

16 AUGUST 2019

ISSUE 42



BANKING SECTOR NEWSLETTER

IN THE MEDIA

Taking action on the Banking, Superannuation and Financial Services Royal Commission – Recommendation 2.4: Grandfathered Commissions

The Coalition Government will introduce legislation to ban the grandfathering of conflicted remuneration paid to financial advisers. The Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 implements the Government's response to the Final Report, to end the grandfathering of conflicted remuneration by 1 January 2021. <http://ejh.ministers.treasury.gov.au/media-release/003-2019/>

Big four and AMP fork out \$120m for poor advice

Australia's five largest banking and financial services institutions have paid a total of \$119.7 million in compensation as at 30 June 2019 to customers who suffered loss or detriment because of non-compliant advice given by financial advisers. <https://www.investordaily.com.au/regulation/45421-big-four-and-amp-fork-out-120m-for-poor-advice> ASIC statement [19-199MR](https://www.asic.gov.au/19-199MR) ASIC update on compensation by institutions for poor financial advice

Standing Economics Committee to expand inquiry into financial services sector

The Morrison Government has asked the House of Representatives Standing Committee on Economics to inquire into progress made by relevant financial institutions in implementing the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. <http://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/086-2019>

COBA: Australians urged to be scam smart

Australia's customer owned banking institutions are urging Australians to be scam smart as scammers ramp up activity in Australia. <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1386-australians-urged-to-be-scam-smart->

New credit reporting arrangements to facilitate better lending deals for consumers and protect vulnerable consumers

Changes to the Privacy Act to allow a credit provider to report when a person is engaged in a hardship arrangement are to be made in support of the Government's mandatory comprehensive credit reporting regime. These changes are expected to increase lending competition and deliver better deals for Australian consumers. <https://www.attorneygeneral.gov.au/Media/Pages/new-credit-reporting-arrangements-2-august-2019.aspx>

Consumer Data Right Bill passes

The Consumer Data Right Bill has passed both houses in parliament, with the Australian Banking Association (ABA) calling it a win for competition. The Bill amends the Competition and Consumer Act 2010, Australian Information Commissioner Act 2010 and Privacy Act 1998 to provide consumers and businesses with a right to access data in relation to them held by businesses. Consumer watchdog ACCC will be responsible for advising what sectors should be added to the system, writing rules, accrediting new participants and enforcement against breaches of customers' rights. <https://www.investordaily.com.au/regulation/45425-consumer-data-right-bill-passes> ABA statement <https://www.ausbanking.org.au/new-consumer-data-right-is-a-win-for-competition/>

RBA: Changes to the Exchange Settlement Account Policy

The Reserve Bank has updated its Exchange Settlement Account (ESA) Policy after determining that a number of changes were appropriate to provide more information about the eligibility requirements and application process, including the various risk management criteria applicants would be expected to meet. <https://www.rba.gov.au/media-releases/2019/mr-19-19.html>

APRA's tough new proposals on executive remuneration

The boards of financial services companies will have up to four years to recover remuneration from recalcitrant senior executives, under new proposals put forward by the Australian Prudential Regulation Authority (APRA). <https://www.superreview.com.au/news/financial-advice/apra%E2%80%99s-tough-new-proposals-executive-remuneration>

IN PRACTICE AND COURTS

[APRA: Strengthening prudential requirements for remuneration: discussion paper](#)

In this discussion paper, APRA proposes creating a new prudential standard to better align remuneration frameworks with the long-term interests of entities and their stakeholders, including customers and shareholders. A key feature of APRA's new standard is to promote the use of non-financial performance criteria in designing variable remuneration incentives: Strengthening prudential requirements for remuneration.

[ASIC consultation: securities lending and 'substantial holding' disclosure](#)

Consultation Paper [CP 319](#) on securities lending by agents, and subsequent disclosure of a substantial holding in a listed entity explains how the relevant interest provisions in s608 and 609 apply to agent lending and therefore ASIC's expectations for compliance with s671B. Comments are due by 6 September 2019.

[ASIC CP 300 Approval and oversight of compliance schemes for financial advisers](#)

The proposals in CP 300 Approval and oversight of compliance schemes for financial advisers are outlined here.

[AASB: Exposure Draft: Disclosure of Accounting Policies](#)

ED 296 Disclosure of Accounting Policies proposes amendments to help entities provide accounting policy disclosures that are more useful to primary users of financial statements. Comments are to be submitted to the AASB by 28 October 2019 via the [AASB website](#).

[AUSTRAC: The Treasury's consultation on the introduction of a cash payment limit](#)

In the 2018-19 Budget, the Government responded to the Black Economy Taskforce's [Final Report](#). This included the introduction of an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods and services. The consultation process is now on the draft legislation and accompanying explanatory materials to implement the cash payment limit from 1 January 2020.

[Responsible PPSR registration management](#)

The level of activity on the PPSR points to the critical role it serves in financial, business and consumer decisions. It's critical that the data held on the PPSR is

accurate. AFSA have taken the view that data integrity is a shared responsibility with the broader PPSR user community. Those principles are contained in a new booklet, '[Responsible PPSR registration management](#)' available from the [Business resources](#) section of the PPSR website.

CASES

[Binqld Finances Pty Ltd \(In Liq\) v Israel Discount Bank Limited; In the Matter of Binqld Finances Pty Ltd \(In Liq\) \[2019\] FCA 1186](#)

TAXATION – Meaning of "protected information" in s 355-30 of Sch 1 to the Taxation Administration Act 1953 (Cth) – whether information in a settlement deed with the Australia Taxation Office is "protected information" – whether disclosure of information would be an offence under s 355-155 of Sch 1 to the Taxation Administration Act 1953 (Cth) – whether the exceptions in s 355-175 and/or s 355-205 of Sch 1 to the Taxation Administration Act 1953 (Cth) engaged or applicable – whether disclosure of "protected information" "necessary" to give effect to a provision of taxation law – whether entire deed "protected information" – whether disclosure of non-protected information in an ATO settlement deed would contravene s 355-155 of Sch 1 to the Taxation Administration Act 1953 (Cth).
PRACTICE AND PROCEDURE – Application for suppression orders in relation to a settlement deed – whether power under s 37AF of the Federal Court of Australia Act 1976 (Cth) should be exercised – whether sufficient grounds established under s 37AG(1) of the Federal Court of Australia Act 1976 (Cth) – whether grounds specified in accordance with s 37AG(2) of the Federal Court of Australia Act 1976 (Cth) – whether necessary to prevent prejudice to the proper administration of justice – whether the risk of exposure to cross-claims a sufficient reason to suppress – whether disclosure of personal information a sufficient reason to suppress.

[Finance Sector Union of Australia v Unimoni Pty Ltd \[2019\] FCA 1128](#)

INDUSTRIAL LAW – principles of construction of eligibility rules of a union
INDUSTRIAL LAW – principles of construction of award
EVIDENCE – relevance of expert opinion as to the construction of rules of an organisation – relevance to the construction of an industrial award.

Rule 5 - It is rule 5 of the Finance Sector Union Rules which sets forth "Conditions of Eligibility for Membership" of the Finance Sector Union. Of primary relevance is the phrase "all employees in or in connection with the finance industry in Australia and/or in connection with the businesses and/or industries of financial intermediaries or financial services in Australia."

[Chen v Fang \[2019\] NSWSC 960](#)

COSTS – discontinuance of proceedings – whether positive ground or good reason to depart from the default position under Uniform Civil Procedure Rules 2005 (NSW) (“UCPR”), r 42.19 – cross-claimants guaranteed repayment of a loan under a Deed of Loan and Deed of Guarantee – where cross-claimants filed a Cross-Claim seeking to be discharged from various agreements including the Deed of Loan and Deed of Guarantee – where loan subsequently repaid by borrower – whether repayment of loan rendered Cross-Claim futile due to a supervening event – only part of Cross-Claim rendered futile by reason of the repayment – no reason to depart from the default position under UCPR r 42.19.

[Bassal v Savills \(NSW\) Pty Limited \[2019\] NSWSC 696](#)

(1) Judgment for the defendant
CONTRACTS – joint venture agreement for construction of outlet shopping centre – where joint venture partners signed Exclusive Leasing Agency Agreement with commercial real-estate agency – where agreement was to identify appropriate tenants and refer them to the JV partners for approval – where shopping centre only 55% let at opening – where joint venture partners defaulted on their loans and joint venture failed – whether real-estate agency failed to introduce tenants – whether real-estate agency breached implied term of care, skill and diligence – whether failure to implement any or any adequate leasing strategy – whether breach caused damage – no breach established – whether even if breaches established there was causation – where quantum of economic loss not properly explained.

[Edwards v Pepper Finance Corporation Limited \[2019\] QCA 152](#)

The appeal be dismissed with costs on the standard basis.
PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – DEFAULT JUDGMENT – SETTING ASIDE – PROCEDURAL AND OTHER MATTERS – where the appellant and her husband entered into a loan agreement under which the respondent would

advance \$937,000 to them, secured by a registered mortgage against a residential property – where the appellant defaulted under that mortgage and the respondent commenced proceedings against the appellant.

[Sea Trek Dive Services Pty Ltd & Anor v Crossley \[2019\] QDC 126](#)

CIVIL PROCEEDING – claim – loan agreement – repayments – interest payable – purported guarantee void or unenforceable for want of consideration – valid and enforceable loan agreement – guarantor of loan . Civil Proceedings Act 2011 (Qld) s 58.; Property Law Act 1974 (Qld) s 56.

[Jams 2 Pty Ltd & Ors v Stubbings \(No 4\) \[2019\] VSC 482](#)

EQUITY – Setting aside of unconscionable loan , mortgage and guarantee – Rescission on equitable grounds – Restitutio in integrum – Formulation of orders to achieve practical justice between the parties.

LEGISLATION

Commonwealth Regulation

[Regional Investment Corporation \(Agristarter Loans\) Amendment \(Loan Terms and Eligibility\) Rule 2019](#)

31/07/2019 - This instrument amends the Regional Investment Corporation (Agristarter Loans) Rule 2019 to allow for agristarter loans to be made available to farm businesses that intend to be engaged solely or mainly in producing commodities for constitutional trade and commerce.

[Banking Amendment \(Rural Finance Reform\) Bill 2019](#)

HR 22/07/2019 - A Bill for an Act to amend the Banking Act 1959 in relation to loans to primary production businesses.

Gazetted 31 July 2019

[Banking \(Prudential Standards\) adjustment or exclusion No. A8 of 2019](#)

[Banking \(Prudential Standards\) adjustment or exclusion No. A7 of 2019](#)

THIS EDITION'S EDITORS



David Murray-Nobbs

Partner

+61 2 9225 2714

+61 405 183 587

dmurraynobbs@tqlaw.com.au



Marc Saadie

Partner

+61 2 9225 2752

msaadie@tqlaw.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.

SYDNEY | Level 25, 1 O'Connell Street | Sydney NSW 2000

MELBOURNE | Level 39, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000

BRISBANE | Level 28, Waterfront Place, 1 Eagle Street | Brisbane QLD 4000

PERTH | Level 27, Exchange Tower, 2 The Esplanade | Perth WA 6000

ADELAIDE | Level 7, 19 Gouger Street | Adelaide SA 5000

www.tqlaw.com.au

Thomson Geer

@ThomsonGeer