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ARTICLES

The Circulating Security Interest in Review: Architectures of Certainty, Flexibility and Control – *Alice Tranter Wilson*

This article critically analyses and deconstructs the circulating security interest concept introduced by the *Personal Property Securities Act 2009* (Cth). Although the circulating security interest echoes the nature and indicia of the traditional floating charge, it is a distinctive means of taking security over fluctuating assets. Nevertheless, a tension between establishing certain characterisation, control and priority principles and promoting commercial flexibility underscores both security devices. Reform by the PPSA is yet to reconcile these competing policy concerns. Ultimately, the PPSA’s abandonment of the distinction between fixed and floating charges and the adoption of the circulating security interest concept are constructive developments. However, the characterisation of circulating security interests and the concept’s impact on pre-existing rights are issues ripe for further clarification. A balance between commercial flexibility and certainty in applying characterisation, control and priority principles is integral to the longevity of the circulating security interest.

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Application of the Basel III Framework to Cash Deposits Held by APRA-regulated Superannuation Funds – *M Scott Donald*

The trustees of Australian Prudential Regulation Authority (APRA) regulated superannuation funds hold substantial assets in cash deposits on behalf of members. Analysis of the terms under which those assets are held suggests that some, at least, of these holdings ought to qualify as “retail” deposits in an Authorised Deposit-taking Institution’s (ADI) calculation of its Liquidity Coverage Ratio for the purposes of Basel III compliance. The same holdings may also deserve preferential treatment under the Net Stable Funding Ratio regime recently introduced by APRA. In both cases, the classification tests applied by APRA fail to engage effectively with the careful allocation of responsibility and accountability imposed by the regulatory regime applied to the superannuation system since the advent of the Stronger Super reforms of 2011. Addressing the deficiencies in the tests would be of considerable benefit to Australian ADIs and would bring the treatment of such deposits into line with the treatment of analogous deposits held by the trustees of self-managed superannuation funds, in accordance with APRA’s statutory obligation to have regard for competitive neutrality in its pursuit of financial system stability.

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Enhancing Competition: Challenges for Australian Retail Banking – *Deborah Healey and Rob Nicholls*

Both before and after the Australian Federal election in 2016 there were calls for a Royal Commission into banking in Australia, targeting the big four banks. Although the original focus for the proposal was driven by poor wealth management advice, the scope of the call was modified in light of their very substantial profit levels and their uniform failure to pass on Reserve Bank rate cuts. In the context of these calls, this article considers the competitiveness of the Australian retail banking sector. This is characterised by high concentration and low consumer switching, both of which suggest that the market is not

highly competitive. This article considers the place of competition in retail banking in Australia, analysing market workings using a number of established economic tools. These confirm that the market is not, in fact, particularly competitive and that there is customer switching inertia. The article goes on to explore policies which might enhance competition, focusing on improving the opportunity for customers to switch banks.	48
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