

12 MARCH 2021

ISSUE 77



## BANKING SECTOR NEWSLETTER

Welcome to Issue 77 of our Banking Sector Newsletter.

In this issue, we have a link to a new guide aimed at the financial services sector to respond to the reporting obligations in the *Modern Slavery Act 2018*.

AFCA have welcomed the announcement of a scheduled review by Treasury of its functions and performance under the enabling legislation that authorises AFCA.

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

### IN THE MEDIA

#### Sector leads home loan growth rate

While there is a nationwide uplift in new home loan commitments, 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. <https://www.customerownedbanking.asn.au/news-and-resources/sector-news/home-loan-growth-rate>

#### Financial sector cannot ignore modern slavery: KPMG

As the reporting deadline for the Modern Slavery Act creeps closer, KPMG and the Australian Human Rights Commission have warned that after the royal commission, banks and super funds cannot afford to risk public trust. <https://www.investordaily.com.au/regulation/48774-financial-sector-cannot-ignore-modern-slavery-kpmg>

#### ASIC launches immunity policy for market misconduct offences

ASIC has released an immunity policy for certain contraventions of the Corporations Act, which includes serious offences such as market manipulation, insider trading and dishonest conduct in the course of carrying on a financial services business. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-030mr-asic-launches-immunity-policy-for-market-misconduct-offences/>

#### Consumer identity theft facing tech 'step change'

The Customer Owned Banking Association is getting behind the Australian Media and Communications Authority (ACMA) directives aimed at targeting new methods of fraudulent activity which can leave a trail of financial destruction for consumers. <https://www.customerownedbanking.asn.au/news-and-resources/media-releases/step-change>

#### Protecting Australians from hidden costs

The Morrison Government has passed legislation that will further protect Australian households from hidden fees and unexpected expenses, with the passage of Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/protecting-australians-hidden-costs>

#### AAA credit rating reaffirmed by Fitch

Australia's AAA credit rating has been reaffirmed by Fitch, with Australia one of only nine countries to hold an AAA credit rating from all three major credit rating agencies. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/aaa-credit-rating-reaffirmed-fitch-1>

#### AFCA welcomes announcement of Independent Review

The Australian Financial Complaints Authority (AFCA) welcomes the announcement of the terms of reference for the scheduled review of its functions and performance. <https://www.afca.org.au/news/media-releases/afca-welcomes-announcement-of-independent-review>

#### Navigating the Design and Distribution Obligations and Exchange Traded Funds

With the Design and Distribution Obligations (DDO) due to commence 5 October this year, the release of ASIC Regulatory Guide RG 274 Product Design and Distribution Obligations (RG 274) in December 2020 was eagerly anticipated by the industry. <https://www.fsc.org.au/news/ddo-etf>

**ABA: Banks launch new phase of pandemic support**

Australian banks are entering the next phase of COVID-19 support, as automatic loan deferrals come to an end and demand for extensions falls. <https://www.ausbanking.org.au/banks-launch-new-phase-of-pandemic-support/>

The new Financial Assistance Hub can be found [here](#).

**ABA: Stronger regulation needed for debt management firms**

The Australian Banking Association supports the Federal Government's proposed licencing regime for debt management firms and has called for further changes to protect consumers. <https://www.ausbanking.org.au/stronger-regulation-needed-for-debt-management-firms/>

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

The Australian Securities and Investments Commission (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>

**COVID-19 disruption sparks planners to make adjustments: Survey**

Financial planners have responded to the business disruption arising from the pandemic by making changes to their risk advice operations, research house Investment Trends says in a new report. <https://www.insurancenews.com.au/life-insurance/covid-disruption-sparks-planners-to-make-adjustments-survey>

**IN PRACTICE AND COURTS****Combatting modern slavery in the financial services industry**

The Australian Human Rights Commission and KPMG Australia have launched a new, practical guide to support the financial services sector to respond effectively to these risks, using a human rights-based approach.

[Financial Services and Modern Slavery: Practical responses to managing risks to people](#) is a guide to help the sector respond effectively to the *Modern Slavery Act 2018 (Cth)* and other global human rights reporting obligations.

**[Review of the Australian Financial Complaints Authority](#)**

The Morrison Government has released a terms of reference for the review of the Australian Financial Complaints Authority (AFCA), and is seeking stakeholder feedback on its functions and performance. The review will be conducted by Treasury, with a report to be finalised by 30 June 2021. All interested parties are invited to lodge submissions through the Treasury website before consultation closes on 26 March 2021.

**ASIC Papers open for public comment**

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

Comments close 11 March 2021.

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

Comments close 15 March 2021.

**ASIC Regulatory Documents**

[ASIC Corporations \(Amendment\)](#)

Amends the [ASIC Corporations \(Litigation Funding Schemes\) Instrument 2020/787](#) to provide for a sunset date of 22 August 2025.

[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.

**APRA revokes Xinja Bank's authorised deposit-taking institution licence**

The APRA has revoked Xinja Bank Limited's authorised deposit-taking institution (ADI) licence under the Banking Act 1959. Xinja Bank completed its return of deposits process after announcing its intention in December to exit the banking industry. An updated list of ADIs can be found on the APRA website [here](#).

[APRA monthly data on temporary loan repayment deferrals](#)

The APRA has published the latest monthly data for ADIs' temporary loan repayment deferrals due to COVID-19, which includes data at both the industry and entity level.

[APRA Monthly Authorised Deposit-taking Institution Statistics for January 2021](#)

The APRA has released its Monthly Authorised Deposit-taking Institution Statistics (MADIS) publication for January 2021.

[APRA announces aggregate Committed Liquidity Facility available to ADIs from 1 April](#)

The APRA has issued a letter to authorised deposit-taking institutions (ADIs) announcing updated aggregate amounts for the 2021 Committed Liquidity Facility (CLF) established between the Reserve Bank of Australia (RBA) and certain locally incorporated ADIs that are subject to the Liquidity Coverage Ratio (LCR).

### [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.

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.

### CPA Current Consultations

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

[ASIC proposals on parent entity financial statements](#).

Comments due 9 March, 2021.

[Treasury consultation on increasing financial reporting thresholds for ACNC-registered charities](#).

Comments due 21 March 2021.

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

Comments due 17 May 2021.

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

Comments due 17 May 2021.

### [ABA: New financial assistance hub: Details](#)

The industry's new financial assistance hub at [ausbanking.org.au/assistance](#) reflects a wide range of personal circumstances and allows you to choose what information is relevant to your situation. They can also find links to financial counselling and support, with access free and independent help.

### RBA

[Payments System Board Update: February 2021 Meeting](#)

19 February 2021 Media Release 2021-02

### AFCA Current matters

[Business interruption insurance test cases](#)

(Updated February 2021).

[Sterling group investors](#) (Updated February 2021).

### AFSA Privacy policy

This is the privacy policy for the Australian Financial Security Authority.

Last updated: 26 February 2021

### FSC Submissions

[FSC Submission - Internal Dispute Resolution - Addendum to CP 311 - Submission to ASIC](#) (16 February 2021)

### AASB Research Reports

[No 15 Review of Auditor Remuneration Disclosure Requirements](#) (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 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*.

### [IAASB Seeks Public Comment on Exposure Draft Aligning Existing Standards with New, Revised Quality Management Standards](#)

The International Auditing and Assurance Standards Board (IAASB) is requesting public comments on its Exposure Draft addressing changes in some of its standards and framework resulting from the new and revised [quality management](#) standards. Comments are requested by May 24, 2021. Please submit your comments via the [IAASB website](#).

### 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 [Due Process 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

### [Tucker, in the matter of Vector Resources Limited \[2021\] FCA 112](#)

PRACTICE AND PROCEDURE – service of process outside the jurisdiction – whether applicants have satisfied the requirements for leave under r 10.43 of the Federal Court Rules 2011 (Cth) – whether a prima facie case is established – where applicants contend that enforcement under an escrow deed is prevented by the appointment of administrators to the company – where final relief would be sought on an urgent basis if leave granted for service out. Corporations Act 2001 (Cth) ss 5(4), 9, 51, 51A, 51D, 180, 181, 182, 183, 437D, 440B, 1337B

Insolvency Practice Schedule (Corporations) 2016 Sch 2, ss 90–15, 90–15(1); Judiciary Act 1903 (Cth) s 39B(1A)(c); Personal Property Securities Act 2009 (Cth) ss 6, 10, 12, 19(2), 21, 21(2)(a), 21(2)(b), 21(2)(c), 24(6), 27, 27(2), 27(3), 207, 240(1), 240(4), 235(3), 267

### [Sanderson and Decision Maker \[2021\] AATA 284](#)

Australian Financial Complaints Authority – review – Corporations Act – Tribunal has no jurisdiction

Administrative Appeals Tribunal Act 1975 (Cth); Corporations Act 2001 (Cth)

### [In the matter of 100% Plumbing Maintenance Pty Ltd \[2021\] NSWSC 103](#)

Extend time under s 588FM of Corporations Act 2001 (Cth) and s 293 of the Personal Property Securities Act 2009 (Cth) to register security interests on Personal Property Securities Register.

CORPORATIONS – Security interests incorrectly registered – inadvertence – whether extension of time should be granted to register corrected security interests.

### [In the matter of Anna Bay Resort Pty Ltd \[2021\] NSWSC 156](#)

Order that the Interlocutory Process is dismissed; order that the proceeds of any contract for sale of the Land be applied, first, in payment of the Company's reasonable costs and disbursements of marketing the sale of that Land, and secondly, in payment of the amount secured by the registered mortgage in favour of National Australia Bank Pty Ltd; order that any remaining proceeds of sale be paid into Court pending further order of the Court.

CORPORATIONS – interim injunction – to prevent sale of company's property – no serious question to be tried – no issue of principle

### [In the matter of Eticore SD Pty Ltd \[2021\] NSWSC 110](#)

CORPORATIONS – Registration time for security interests – Application under Corporations Act 2001 (Cth) s 588FM(1) to fix registration time for security interests registered in the register established under the Personal Property Securities Act 2009 (Cth) – Whether failure to register security interest was accidental or due to inadvertence – Relevance of financial position of company granting security interest

### [JKAM Investments Pty Ltd ACN 159 084 018 v Damien \[2021\] NSWSC 70](#)

MISLEADING AND DECEPTIVE CONDUCT – plaintiff claims defendant made a series of misleading and deceptive statements inducing the plaintiff to enter into a lease, a development deed, a contract for sale of land and a mortgage – the plaintiff alleges that the defendant stated that the defendant was not in default to its first mortgagee and that there were no other prior encumbrances over the property – the plaintiff further alleges that the defendant represented that his residential property would be included in the grant of a mortgage to the plaintiff – the executed version of the mortgage omitted the residential property – whether the defendant made these and other related statements – whether these and other related statements were false or misleading – whether these and other related statements induced the plaintiff to enter into the development deed – where the plaintiff claims that the defendant did not disclose knowledge of prior encumbrances and a deed with the first mortgagee – whether the circumstances were such that the defendant had a reasonable expectation of disclosure of that knowledge to the plaintiff.

## LEGISLATION

### Commonwealth

#### Regulations

### [Financial Sector Reform \(Hayne Royal Commission Response\) \(2021 Measures No. 1\) Regulations 2021](#)

18/02/2021 - This instrument amends the Insurance Contracts Regulations 2017 to remove the concept of eligible contracts of insurance. It also amends the Corporations Regulations 2001 to make handling

an insurance claim a 'financial service' under the Corporations Act 2001.

7.6.01AAAA Need for Australian financial services licence: prescribed insurance products in relation to claimant intermediaries - For the purposes of subparagraph 911A(2)(ek)(vi) of the Act, general insurance products are prescribed.

7.6.01AAAB Need for Australian financial services licence: issuers of insurance products.

### [ASIC Supervisory Cost Recovery Levy Amendment \(Claims Handling and Settling Services Providers\) Regulations 2021](#)

These regulations amend the ASIC Supervisory Cost Recovery Levy Regulations 2017 to allow the Australian Securities and Investments Commission to recover costs from its regulation of activities undertaken by people who handle insurance claims. 72AA Claims handling and settling services providers.

(a) leviable entity forms part of the claims handling and settling services providers sub-sector in a financial year if: (a) the entity holds, at any time in the financial year, an Australian financial services licence; and (b) the licence authorises the holder to provide claims handling and settling services.

## THIS EDITION'S EDITOR



**Phil Kaunitz**

Partner

+61 7 3166 4511

+61 402 844 833

[pkaunitz@tglaw.com.au](mailto:pkaunitz@tglaw.com.au)

This Alert is produced by Thomson Geer. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under Professional Standards Legislation.