

Article Information

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Banking & Finance Summary Updates - September 2019

There have been a number of updates in the industry over the past month from regulators and the Government.

Partner, Andrea Beatty, Lawyer, Chelsea Payne and Law Clerk, Chloe Kim summarise the major changes that have occurred.

- ASIC has filed an [appeal](#) with the Full Federal Court of Australia against the Honourable Justice Perram's [decision of ASIC v Westpac](#). ASIC has two grounds of appeal:
 - the primary judge erred by incorrect assessment under s 129; and
 - the primary judge erred by making an assessment of unsuitability within the meaning of "financial obligations" in s 131(2)(a).
 - ASIC also seeks to have the appeal costs be paid by Westpac.
- ASIC has [extended licensing relief for foreign financial services providers](#) to 31 March 2020 so they can provide certain financial services to Australian wholesale clients without holding an Australian financial services licence.
- ASIC approved an AFCA rule change to enable the naming of financial firms in its published Determinations.
- ASIC brought an action against NAB for dealing with unlicensed home loan introducers. ASIC alleges that NAB breached section 31(1) of the National Credit Act which prohibits credit licensees from conducting business with parties engaging in credit activity without an ACL. Furthermore, ASIC alleges that they breached obligations under s 47 of the National Credit Act requiring it to engage in credit activities efficiently, honestly and fairly and to comply with the Act.
- AUSTRAC issued a \$252,000 infringement notice to Compass Global Holdings Pty Ltd for failing to report international funds transfer instructions (IFTIS) between 2018 and 2019. This is a requirement for AUSTRAC regulated entities under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.
- After ASIC released REP 622 (which we have reported previously on [here](#)) Allianz will be refunding over \$8 million in consumer credit insurance premiums and fees.
- ASIC will review the industry transition towards ending grandfathered remuneration for financial advice following the Government's commitment to end the practice by 1 January 2021.
- ASIC released [Consultation Paper 322](#): Product intervention: OTC binary options and CFDs which proposes to ban the sale of binary options to retail clients, and restrict the sale of CFDs.
- On 28 August 2019, ASIC released their [Corporate Plan 2019 - 2023](#). The report addresses how the regulatory body will address misconduct in the financial system and improve consumer outcomes. The plan outlines ASIC's commitment to implementing recommendations of the Banking Royal Commission.
- On 29 August 2019, APRA released their [Corporate Plan 2019-2023](#). The report focuses on regulating non-financial risks and improving outcomes for superannuation members.
- On 23 August 2019, the OAIC released [Corporate Plan 2019-2020](#) which sets out their vision and strategic priorities. The four strategic priorities are to advance online privacy protections for Australians, influence and uphold privacy and information access rights frameworks, encourage and support the proactive release of government-held information and take a contemporary approach to regulation.
- APRA updated the Prudential Standard APS 222 Associations with Related Entities (APS 222) to strengthen the rules to combat contagion risk within banking groups and reduce the risk of problems in one part of a corporate group having a detrimental impact on an authorised deposit-taking institution (ADI). APS 222 will come into effect from 1 January 2021.
- APRA updated their [Enforcement Approach](#) to address how they will clarify and increase transparency regarding their data reporting and the use of their formal enforcement powers.
- AFCA named [29 financial firms](#) who breached their member requirements by failing to pay complaint-related charges.
- On 26 August the Government released an exposure draft legislation, the 'National Consumer Credit Protection

Amendments (Mortgage Brokers) Bill 2019' in response to the Banking Commission. The exposure draft bill introduces a best interests duty for mortgage brokers and reform mortgage broker remuneration. This draft legislation is open for consultation until the 4 October and is intended to come into effect 1 July 2020.

- ASIC has used their [product intervention order](#) for the first time to ban a model of lending in the short term credit industry which led to significant consumer detriment. The order ensures that short term credit providers do not have business structures which allow them to charge fees exceeding the prescribed limits for regulated credit. This order comes after ASIC's public consultation on product intervention powers which we have previously discussed [here](#).