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ISSUE 86



BANKING SECTOR NEWSLETTER

Welcome to Issue 86 of our Banking Sector Newsletter.

In this issue, we refer to a recent Federal Government announcement about the Consumer Data Right with new entrants joining and changes to the rules opened for consultation. The changes relate to consumers being able to share more of their data.

We also refer to a report on the final review by Stephen Sedgwick into product sales commissions and product-based payments in retail banking. It finds that the industry's policies have changed in line with earlier recommendations with the effect of making banks more customer than sales-centric.

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

IN THE MEDIA

AFCA receives 70,000 financial complaints in 2020-21

Australians in dispute with banks, insurers, super funds, investment firms and financial advisers lodged more than 70,000 complaints with the Australian Financial Complaints Authority (AFCA) in the past 12 months. <https://www.afca.org.au/news/media-releases/afca-receives-70000-financial-complaints-in-2020-21>

ASIC releases adviser feedback on affordable advice

The corporate regulator's consultation found that limited advice is too costly to provide and there is a lack of demand for digital advice. <https://www.moneymanagement.com.au/news/financial-planning/asic-releases-adviser-feedback-affordable-advice>

Debt management firms become AFCA members

Under new government regulations certain debt management services are now prescribed as a type of credit activity for the purposes of the National Consumer Credit Protection Act 2009. <https://www.afca.org.au/news/latest-news/debt-management-firms-become-afca-members>

Open banking accelerating one year on

The Federal Government's world-leading Consumer Data Right reaches a significant milestone with even more Australians now able to access its benefits across the banking sector, with the four major banks sharing access to consumer data for a range of personal accounts. Further changes to the CDR Rules have been released for consultation to accelerate the benefits for consumers. <https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/open-banking-accelerating-one-year>

Final Sedgwick Review confirms banks putting customers first in pay systems for frontline staff

An independent review of retail banking product commissions and payments has described the change in culture and practices as a "substantial achievement" that will improve outcomes for customers. This report concludes the ABA Retail Banking Remuneration Review. <https://www.ausbanking.org.au/final-sedgwick-review-confirms-banks-putting-customers-first-in-pay-systems-for-frontline-staff/>

CHOICE calls on Govt to act on CSLR

Wrongdoing by bank executives will continue to go unpunished if the Government does not legislate the Compensation Scheme of Last Resort and Financial Accountability Regime, the consumer advocacy group believes. <https://www.moneymanagement.com.au/news/policy-regulation/choice-calls-govt-act-cslr>

Reserve Bank Welcomes Digital Finance Cooperative Research Centre

The Reserve Bank has welcomed the announcement that the Digital Finance Cooperative Research Centre (CRC) has been selected to receive funding under the CRC Program administered by the Ministry of Industry, Science and Technology. <https://www.rba.gov.au/media-releases/2021/mr-21-12.html>

ASIC cancels BBY's licence

The Australian Securities and Investments Commission has cancelled the Australian financial services licence of BBY Limited, effective 24 June, following the earlier suspension. <https://www.moneymanagement.com.au/news/financial-planning/asic-cancels-bby%E2%80%99s-licence>

Better Advice Bill introduced into Parliament

The Morrison Government is introducing further reforms to strengthen the financial advice sector and implement recommendation 2.10 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – proposed the establishment of a single disciplinary body for financial advisers. <https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/better-advice-bill-introduced-parliament>

Better Advice Bill creates individual registration in 2023

The FPA has welcomed the Government supporting an individual personal registration system for financial planners, as part of the Government's Financial Sector Reform – Better Advice Bill 2021 – which was introduced in Parliament, to improve the accountability and transparency of the financial services sector. <https://fpa.com.au/news/better-advice-bill-creates-individual-registration-in-2023/>

Regulation of credit cards and digital wallets for online gambling

The ABA encourages the Committee to consider amending the Interactive Gambling Act 2001 to establish a consistent policy approach to the use of credit for gambling across all gambling services in venues and online for the benefit of customers. Banks will continue to engage with community groups and industry stakeholders on this issue. <https://www.ausbanking.org.au/submission/regulation-of-credit-cards-and-digital-wallets-for-online-gambling/>

Joint accounting bodies welcome Australia-UK trade agreement

Chartered Accountants ANZ, CPA Australia and the Institute of Public Accountants (IPA) welcome the in-principle announcement of the Australia-United Kingdom (UK) Free Trade Agreement (FTA). There is a great commonality in the accounting, auditing, accounting ethics and accounting education standards between these two countries. <https://www.cpaaustralia.com.au/about-cpa-australia/media-policy-and-advocacy/media-releases/joint-accounting-bodies-welcome-australia-uk-trade-agreement>

IN PRACTICE AND COURTS

Consultations

[Financial Sector Reform \(Hayne Royal Commission Response—Better Advice\) Bill 2021 \[Provisions\]](#)

Status: Accepting Submissions

Date Referred: 24 June 2021

Submissions Close: 09 July 2021

Reporting Date: 28 July 2021

[ASIC: Industry response to consultation on promoting consumer access to affordable advice](#)

1 July 2021 - ASIC released an infographic summary of the response to [Consultation Paper 332 Promoting access to affordable advice for consumers](#) (CP 332). The infographic sets out the key issues raised by respondents in their submissions to CP 332. The response to CP 332 was unprecedented, with ASIC receiving 466 submissions from financial advisers, licensees, industry associations and relevant stakeholders.

[ASIC CP 344 Remaking ASIC class order on when debentures can be called secured notes: \[CO 12/1482\]](#)

Sets out ASIC's proposals to remake Class Order [\[CO 12/1482\]](#) *When debentures can be called secured notes*, which is due to expire ('sunset') on 1 April 2022: see [21-156MR](#).

[ASIC INFO 254 Debt management services: Applying for a credit licence or variation](#)

Explains new regulatory obligations under the [National Consumer Credit Protection Amendment \(Debt Management Services\) Regulations 2021](#) (for providers of debt management services including the requirement to be licensed from 1 July 2021: see [21-094MR](#)).

[ASIC CP 341 Review of the ePayments Code: Further consultation](#)

Seeks feedback on proposed updates to the ePayments Code that are designed to modernise the Code and ensure it continues to be effective and relevant to consumers and subscribers: see [21-108MR](#).

[ASIC Corporations \(Amendment\) Instrument 2021/381](#)

Amends the [ASIC Corporations \(Auditor Independence\) Instrument 2021/75](#) and [ASIC Corporations \(Parent Entity Financial Statements\) Instrument 2021/195](#) to change the repeal dates from April 2026 to April 2024.

[ASIC Corporations \(COVID-19—Advice-related Relief\) Instrument 2021/268](#)

Extends until 15 October 2021 the relief measure that allows financial advisers to provide a record of advice rather than a statement of advice to existing clients requiring financial advice due to the impact of the COVID-19 pandemic: see [21-072MR](#) and [FAQs](#).

[ASIC CP 340 Breach reporting and related obligations](#)

This consultation paper sets out the proposals for providing guidance to Australian financial services (AFS) licensees and Australian credit licensees (credit licensees) on the breach reporting obligation that applies from 1 October 2021. The obligations require these licensees to notify, investigate and remediate breaches of the law in certain circumstances.

[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 Monthly Authorised Deposit-taking Institution Statistics May 2021](#)

30 June 2021 - Copies of the May 2021 monthly publication are available on the [APRA website](#).

[APRA: FAQ on the prudential treatment of residential mortgage loans issued under the Family Home Guarantee and First Home Loan Deposit Scheme](#)

The FAQ clarifies the regulatory capital requirements for residential mortgage loans issued under both the FHG and FHLDS for ADIs that use the standardised and internal ratings-based approach to credit risk. The FAQ also clarifies the correct reporting approach for entities that use the standardised approach to credit risk under Reporting Standard ARS 112.1.

[APRA consultation on guidance in support of prudential standard on remuneration](#)

The draft *Prudential Practice Guide CPG 511 Remuneration* sets out principles and examples of better practice to assist banks, insurers and superannuation licensees comply with prudential standard [CPS 511 Remuneration](#), which will be finalised later this year. The closing date for submissions on the draft CPG 511 is 23 July 2021.

[APRA draft Prudential Practice Guide CPG 229 Climate Change Financial Risks \(CPG 229\)](#)

The guide is designed to assist APRA-regulated entities in managing climate-related risks and opportunities as part of their existing risk management and governance frameworks. APRA feedback on the draft CPG 229 closes 31 July 2021.

[AFSA: Personal Insolvency Compliance Program 2021-22, the Regulatory Charter and the Regulatory Cooperation & Support Policy](#)

The Australian Financial Security Authority (AFSA) has released its Personal Insolvency Compliance Program 2021-22, Regulatory Charter and Regulatory Actions Cooperation and Support Policy. These three documents underpin AFSA's regulatory and enforcement responsibilities in relation to personal insolvency and the Personal Property Securities Register.

AFSA: No changes to fees in 2021-22

AFSA will not be increasing fees or charges on 1 July 2021. AFSA are currently undertaking a review of their fees and charges as part of the annual Cost Recovery Impact Statement (CRIS) process, with any increases likely to be implemented on 1 July 2022. AFSA's current charging model is outlined in the [CRIS for personal insolvency](#) and the [CRIS for the PPSR](#).

CPA Current Consultations

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

[IPSASB Consultation ED 78 Property, Plant, and Equipment](#)
Comments due 25 September 2021.

Transition amendments to AASB 1059 Service Concession Arrangements: Grantors

24 June 2021 - The AASB issued:

[AASB 2021-4](#) to amend the modified retrospective transition method for service concession grantors measuring the Grant of a Right to the Operator (GORTO) liability when implementing AASB 1059.

[AASB 2021-4 Amendments to Australian Accounting Standards – Modified Retrospective Transition Approach for Service Concession Grantors](#) amended paragraph C4(c) so that the GORTO liability is initially measured based on the fair value (current replacement cost) of the service concession asset at the date of initial application adjusted.

[AASB Exposure Draft 310 Lack of Exchangeability](#)

The AASB is proposing to amend AAS 121 The Effects of Changes in Foreign Exchange Rates to help companies determine whether a currency can be exchanged into another currency and what accounting requirements to apply if the currency cannot be exchanged. Please submit your comments to the AASB by 23 July 2021, via the [AASB website](#).

[AASB Reminder: Navigating the financial reporting requirements in for-profit private sector client documents—what you need to know](#)

This AASB key facts summary has been prepared by the staff of the AASB for information purposes only and is not authoritative. The changes will take effect for any new or amended documents from 1 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*.

[IASB to extend the comment period for Exposure Draft Regulatory Assets and Regulatory Liabilities](#)

IASB extends by 30 days the comment period for the Exposure Draft *Regulatory Assets and Regulatory Liabilities* to give stakeholders more time to respond. The comment period will now end on 30 July 2021.

CASES

[BMW Australia Finance Limited v Rodrigues \[2021\] FCCA 1393](#)

CONSUMER LAW – application under s 100 of the National Credit Code for access to residential premises for the purpose of taking possession of a vehicle claimed to be the subject of a security interest – whether the court has power to make an order under s 100 of the National Credit Code without prior notice to the occupant – circumstances in which such order may be made – order authorising access made ex parte subject to undertakings and other conditions

Federal Circuit Court Rules 2001 (Cth) r 6.14

National Consumer Credit Protection Act 2009 (Cth) s 187, Sch 1, ss 4, 5, 88, 99, 100

Personal Property Securities Act 2009 (Cth) ss 10, 12, 18(a), 19(1), 123(1), 150, 206(1), 207

[Betalli and Australian Securities and Investments Commission \[2021\] AATA 1953](#)

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of publication of banning order by the Respondent – where applicant is banned for 2 years for – objectives of the regulators in making a decision – protection – objective of transparency – stay application granted

Administrative Appeals Tribunal Act 1975; Australian Securities and Investments Commission Act 2001;

Corporations Act 2001

Mr Christopher Betalli provides a range of services to his individual and small business clients. He is a mortgage broker, an equipment finance broker, an accountant, and a registered tax agent

[P & S Kauter Investments Pty Ltd v Arch Underwriting at Lloyds Ltd \[2021\] NSWCA 136](#)

Appeal dismissed with costs

INSURANCE – professional indemnity insurance – claims made and notified policy – where insurers notified within policy period of “chance of a claim”

INSURANCE – non-disclosure and misrepresentation – where insurers seek to avoid policy for fraudulent misrepresentation under Insurance Contracts Act 1984 (Cth), s 28(2) – whether fraudulent misrepresentations specifically pleaded – whether misrepresentations concerning matters of fact or statements of opinion

COSTS – where separate proceedings against same defendants heard together – where most issues of fact and law common or closely related – where plaintiffs and defendants represented by the same lawyers in each proceeding – whether plaintiffs should be jointly and severally liable for defendants’ costs

The appellants are members or self-managed superannuation funds of four family groups who received financial planning advice from Moylan Retirement Solutions Pty Ltd (MRS)

[de L’Isle v Knight \[2021\] NSWSC 809](#)

(1) Statement of claim filed 15 June 2020 be dismissed

CONTRACTS – construction – interpretation – where parties entered into a loan agreement – where plaintiff and companies associated with defendant subsequently entered into a joint venture – where joint venture terminated by agreement – where termination agreement discharged “all payment obligations” the defendant may have to the plaintiff – whether the loan was a payment obligation discharged by the termination agreement

[Goulburn International Pty Limited v GEMI 160 Pty Limited \[2021\] NSWSC 796](#)

CIVIL PROCEDURE – interim preservation – freezing order – mortgagors seek to restrain mortgagee from paying out part of proceeds of sale of mortgaged properties – scope of exceptions to freezing order – whether mortgagee can be prevented from making payments to third party investors under contracts made before the dispute arose – consideration of Jackson v Sterling, Cardile and Coral Rose – application refused

Before the Court is an application for a freezing order in a mortgage case. The mortgagee has exercised its power of sale

[Payton Securities Pty Ltd v Mason White McDougall \(Hurstbridge\) Pty Ltd \[2021\] VSC 375](#)

APPLICATION FOR JOINDER – Apportionable claim pursuant to s 24AL of the Wrongs Act – Extent of scope of solicitor’s retainer – Whether claim of concurrent wrongdoing is reasonably arguable - Kayteal Pty Ltd v John Joseph Dignan & Ors; Atkins v Interprac & Crole [2007] VSC 445; David v David [2009] NSWCA 8; Provident Capital Ltd v Papa [2013] NSWCA 36; Zakka v Elias [2013] NSWCA 119; Rexstraw v Johnson [2003] NSWCA 287 considered. – mortgages over properties

[Gulabovski v Integrity Financial Planners Pty Ltd \[2021\] VCC 842](#)

CONTRACT - ASSIGNMENT – Whether assignee is proper plaintiff to proceeding – Validity and enforceability of deed of assignment – Whether causes of action are rights under agreement

NOTICE – Whether plaintiff is legal or equitable assignee – Whether plaintiff provided express notice of assignment to defendant

TERMINATION – Financial planning advisor licence agreement – Australian financial services licensee – Corporate and individual authorised representatives – Whether corporate authorised representative had notice or knowledge of termination – Whether corporate authorised representative consented to termination – Credibility issues BREACH Failure to comply with notice requirements in agreement – Termination by mutual agreement

ESTOPPEL - Whether plaintiff is estopped from asserting breach by reason of conduct of corporate authorised representative

LOSS OR DAMAGE – Loss of book of clients – Causation Corporations Act 2001 (Cth) ss 477(2)(c), 917B, 917E and 917F(1);

LEGISLATION

Commonwealth

[Financial Sector Reform \(Hayne Royal Commission Response – Better Advice\) Bill 2021](#)

HR 24/06/2021 - Tax (financial) advisers will no longer be regulated by the Tax Practitioners Board but instead will be regulated only under the Corporations Act 2001. The Bill will also give the Minister the power to extend the cut-off date for certain existing financial advisers to pass the exam. The Government will use the power to extend the cut-off date to 30 September 2022 for advisers who have attempted the exam twice prior to 1 January 2022.

[Farm Household Support Amendment \(Debt Waiver\) Bill 2021](#)

Finally passed both Houses 24 June 2021 - The Farm Household Support Amendment (Debt Waiver) Bill 2021 (the Bill) would waive the repayment of certain classes of debts in relation to the Farm Household Allowance (FHA) program through amendments to the Farm Household Support Act 2014 (the FHS Act).

[Financial Regulator Assessment Authority \(Consequential Amendments and Transitional Provisions\) Bill 2021](#)

Assent Act no: 64 Year: 2021 29 June 2021 - Introduced with the Financial Regulator Assessment Authority Bill 2021, the bill amends five Acts to make amendments consequential on the establishment of the Financial Regulator Assessment Authority.

[Financial Regulator Assessment Authority Bill 2021](#)

Assent Act no: 63 Year: 2021 29 June 2021 - Senate 2nd reading 15/06/2021 - Introduced with the Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021, the bill: establishes the Financial Regulatory Assessment Authority to assess and report on the effectiveness and capability of the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission; and prohibits the unauthorised use or disclosure of protected information provided to the Authority.

[Treasury Laws Amendment \(2021 Measures No. 4\) Bill 2021](#)

Assent Act no: 72 Year: 2021 30 June 2021 - HR 3rd reading 17/06/2021 - Amendments to product intervention regime - to provide that ASIC is not prohibited from making a product intervention order that has conditions relating to fees, charges or other consideration paid or payable as remuneration by a retail client or consumer to a person, including the provider (or their associates) of a financial product or a credit product.

Regulations

[Accounting Standard AASB 2021-4 Amendments to Australian Accounting Standards – Modified Retrospective Transition Approach for Service Concession Grantors](#)

02/06/2021 - This instrument changes the modified retrospective method for a grantor's measurement of the Grant of a Right to the Operator (GORTO) liability at the date of initial application.

[Australian Prudential Regulation Authority Supervisory Levies Determination 2021](#)

29/06/2021 - The determination ensures the recovery of APRA's costs, and the costs incurred in connection with supporting the integrity and efficiency of markets and promoting the interests of consumers in the financial system, from industries that are prudentially regulated by APRA.

[ASIC Corporations \(Amendment\) Instrument 2021/500](#)

28/06/2021 - This instrument amends ASIC Class Order [CO 14/1262] (gives relief for 18 months to enable 31-day notice term deposits of up to five years to be given concessional regulatory treatment as basic deposit products under the Corporations Act (the Act)) to extend relief for an additional three years.

[Australian Prudential Regulation Authority instrument fixing charges No. 2 of 2021](#)

23/06/2021 - This instrument provides statistical information about financial sector entities to the Reserve Bank of Australia and the Australian Bureau of Statistics during the 2020-21 financial year.

[Australian Prudential Regulation Authority instrument fixing charges No. 1 of 2021](#)

21/06/2021 - This instrument specifies models-based capital adequacy requirements for authorised deposit-taking institutions for the financial year 2020-21.

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