultation: Chapter 3 – Correspondent banking; Chapter 6 – Customer identification and verification; Chapter 7 – Reliance on customer identification carried out by another reporting entity and Chapter 10 – Gambling services.

The proposed changes are to support reforms to the AML/CTF Act made by the [Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020](#) (Phase 1.5 reforms).

The consultation period for these amendments is 27 January 2021 until 11 March 2021.

AFCA COVID-19 complaints snapshots

COVID-19 complaints snapshot - 3 March 2020 to 31 January 2021.

RBA Statement on Monetary Policy February 2021

The Statement on Monetary Policy sets out the Bank's assessment of current economic conditions, both domestic and international, along with the outlook for Australian inflation and output growth. A number of boxes on topics of special interest are also published.

RBA Research Discussion Paper – RDP 2021-02 Star Wars at Central Banks

Adam Gorajek, Joel Bank, Andrew Staib, Benjamin Malin and Hamish Fitchett, February 2021

The RBA Research Discussion Paper investigates the credibility of central bank research by searching for traces of researcher bias, which is a tendency to use undisclosed analytical procedures that raise measured levels of statistical significance (stars) in artificial ways.

CPA Australia

11/02/2021 [CPA Australia 2021-22 Federal Budget Submission](#)

CPA Current Consultations

The CPA are seeking comments from members to be considered as part of their submissions in response to the following major consultations.

[IPSASB Exposure draft: ED 75 Leases](#)

Comments due by 17 May 2021.

[IPSASB request for information: Concessionary leases and other arrangements similar to leases](#)

Comments due by 17 May 2021.

AUSPAYNET: Are QR codes making a comeback?

The year 2020 was a game-changer for QR codes. AUSPAYNET look at the resurgence of QR technology amidst the pandemic, and the opportunities it presents for payments.

FSC Submissions

02/02/2021 [FSC Submission - ASIC Consultation Paper 332: Promoting access to affordable advice for consumers](#)

02/02/2021 [FSC Submission - ASIC Consultation Paper 333: Implementing the Royal Commission recommendations: Reference checking and information sharing](#)

AASB: Proposals to Extend the Practical Relief for Lessees for COVID-19-Related Rent Concessions – AASB Exposure Draft ED 308

ED 308 COVID-19-Related Rent Concessions beyond 30 June 2021 proposes to extend by one year the practical expedient added to AASB 16 Leases in 2020 to help lessees in accounting for COVID-19-Related Rent Concessions.

AASB: Exposure Draft ED 307: Regulatory Assets and Regulatory Liabilities

ED 307 proposes a new accounting model that would require companies subject to rate regulation to give investors better information about their financial performance.

[AASB: Exposure Draft 305 Amendments to Australian Accounting Standards – Lease Liability in a Sale and Leaseback](#)

Amendments to AASB 16 Leases have been proposed to specify the method a seller-lessee uses in initially measuring the right-of-use asset and liability arising in a sale and leaseback transaction. The amendments would also address how the seller-lessee subsequently measures that liability. Please have your say and send your comments to the AASB by 21 February 2021.

[AASB: Invitation to Comment 42 Business Combinations under Common Control](#)

Comments are invited on possible new accounting requirements for business combinations under common control – where mergers and acquisitions occur involving entities within the same group. The aim of the possible requirements would be to reduce diversity in practice and to improve transparency and comparability in reporting these transactions. Please have your say and send your comments to the AASB by 17 July 2021.

[AASB Reminder: 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 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*.

IASB reviews package of IFRS Standards for group accounting

The International Accounting Standards Board (Board) is calling for feedback on the IFRS Standards for group accounting—IFRS 10 Consolidated Financial Statements, IFRS 11 Joint Arrangements and IFRS 12 Disclosure of Interests in Other Entities. Further information about post-implementation reviews can be found in the Handbook. The deadline for comments is 10 May 2021.

[IASB proposes amendment to its leases Standard to improve accounting for sale and leaseback transactions](#)

The International Accounting Standards Board has proposed to amend IFRS 16 Leases by specifying how a company measures the lease liability in a sale and leaseback transaction. Exposure Draft Lease Liability in a Sale and Leaseback is open for public comment until 29 March 2021.

[IASB consults on possible new accounting requirements for mergers and acquisitions within a group](#)

The International Accounting Standards Board has launched a public consultation on possible new accounting requirements for mergers and acquisitions involving companies within the same group—business combinations under common control. Access the

Discussion Paper [Business Combinations under Common Control](#). The deadline for comments is 1 September 2021. Access a [fact sheet](#) about the Board's project and the [Snapshot](#), which provides a more detailed summary of the Discussion Paper.

CASES

[Westpac Securities Administration Ltd v Australian Securities and Investments Commission \[2021\] HCA 3](#)

Corporations – Financial services – Where appellants had contacted members of superannuation funds of which they are trustees, advising each to accept offer to roll over their external superannuation accounts into their account with appellants – Where s 766B(3)(b) of Corporations Act 2001 (Cth) defines “personal advice” to include “financial product advice” given or directed to person in circumstances where a reasonable person might expect provider to have considered one or more of that person's objectives, financial situation and needs – Whether financial product advice given by appellants to members personal advice within meaning of s 766B(3)(b).

Corporations Act 2001 (Cth), ss 766B(3), 766B(4), 949A(2)(a).

[Nikitins \(Liquidator\) v EncoreFX \(Australia\) Pty Ltd \(in liq\), in the matter of EncoreFX \(Australia\) Pty Ltd \(in liq\) \(No 2\) \[2021\] FCA 27](#)

CORPORATIONS - application by liquidators for directions as to whether justified in treating contested funds as property of liquidation - where company provided foreign exchange and global payment services - where client companies entered into arrangements for foreign exchange transactions and wire transfer of funds - where transactions and wire transfers not completed due to placement of company in administration - where company's settlement account swept after receipt of funds for transaction - whether amounts paid by client companies held by liquidators on trust under s 1017E or s 981H of Corporations Act 2001 (Cth) - whether amounts paid for purpose of securing issue of financial product or as part of performance of arrangements that constitute financial product - whether amounts held on trust according to Quistclose principles - claims by client companies that amounts held on trust upheld.

Corporations Act 2001 (Cth) ss 9, 760A, 761A, 761D, 761E, 762C, 763A, 763D, 764A, 981A, 981B, 981D, 981E, 981H, 766A, 766B, 766C, 766D, 766E, 766F, 1010B, 1012A, 1016F, 1017A, 1017B, 1017C, 1017D, 1017E, Chapter 7.

[Abellanoza v R \[2021\] NSWCCA 4](#)

CRIME — appeal against sentence — dishonestly obtain financial advantage by deception — money laundering — ongoing fraud of employer leading to loss in the millions of dollars — very large sum unaccounted for — aggravating and mitigating features — moral culpability as relevant factor on sentence — whether sentencing judge erred by failing to find offences motivated by gambling — whether error with regard to asserted nexus between mental conditions and offending — onuses of proof on sentence — sentence assertedly manifestly excessive.

[Collis v Bank of Queensland Ltd \[2021\] VSCA 17](#)

BANKING AND FINANCE – Financial accommodation provided to applicant and others – Default by borrowers and mortgagor – Failure to pay following demands – No arguable defence to claims by the bank – Summary judgment granted against applicant for possession of property and monetary sum.

APPEAL – Application for leave to appeal from order for possession and monetary sum – Grounds of appeal fundamentally misconceived and failed to engage with any of the issues in the decision the subject of the application for leave to appeal – Leave to appeal refused.

PRACTICE AND PROCEDURE – Leave to appeal – Application to extend time within which to file application for leave to appeal – Application dismissed by judicial registrar – No reasonable explanation for length of delay – Grounds of appeal lack merit – Application for leave to appeal decision of judicial registrar – Application refused.

[Sapra Enterprises Pty Ltd v Cooper \[2021\] NSWSC 58](#)

CONTRACTS -- Remedies -- Debt -- where no defence by guarantor and debtor to claims by creditor under written loan agreements CONTRACTS -- Misleading conduct under statute -- misleading or deceptive conduct -- where evidence does not establish such conduct CONTRACTS -- Unconscionable conduct -- where evidence does not establish such conduct CORPORATIONS – Directors and officers – Directors’ duties – where it is alleged that a director has breached his duties – no breaches of duty proved.

[Timbercorp Finance Pty Ltd \(in liq\) v De Vries \[2021\] VSC 37](#)

CONTRACT – Whether terms were incorporated into loan agreements by reference – Whether loan money was advanced in accordance with the loan agreements by journal entries – Whether an agreement that an advance could be made by way of journal entries should be inferred – Whether journal entries merely notional.

CORPORATIONS – Managed investment scheme – Whether responsible entity borrowed money within the meaning of s 601GA(3) of the Corporations Act 2001 (Cth) – Burden of proving contravention by the responsible entity.

THIS EDITION'S EDITOR



Phil Kaunitz

Partner

+61 7 3166 4511

+61 402 844 833

pkaunitz@tglaw.com.au

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SYDNEY | Sixty Martin Place, Level 14, 60 Martin Place | Sydney NSW 2000

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

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

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

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

LEGISLATION

Commonwealth

Acts Compilation

[Personal Property Securities Act 2009](#)

12/02/2021 - Act No. 130 of 2009 as amended

[Payment Systems and Netting Act 1998](#)

10/02/2021 - Act No. 83 of 1998 as amended

[Banking Act 1959](#)

09/02/2021 - Act No. 6 of 1959 as amended

[International Monetary Agreements Act 1947](#)

02/02/2021 - Act No. 5 of 1947 as amended

[National Consumer Credit Protection \(Transitional and Consequential Provisions\) Act 2009](#)

02/02/2021 - Act No. 135 of 2009 as amended

Regulations

[ASIC Derivative Transaction Rules \(ADI Foreign Subsidiaries\) Class Exemption 2021/51](#)

11/02/2021 - This instrument provides exemptive relief for foreign subsidiaries of Australian Deposit-taking Institutions from reporting transactions under the ASIC Derivative Transaction Rules (Reporting) 2013 that do not have a nexus to Australia.

[Currency \(Australian Coins\) Amendment \(Miscellaneous Amendments No. 1\) Determination 2021](#)

05/02/2021 - This instrument amends the Currency (Australian Coins) Determination 2019 to make a minor amendment to the determination of one coin proposed to be issued by the Royal Australian Mint.

[ASIC Supervisory Cost Recovery Levy Amendment \(Corporate Insolvency Reforms\) Regulations 2021](#)

05/02/2021 - This instrument amends the ASIC Supervisory Cost Recovery Levy Regulations 2017 to enable the Australian Securities and Investments Commission to recover their supervisory costs relating to the formal debt restructuring process.

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