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BANKING SECTOR NEWSLETTER

Welcome to the latest issue of our Banking Sector Newsletter.

In this edition, the International Monetary Fund's governing committee has urged policymakers to monitor inflation and "carefully calibrate" domestic policies to the evolving pandemic and available policy space. It also assured that central banks can look through inflation pressures that are transitory.

Analysis by the Australian Banking Association confirm that Australians are increasingly embracing online banking and transactions using technology rather than cards or cash. ABA Chief Executive Anna Bligh says COVID-19 has influenced banking choices for Australians and believes these customer-led changes are here to stay.

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

IN THE MEDIA

IMF governing committee urges central banks to monitor inflation

The International Monetary Fund's governing committee has issued an alert to policymakers drawing attention to the cruciality of monitoring pricing dynamics closely, while ensuring to "look through" transitory inflationary pressures. <https://www.investordaily.com.au/regulation/50089-imf-governing-committee-urges-central-banks-to-monitor-inflation>

Financial planners pay the price on Compensation Scheme of Last Resort: FPA

The Financial Planning Association (FPA) has called on the Government to reconsider its planned Compensation Scheme of Last Resort for victims' unpaid compensation until it fixes the problem of professional indemnity insurance in the profession. <https://fpa.com.au/news/financial-planners-pay-the-price-on-compensation-scheme-of-last-resort-fpa/>

'Lifblood of those towns': taskforce to look into wave of bank closures in regional Australia

The Australian government has announced a taskforce, including the big four banks, to assess the impact of bank branch closures in regional communities. The announcement comes after the APRA's annual listing of banking services revealed that more than 100 regional and rural banking branches had closed in the past year. <https://www.theguardian.com/australia-news/2021/oct/23/lifblood-of-those-towns-taskforce-to-look-into-wave-of-bank-closures-in-regional-australia>

ABA ready to assist Regional Banking Taskforce

The Australian Banking Association (ABA) stands ready to assist the newly established Regional Banking Taskforce. <https://www.ausbanking.org.au/aba-statement-on-regional-banking-taskforce/>

RBA backflips on 'no-surcharge' rules for BNPL

Australia's central bank has changed its mind about whether existing credit card surcharge rules should apply to Afterpay and Zip. In a statement, the RBA said that it had "concluded that it would be in the public interest for 'buy now, pay later' providers to remove their no-surcharge rules, consistent with the board's longstanding position on such rules". <https://www.investordaily.com.au/regulation/50139-rba-backflips-on-no-surcharge-rules-for-bnpl>

Media statement in response to the passing of Better Advice Bill

The FPA welcomes the passing of the Better Advice Bill in the Senate and looks forward to the stability that will follow. After 8 years of constant regulatory change, financial planners now have the opportunity to focus on their clients and on the challenge of providing financial advice to more Australians without the distraction of constant regulatory change. <https://fpa.com.au/news/media-statement-in-response-to-the-passing-of-better-advice-bill/>

Better Advice Bill passes parliament

The Government has passed the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021. Consistent with recommendation 7.1 of the Review of the Tax Practitioners Board, the legislation removes duplication for financial advisers who provide tax (financial) advice by ensuring they are only subject to one disciplinary and registration system. <https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/better-advice-bill-passes-parliament>

AFCA to consult on approach to categorising complaints about financial advice and financial products

With the forthcoming release of the draft Compensation Scheme of Last Resort (CSLR) legislation and in our regular discussions with the advice sector, AFCA intends to provide additional clarity to the sector and consumers on how it currently deals with and categorises these complaints. <https://www.afca.org.au/news/latest-news/afca-to-consult-on-approach-to-categorising-complaints-about-financial-advice-and-financial-products>

AAT amends Spectrum ban

The Administrative Appeals Tribunal has broadened the corporate regulator's decision to ban Spectrum Wealth director, Mark Schroeder, from providing financial services. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-277mr-aat-varies-asic-ban-of-former-spectrum-wealth-director-mark-schroeder/>

Banking customers continue shift to digital

New analysis by the ABA has shown a further shift by customers towards banking online and an increase in people paying with technology instead of physical cards or cash. <https://www.ausbanking.org.au/banking-customers-continue-shift-to-digital/>

ASIC further extends temporary financial advice relief measures in COVID-19 instrument

ASIC announced that it will further extend temporary relief measures designed to help the financial advice industry provide consumers with affordable and timely advice during the COVID-19 pandemic. The relief will now end on 15 April 2022. <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-269mr-asic-further-extends-temporary-financial-advice-relief-measures-in-covid-19-instrument/>
<https://www.moneymanagement.com.au/news/policy-regulation/asic-extends-temporary-financial-advice-covid-19-relief-measures>

Response to the FSC'S White Paper

The FPA broadly welcomes the release of the FSC's white paper and its goal to reduce the cost of providing financial advice, allowing financial planners to spend more time with new and existing clients. This white paper closely aligns with the FPA's five-year policy-platform roadmap – Affordable advice, sustainable profession. <https://fpa.com.au/news/fscs-white-paper/>

FSC launches white paper on financial advice

The Financial Services Council has released the White Paper on Financial Advice, a blueprint for a simplified regulatory framework that could reduce the cost of providing financial advice by almost \$2,000, or up to 37 per cent. <https://www.fsc.org.au/resources/2301-fsc-media-release-fsc-launches-white-paper-on-financial-advice/file>

Download the FSC's White Paper on Financial Advice [here](#).

Safety remains banking industry pandemic priority

As essential services, Australia's banks have focussed, throughout the COVID-19 pandemic, on keeping their staff and customers safe. <https://www.ausbanking.org.au/safety-remains-banking-industry-pandemic-priority/>

Financial Advisers raising education standards

FASEA has released a statement highlighting strong progress by financial advisers in raising their education levels. <https://www.fasea.gov.au/financial-advisers-raising-education-standards/>

FSC to ban occupational exclusions in default group life insurance in superannuation

The FSC has announced it will be introducing an enforceable FSC Standard to prohibit the use of exclusions and restrictive disability definitions because a member is employed in a high-risk occupation. It will apply to all default group life insurance in superannuation amongst FSC members. <https://www.fsc.org.au/resources/2297-fsc-media-release-fsc-to-ban-occupational-exclusions-in-default-group-life-insurance-in-superannuation/file>

Submissions to the FSC's consultation process are available [here](#).

IN PRACTICE AND COURTS

ASIC Updates

19/10/2021 [INFO 196 Audit quality – The role of directors and audit committees \(reissued\)](#)
Updated for changes made in developing the equivalent [IOSCO guide](#), including a new section titled 'What features of audit committees support audit quality?' (Financial Reporting Auditors).

18/10/2021 [CP 348 Extension of the CFD Product Intervention Order](#)

Seeks feedback on a proposal to extend ASIC's product intervention order imposing conditions on the issue and distribution of contracts for difference (CFDs): see [21-274MR](#).

13/10/2021 [ASIC Corporations \(Amendment\) Instrument 2021/848](#) and [INFO 262 FAQs: COVID-19 information for advice licensees and financial advisers](#)

Extends two temporary relief measures that facilitate access to timely and affordable personal advice for existing clients of providing entities that is in connection with the adverse economic effects of COVID-19: see [21-269MR](#). Amended: Instrument [2021/268](#).

[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 Consultations: 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.

[APRA finalises guidance for new prudential standard on remuneration](#)

The APRA has published guidance to assist banks, insurers and superannuation licensees in meeting the requirements of the new prudential standard CPS 511 Remuneration (CPS 511), which comes into effect from 1 January 2023. The final Prudential Practice Guide CPG 511 Remuneration (CPG 511) will assist industry in complying with CPS 511 by setting out guidance and examples of better practice.

[RBA: Review of Retail Payments Regulation: Conclusions](#)

The Payments System Board met on 18 October and concluded its Review of Retail Payments Regulation. The Bank has released a [Conclusions Paper](#) setting out various policy actions, together with amendments to the Bank's standards for card payment systems, which will contribute to a more efficient and competitive payments system.

[Australia's Personal Property Securities Register – AFSA statistics September quarter 2021](#)

AFSA statistics for the September quarter.

[AASB Invitation to Comment ITC 47 on the IASB Request for Information on Post-implementation Review of IFRS 9 Financial Instruments – Classification and Measurement](#)

IFRS 9 specifies how an entity is required to classify and measure financial assets and financial liabilities as well as some contracts to buy or sell non-financial items. Reviews of the impairment and hedge accounting requirements in IFRS 9 will follow later. Please submit your comments to the AASB by 31 December 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](#).

[AASB Staff Paper: Going Concern Disclosures: A Case for International Standard-Setting](#)

The AASB has released a new staff paper [Going Concern Disclosures: A Case for International Standard-Setting](#) which identifies potential areas for improvement relating to the existing going concern disclosure requirements in the IFRS Standards.

[AASB Exposure Draft ED 314 Subsidiaries without Public Accountability: Disclosures](#)

ED 314 incorporates IASB ED/2021/7, which proposes a reduced set of disclosure requirements for eligible subsidiaries without public accountability that apply IFRS Standards.

AFCA Current Matters

[Business interruption insurance test cases](#)

(Updated October 2021)

[Sterling group investors](#) (Updated October 2021)

[FSC: Target Market Determination \(TMD\) Templates](#)

The new Design Distribution and Obligations (DDO) came into effect on 5 October 2021, and require product issuers to develop Target Market Determinations (TMDs) for the products they issue to retail clients. For more information on the reforms and the FSC's template TMDs and data standards.

FSC Consultations

[FSC Submission Treasury Consultation on Occupational Exclusions](#)

[FSC Submission – Common Ownership and Capital Concentration Inquiry](#)

[FSC Submission – Greater Transparency of Proxy Advice Consultation Paper](#)

[Occupational Exclusions Consultation Paper](#)

FPA Submissions

[Better Advice Bill – Exposure Draft Regulations Treasury](#)

CASES

[The Australian People Future Fund and Registrar of Personal Property Securities \[2021\] AATA 3874](#)

PERSONAL PROPERTY SECURITIES – applications filed out of time – applicant refused to pursue its application for an extension of time – applicant contends Tribunal does not have jurisdiction to review the applications and requests immediate transfer of them to Federal Court – applications dismissed for lack of jurisdiction in absence of the grant of an extension of time.

[Point Bay Developments Pty Ltd v Perkins \(WA\) Pty Ltd \[2021\] QSC 272](#)

1. The respondent pay the sum of \$599,274.71 to the applicant.

EQUITY – GENERAL PRINCIPLES – MISTAKE – RECOVERY OF MONEY PAID OR EXPENDED – MONEY PAID BY MISTAKE – MISTAKE OF FACT – where the applicant unintentionally provided to the ATO the bank

account details of another company, A, for payment of a GST refund due to the applicant – where the ATO paid the money to A – where the applicant was not indebted to A – where A subsequently paid the money to the respondent pursuant to a debt appropriation order under the Civil Judgments Enforcement Act 2004 (WA) to discharge A's judgment debt to the respondent – where the applicant did not intend for the money to be paid to A, or intend for the money to be used to discharge A's judgment debt to the respondent – whether the mistake of fact caused the GST refund to be paid to A – whether the respondent was enriched at the expense of the applicant despite the respondent being a subsequent or indirect recipient of the money paid by mistake

EQUITY – GENERAL PRINCIPLES – UNJUST ENRICHMENT – DEFENCES – CHANGE OF POSITION
– where the respondent was a judgment creditor – where the respondent obtained a debt appropriation order under the Civil Judgments Enforcement Act 2004 (WA) directing the judgment debtor's bank to pay funds standing to the credit of the debtor to the respondent – where funds standing to the credit of the judgment debtor had been paid to the debtor from the applicant by a mistake of fact – where, pursuant to the debt appropriation order, the bank paid out the money to the respondent – where the respondent had notice of the mistake of fact prior to receipt of the money from the bank – where the applicant seeks recovery of the money from the respondent as money had and received – where the respondent faces legal costs in obtaining a fresh debt appropriation order if the respondent is ordered to disgorge the money – where the prospects of obtaining a fresh debt appropriation order are uncertain – whether the respondent has changed its position

[Bolitho v Banksia Securities Ltd \(No 18\) \(remitter\) \[2021\] VSC 666](#)

ADMINISTRATION OF JUSTICE – Paramount duty to court and overarching obligations – Group proceeding – Litigation funder, counsel, solicitor/law firm and expert witness – Fraudulent scheme to obtain grossly inflated legal costs and litigation funding commission from settlement payment – Repeated contraventions of duty and obligations – Where conduct corrupted the proper administration of justice – Content of paramount duty – Where solicitor on record played only a post-box role – Where targeted destruction of documents discovered – Civil Procedure Act 2010 (Vic) ss 10, 16–19, 21, 24

THIS EDITION'S EDITOR



Phil Kaunitz

Partner

+61 7 3166 4511

+61 402 844 833

pkunitz@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

[Tainton v Raftery Creek Pty Ltd \(in liq\) \[2021\] VSC 676](#)

PRACTICE AND PROCEDURE – Application for leave for director to appear on behalf of company – Application for lengthy adjournment at short notice – Where affidavit material and submissions on behalf of company filed – Not satisfied Court would be assisted if leave granted – Leave refused – Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 1.17(1) – Rossi Homes Pty Ltd v Victorian Civil and Administrative Tribunal [2018] VSC 95

PRACTICE AND PROCEDURE – Joinder – Application by new trustee to join proceedings to determine question of how much owed under mortgage – Where debt owing under mortgage admitted – Where application sought possession only – Joinder refused – Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 9.06

PRACTICE AND PROCEDURE – Summary judgment – Application for possession as mortgagee – Where land claimed to be held on bare trust – Trustee replaced on insolvency – Where defendant says land now held by new trustee – Where defendant's defence does not have any real prospects of success – Civil Procedure Act 2019 (Vic) Pt 4.4, ss 61–64 – Bendigo and Adelaide Bank Limited v Grahame [2020] VSC 86 – Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd [2013] VSCA 158; (2013) 42 VR 27

LEGISLATION

Commonwealth

[Protecting Pensioners from the Cashless Debit Card Bill 2021](#)

25/10/2021 - The Protecting Pensioners from the Cashless Debit Card Bill 2021 (the Bill) will amend the Social Security (Administration) Act 1999 (the Act) to repeal law that allows the Government to compel social security recipients to use the Cashless Debit Card.

Regulations

[ASIC Corporations \(Amendment\) Instrument 2021/848](#)

Tabled Senate 18/10/2021 - This instrument amends the ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268 to give effect to two temporary relief measures that facilitate access to timely and affordable personal advice for existing clients of providing entities that is in connection with the adverse economic effects of COVID-19.

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