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Regulatory compliance updates

National Credit Providers Association Regulatory Report

September 2019

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Introduction

This is a summary of some of the regulatory changes affecting financial services in August and September 2019.

For more recent information visit www.brightlaw.com.au or call me.

Regards
David Jacobson

Financial Services Royal Commission Implementation Roadmap

The Government has released its Financial Services Royal Commission Implementation Roadmap setting out when it will implement its response to the Royal Commission Final Report published in February 2019. Background.

The following lists outline indicative timelines for implementation of recommendations and additional commitments requiring Government action.

Legislation to be consulted on and introduced by end-2019

• Recommendation 1.2 – Mortgage broker best interests duty
• Recommendation 1.3 – Mortgage broker remuneration (consistent with the Government's response)
• Recommendation 2.4 – Ending grandfathered commissions for financial advisers (legislation introduced on 1 August 2019)
• Recommendation 4.2 – Removing the exemptions for funeral expenses policies
• Recommendation 4.7 – Application of unfair contract terms provisions to insurance contracts
• Recommendation 4.8 – Removal of claims handling exemption for insurance
• Additional Commitment – ASIC's search warrants powers (ASIC Enforcement Review)
• Additional Commitment – ASIC's telecommunications interceptions powers (ASIC Enforcement Review)
• Additional Commitment – ASIC's licensing powers (ASIC Enforcement Review)
• Additional Commitment – ASIC's power to ban people in the financial sector (ASIC Enforcement Review)

Legislation to be consulted on and introduced by 30 June 2020

- Recommendation 1.7 – Removal of point-of-sale exemption
- Recommendation 1.15 – Enforceable code provisions for industry codes of conduct
- Recommendation 2.1 – Annual renewal and payment for financial advice
- Recommendation 2.2 – Disclosure of lack of independence of financial advisers
- Recommendation 3.1 – No other role or office for trustees of Registrable Superannuation Entities (RSE)
- Recommendation 3.2 – No deducting advice fees from MySuper accounts
- Recommendation 3.3 – Limitations on deducting advice fees from choice superannuation accounts
- Recommendation 3.4 – No hawking of superannuation products
- Recommendation 4.1 – No hawking of insurance products
- Recommendation 4.3 – Deferred sales model for add-on insurance
- Recommendation 4.4 – Cap on commissions paid to vehicle dealers for sale of add-on insurance products
- Recommendation 4.5 – Duty to take reasonable care not to make a misrepresentation to an insurer
- Recommendation 4.6 – Limiting circumstances where insurers can avoid life insurance contracts
- Recommendation 4.8 – Removal of claims handling exemption
- Additional commitment in response to Recommendation 4.2 – Restricting use of the term 'insurer' and 'insurance'
- Recommendation 1.6 – Reference checking and information sharing for mortgage brokers
- Recommendation 2.7 – Reference checking and information sharing for financial advisers
- Recommendation 2.8 – Licensee obligations to report compliance concerns
- Recommendation 2.9 – Licensee obligations where misconduct by financial advisers
- Recommendation 3.8 – Adjustment of APRA's and ASIC's roles in superannuation
- Recommendation 6.3 – General principles for ASIC and APRA to co-regulate superannuation
- Recommendation 6.4 – ASIC as conduct regulator for superannuation
- Recommendation 6.5 – APRA to retain current functions for superannuation
- Recommendation 6.9 – Statutory obligation for APRA and ASIC to co-operate

and share information
• Recommendation 6.14 – A new oversight authority for APRA and ASIC
• Recommendation 6.11 – Improving ASIC's Board meeting procedures
• Recommendation 7.2 – Implementing the ASIC Enforcement Review Taskforce's recommendations to improve the breach reporting regime
• Additional commitment in response to Recommendation 7.2 – Implementing the ASIC Enforcement Review Taskforce's directions power recommendations

Legislation to be consulted on and introduced by end-2020
• Recommendation 2.10 – A new disciplinary system for financial advisers
• Recommendation 7.1 – Compensation scheme of last resort
• Recommendation 3.9 – Extending the Banking Executive Accountability Regime (BEAR) to RSE licensees
• Recommendation 4.12 – Extending the BEAR to APRA-regulated insurers
• Recommendation 6.6 – Joint administration of the BEAR
• Recommendation 6.7 – Statutory amendments to facilitate co-regulation
• Recommendation 6.8 – Extending the BEAR to all APRA-regulated financial services institutions.
• Additional commitment – extension of the executive accountability regime to non-prudentially regulated financial entities to be administered by ASIC.

Reviews in 2022
• Recommendation 1.4 – Council of Financial Regulators and the Australian Competition and Consumer Commission review of changes to mortgage broker remuneration and operation of upfront and trail commissions
• Recommendation 2.3 – Review of measures to improve the quality of financial advice – Consistent with the Royal Commission recommendations, the review will examine all exemptions from the ban on conflicted remuneration, including for general insurance, consumer credit insurance, timeshare and stockbroking remuneration, and stamping fees
• Recommendation 2.6 – Review of each remaining exemption from the ban on conflicted remuneration. This review will occur as part of the review of measures to improve the quality of financial advice (recommendation 2.3)
• Additional commitment – Independent inquiry into changes in industry practices
• Additional commitment – Assessment of the effectiveness of changes made by the regulators following the Royal Commission by the (to be established) financial regulator oversight authority

Other measures

• Recommendation 1.11 – A national farm debt mediation scheme – The Government is working with states and territories through the Agriculture Ministers' Forum (AGMIN) to progress work on the establishment of a national farm debt mediation scheme

• Recommendation 1.5 – Regulating mortgage brokers as financial advisers – This recommendation will be progressed following the review of financial advice reforms (recommendation 2.3), given that review may recommend changes to the regulation of financial advisers

• Recommendation 3.5 – One default superannuation account – Implementation of this recommendation will be considered in the context of the findings and recommendations of the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness

• Additional commitment in response to Recommendation 7.1 – Increasing AFCA's role in remediation programs – legislation to be introduced by mid-2021

• Additional commitment – Extension of Federal Court jurisdiction in relation to criminal corporate crime – legislation to be introduced by mid-2020

Design and Distribution Obligations to be extended

Treasury has released for public consultation exposure draft Corporations Amendment (Design and Distribution Obligations) Regulations 2019 to support the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019. Background.

The purpose of the Regulations is to extend the DDO regime by altering the products and persons in relation to which the DDO regime applies.

The amendments:

- extend the DDO to additional persons;
- extend the DDO to additional products; and
- exclude certain products from the DDO.

Additional Persons
The Regulations extend the definition of regulated person to include credit licensees and credit representatives within the meaning of the Credit Act. They also extend the definition of regulated person to a person who is exempt from the obligation to hold a credit licence under section 29 of the Credit Act because of an exemption under sections 109 and 110 of the Credit Act.

Additional products
These Regulations extend the DDO regime so that it applies in relation to the following products:
• simple corporate bonds depository interests in simple corporate bonds, where the simple corporate bonds are, or are to be, issued under a 2 part simple corporate bonds prospectus;

• debentures of a body that is an ADI (authorised deposit-taking institution) or

registered under section 21 of the Life Insurance Act 1995;
• basic banking products;
• custodial arrangements that are not already subject to the new regime, including an interest in an investor directed portfolio service (IDPS); and
• products sold in certain situations where the DDO could be avoided.

Excluded products
These Regulations exclude the following products from the DDO regime:
• interests in eligible rollover funds (ERFs);
• defined benefit interests;
• medical indemnity insurance products;
• depository interests in foreign fully paid ordinary shares, being shares in relation to which, if they were offered directly to retail clients, the DDO obligations in the Act would not apply;
• bank drafts (and money orders issued by or for Australia Post);
• credit facilities not issued in the course of a business of providing credit;
• credit provided for business purposes;
• certain 'credit facilities' that do not involve the provision of credit;
• credit provided by pawnbrokers;
• the provision of a mortgage (as distinct from the credit contract secured by the mortgage); and
• financial products not received in this jurisdiction that are not already excluded from the DDO.

The Regulations commence on the later of the day after registration of the Regulations or the commencement of the DDO amendments in the Act (which commence on 5 April 2021, two years after the Act received Royal Assent).

ASIC Product Intervention Order—Short Term Credit

ASIC has used its product intervention power for the first time to prohibit from 14 September 2019 companies, and directors of those companies, from using a specific short term lending model that ASIC considers has resulted in, will result or is likely to result in significant detriment to retail clients.

ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917 prohibits the provision of short term credit except in accordance with conditions which limit the total fees that can be charged. Background.

A short term credit provider (as defined by subsection 6(1) of the National Credit Code) must not provide credit to a retail client under a short term credit facility except in accordance with the condition that the total of:
(a) the amount of credit fees and charges that may be imposed or provided for under the short term credit facility; and
(b) the amount of collateral fees and charges that may be imposed or provided for under a collateral contract;
must not exceed the maximum amount of credit fees and charges permitted under subsection 6(1) of the National Credit Code in relation to the provision of credit under the short term credit facility.

Consultation on new ASIC licensing and enforcement powers

Treasury has released for consultation draft legislation to implement recommendations of the ASIC Enforcement Review Taskforce Report relating to licensing, banning orders, search warrants and access to telecommunications intercept material.

The draft legislation:

- Grants ASIC new powers in relation to the variation and cancellation of Australian Financial Services Licences and Australian Credit Licences;
- Strengthens ASIC's licensing powers by replacing the AFS License requirement that a person be of 'good fame and character' with an on-going requirement that they be a 'fit and proper person';
- Aligns the penalties for false and misleading statements in AFS and Australian Credit License applications;
- Extends ASIC's powers so that they may ban a person from performing functions in a financial services or credit business. The legislation also expands the grounds on which ASIC can issue banning orders;
- Harmonises ASIC's Search Warrant powers across different Acts and brings them into line with the search warrant powers in the Crimes Act;
- Allows interception agencies to provide lawfully intercepted information to ASIC for serious offences that ASIC can investigate or prosecute.

Licensing changes

Under the draft bill:

- ASIC may suspend or cancel an AFS licence if the licensee does not provide a financial service within 6 months of the licence being granted, or if the licensee ceases to carry on a financial service business;
- An AFS licensee or credit licensee who requests a variation of their licence must satisfy the fit and proper person test in order for ASIC to grant a varied licence;
- ASIC may vary or revoke an AFS licence or credit licence if it is no longer satisfied that the licensee, its officers, or controllers no longer satisfy the 'fit and proper person' requirement;
- An AFS licensee or credit licensee must notify ASIC of a change of control within 30 days of the change. A failure to notify ASIC of a change in control is an offence of strict liability.

ASIC's existing powers in the AFS licensing regime do not provide for suspension or cancellation if the licensee does not provide the financial services that have been authorised.

The Taskforce found that this provides an opportunity for entities to 'warehouse' and commoditise AFS licences. In practice, an entity is able to apply for a licence without any intention of commencing activities authorised by the licences. The intention is to sell the licences to persons who may not always meet the requirements to hold an AFS or credit licence.

The amendments specifically provide that where a licensee makes a variation request, ASIC must apply the fit and proper test, in a similar manner to a licence application. That is, ASIC must have no reason to believe that the licensee and the controllers are not fit and proper having regard to the factors described above.

The amendments to the variation provisions also align with the amendments to the original licence application process, that is, provide ASIC with the power to request information from controllers, confirm that there have been no material changes to the information provided by the licensee before the variation is granted and deem withdrawal of the variation request if the licensee does not provide information that is requested by ASIC.

Responsible lending case note: ASIC v Westpac

In the first contested decision on the specific obligations of responsible lending, in Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial) [2019] FCA 1244 Justice Perram of the Federal Court dismissed ASIC's claims that firstly Westpac's computer-operated loan approval system failed to have regard to any of the living expenses declared by consumers on their loan application forms and secondly that Westpac's loans having an initial interest only period before payment of principal was required contravened the National Credit Act. Background.

UPDATE: ASIC has appealed the decision.

Although Westpac (and other lenders) have changed their assessment procedures since the period under review the decision makes important observations about the discretion lenders have in their assessment process and what is and is not, mandatory.

Facts

ASIC's case focussed on the meaning of Section 131(2)(a) of the National Credit Act which deals with when a credit contract must be assessed as unsuitable.

Justice Perram rejected ASIC's case on the facts. He found that Westpac did have regard to borrowers' declared living expenses and therefore made a valid assessment.

He concluded that by means of its 70% Ratio Rule Westpac did take into account the consumer's declared living expenses from Westpac's Form PFI001 as part of a process leading to an answer to the section 131(2)(a) requirements.

The 70% Ratio Rule was triggered if a consumer's declared living expenses, as recorded on the Form PFI001, exceeded 70% of their verified monthly income. Once triggered, an application was referred for manual processing by a credit officer.

In the course of the action, ASIC amended its claim to focus on the general obligation to assess unsuitability under the National Credit Act rather than to examine whether particular loans should have been assessed as unsuitable.

ASIC alleged that Westpac breached the Act for every one of the 261,987 Westpac-branded home loans it made in the period 12 December 2011 to March 2015 (after which it changed its procedures).

But ASIC did not allege that the alleged defects in the automated decision system ('the ADS') resulted in Westpac extending loans in the case of any of the 261,987 loans to any consumers who it ought to have found would be unable to meet their financial obligations under the credit contracts or who would be able to do so only in circumstances of substantial hardship.

Interpretation of Section 131(2)(a) of the National Credit Act
Justice Perram said:

> *"… so far as the consumer's financial position is concerned, the Act requires a credit provider to ask itself only whether 'the consumer will be unable to comply with the consumer's financial obligations under the contract' or, alternatively, whether the consumer 'could only comply with substantial hardship': s 131(2)(a)….*
> *Whilst I accept that the Act requires a credit provider to ask the consumer about their financial situation (s 130(1)(b)) and, in turn, to ask itself—and to answer—the s 131(2)(a) Questions, I do not accept that this has the further consequence that the credit provider must use the consumer's declared living expenses in doing so.*
> *In fact, the Act is silent on how a credit provider is to answer the s 131(2)(a) Questions. Division 3 of the Act contains neither an express statement that a credit provider must use the consumer's declared living expenses in doing so nor, in my opinion, can such a requirement*

> *be discerned from its terms as a matter of necessary intendment. "*

ASIC argued that Westpac's assessments did not comply because they did not follow 3 required steps:
1. in conducting an assessment under s 129 a credit provider must take account of information about the particular consumer's financial situation obtained under s 130.
2. across the whole of its home loan approvals that were not referred for manual assessment for the period 12 December 2011 to March 2015 Westpac failed to take account of the consumer's declared living expenses in purportedly assessing whether a credit contract was unsuitable and therefore failed to take into account information about each consumer's financial position.
3. Westpac's failure to take account of the consumer's declared living expenses in purporting to carry out an assessment under s 129 meant that it had not carried out an assessment as required. It then followed that Westpac contravened s 128 which required it to conduct an assessment under s 129 before extending a loan to a consumer.

Justice Perram rejected each of those three steps.

In respect of ASIC's First Step, Justice Perram said that section 129 does not say that a credit provider must take account of the consumer's financial information obtained by it under s 130(1)(b) in performing an assessment under s 129.

> *"Rather, it says that the assessment must have two qualities. It must 'specify' the period to which it relates and it must 'assess' whether the credit contract 'will be unsuitable for the consumer'. If a credit provider performs an assessment which does both of these things then it will have made an assessment in accordance with s 129."*

He agreed with ASIC that the inquiries required by s 130 must take place before the assessment is carried out and the only purpose for which these inquiries are made is for the purpose of carrying out the assessment.

He rejected ASIC's arguments as to the nature of the assessment which is required and that declared living expenses are mandatory.

He said that the assessment is to be an assessment of whether the proposed credit contract would be unsuitable for the borrower:

> *“the mandatory matter which must be taken into account is the consumer’s financial situation viewed overall and not any particular integer of which it consists. Whether that financial situation has been taken into account and how it has been taken into account will therefore be a question of fact and degree…*
>
> *“The only statutory purpose for which the information is collected is, in my opinion, to answer the s 131(2)(a) Questions (or, in a case where they were relevant, the s 131(2)(b) or (c) questions). They are precise questions: is it possible for the consumer to service the loan at all and, if it is, can it nevertheless only be serviced by the making of repayments which would put the consumer in circumstances of substantial hardship? I accept that, in principle, whatever must as a matter of necessity be considered to answer those two questions is a mandatory matter which a credit provider must take into account.”.*
>
> *“I do not, however, accept ASIC’s contention that all of the financial circumstances of the consumer can be such a mandatory matter. Many of the consumer’s financial circumstances are not relevant to either question. For example, the fact that a consumer had superannuation could have no relevance to the s 131(2)(a) Questions of whether the consumer could in absolute terms afford the repayments; so too, the fact that the consumer takes an annual first class holiday to the United States is not relevant to assessing whether the repayments will put the consumer into circumstances of substantial hardship. Thus, the mandatory matters flowing from the terms of the s 131(2)(a) Questions cannot include as a single mandatory matter all of the financial circumstances of the consumer. And, because they do not include all of those circumstances, it cannot be said that this argument has the*

consequence that the subset of all of the financial circumstances of the consumer comprising the consumer's declared living expenses must be a mandatory consideration either."

"I am unable to discern why, as a matter of principle, the consumer's declared living expenses must be considered in answering the s 131(2)(a) Questions. The first of those questions concerns the absolute ability of the consumer to make the repayments on the loan. This inquiry is only concerned with the consumer's ability to service the loan and not with any issues as to whether doing so will put the consumer in circumstances of substantial hardship. I am unable to perceive why, in answering that question, one must know what the declared living expenses of the consumer are. ASIC's submissions did not seek demonstrate why this might be so."

"The problem for ASIC's argument is that the mere fact that there are living expenses is not necessarily relevant to whether a consumer will be unable to comply with their loan obligations because it is always possible that some of the living expenses might be foregone by the consumer in order to meet the repayments.

In fact, the only way that one or more declared living expenses can be shown to be necessarily relevant to the issue of whether the consumer can afford to make the repayments is by identifying some living expenses which simply cannot be foregone or reduced beyond a certain point. For example, everyone has to eat so there must be an amount for food which is the minimum which can conceivably be spent. But that minimum is an entirely different concept to the declared living expense of what the consumer actually spends on food. Indeed, knowing how much the consumer actually spends on food does not tell one anything about that conceptual minimum."

"The situation is no better in relation to the second of the s 131(2)(a) Questions (i.e. whether the consumer, whilst able to afford the

repayments, will not be able to do so without being placed in circumstances of substantial hardship). Largely the problem is the same as that described in the preceding paragraph although it is now more acute. Here the issue is not whether some or all of the declared living expenses can be done without but the even more complex question of whether, if done without, this would give rise to circumstances of substantial hardship. Again, one cannot say that as a matter of necessity this can be discerned from the declared living expenses by themselves. ".

"It follows that as a matter of analysis, declared living expenses by themselves do not necessarily have to be relevant to the s 131(2)(a) Questions. If they do not necessarily have to be relevant to the answering of those questions, one cannot say that s 129 requires that the declared living expenses be taken into account in performing an assessment of unsuitability. I therefore reject the first step in ASIC's argument.

That conclusion is consistent with what seems to me a more likely operation for ss 128 and 129. To grasp this it is first necessary to know that Div 3 is very concerned to ensure that the assessment which the credit provider carries out is correct. The credit provider is obliged by s 129 to carry out an assessment of the suitability of the loan for the consumer (strictly, unsuitability) and is prohibited, on pain of civil penalty, by s 128 from entry into a credit contract unless it has performed such an assessment. ASIC's argument effectively telescopes substantial obligations into ss 128 and 129 relating to how a credit provider goes about this process. But this appears to me to be pointless because of ss 131 and 133. Section 131 requires certain credit contracts to be assessed as unsuitable and s 133 prohibits entry by a credit provider into a credit contract which is unsuitable.

The policy of the statute that unsuitable loans should not be made is explicitly and directly given force by ss 131 and 133. Given that

> *statutory fact, what purpose can be served by prescribing how a credit provider goes about the assessment process? Sections 131 and 133 make that the problem of the credit provider. A credit provider may do what it wants in the assessment process, so far as I can see; what it cannot do is make unsuitable loans. ASIC's argument creates a whole new range of implied rules which appear altogether unnecessary in light of ss 131 and 133."*

Justice Perram concluded that ASIC's second step failed on the facts: Westpac did not fail to take into account the consumer's declared living expenses. It took them into account in applying the 70% Ratio Rule as part of its process of assessment under the ADS in conjunction with other rules.

In respect of ASIC's third step he concluded that even if Westpac had been obliged to take into account all declared living expenses (which it was not) and if it had failed to do so (which it did not), then it had not failed to carry out the assessment called for by s 129.

He said that the word 'assessment' as used in section 132 refers to the thing which results from the process of assessment.

The HEM benchmark

ASIC did not submit that s 129(b) prohibits a credit provider from using the HEM benchmark. It argued that because the HEM benchmark is not about a particular consumer or a particular credit contract, a credit provider who assessed a loan's suitability based only on the HEM benchmark would not have carried out the assessment required by s 129(b). It argued that in using the HEM benchmark a lender must take into account the individual financial position of the consumer in doing so and that the HEM benchmark, by itself, will not satisfy that requirement.

ASIC's case was that Westpac had not used the consumer's declared living expenses and had, rather, relied solely on the HEM benchmark.

But Justice Perram found that Westpac did use the declared living expenses.

He did not decide whether the HEM benchmark was a good proxy for what substantial hardship might be. He said:

“Assuming … that the HEM benchmark is imperfect, this does not prevent me drawing the conclusion that Westpac understood the HEM benchmark to be a measure to assess hardship and that it used it in the ADS, in good faith, for that purpose.

I reject Westpac’s … submission that the use of the HEM benchmark did involve an assessment of the borrower’s actual expenses and accept instead its contention … that the use of the HEM benchmark is not an estimate of the borrower’s actual living expenses but ‘an estimate of the level of household expenditure that the consumer could reasonably be expected to spend to participate fully in society with a reasonable standard of living.’”

Initial interest only period loans
ASIC alleged that Westpac contravened the National Credit Act in respect of initial interest only period loans on 154,351 occasions across the same period as its first allegation (these loans are a subset of the 261,987 loans in ASIC’s primary case).

He said Westpac’s legal obligation was to ask and answer the s 131(2)(a) Questions. The fact that it did so as if the loan did not involve an initial interest only period did not mean that it did not ask and answer those questions.

ASIC did not allege that where Westpac calculated the monthly repayments on a variable interest rate loan using the rate prevailing at the inception of the loan that it infringed the Act if the interest rate subsequently shifted.

Justice Perram concluded:

“This part of ASIC’s case may be readily dispatched. What it submits is impossible. Because the interest is variable it is not possible to know what the repayments will be at the end of the only interest only period. In the case of these loans the choice is between assessing the monthly repayments as the repayments of interest due at the inception of the loan or doing as Westpac did which is to amortise the principal across the life of the loan on the assumption that the initial interest rate applies

across the life of the loan. ASIC’s contentions about these loans can be rescued from incoherence only by adding an additional assumption that the repayments at the end of the initial period should be estimated at the initial interest rate. …

The burden of ASIC’s submission is that the repayments due at the end of the initial interest only period is a mandatory matter which must be taken into account in answering the s 131(2)(a) Questions. I do not see how that can be. As I have explained above, the consumer’s entire financial position is not a mandatory consideration for the purpose of answering the s 131(2)(a) Questions. One cannot reason therefore that the repayments due at the end of the interest only period is mandatory through the fact that they make up part of the consumer’s financial position.

What is in fact mandatory are those matters which must be known before the s 131(2)(a) Questions can be answered. Since the manner of answering those questions is not itself regulated by s 131 it may be difficult to identify such matters in advance although I would not at this stage exclude the possibility. But in any event it certainly cannot remotely be said that those questions cannot be answered without knowing the repayments which will be due at the end of the initial interest only period.

I am unable to discern how Div 3 can be construed in such a way that the numerical figures used in process of assessment can result in there having been no assessment at all. Indeed, ASIC accepted in its closing written submissions that it was not a contravention of s 128 ‘for a licensee to make a wrong assessment’ and this was because ‘s 128 is not about being right or wrong’. I would accept that an invalid assessment would result if a credit provider failed to ask itself the s 131(2)(a) Questions and asked itself some other question. But once it is accepted that Westpac did in fact ask itself the s 131(2)(a) Questions, how it went about answering those questions was, …,

> *legitimately a matter for it. In that regard, ASIC's position on its primary case (where it accepted that what the credit provider did with the information it gathered was a matter for it) was inconsistent with its secondary case about loans with initial interest only periods (where it said that the credit provider has to calculate the repayments in a particular way). "*

Where to now?

ASIC may appeal the decision but the judge's findings on the facts may preclude that.

A class action continues against Westpac on behalf of persons who entered into unsuitable loans secured by residential property with Westpac from January 2011 and who have suffered, or are likely to, suffer loss.

ASIC is still consulting on changes to its Regulatory Guide 209 but RG 209 is only guidance, not the law.

ASIC may request the Government to amend the National Credit Act. But that may create further uncertainty.

The Financial Services Royal Commission Final Report when discussing benchmarks noted that ASIC v Westpac was in process and said that "if the court processes were to reveal some deficiency in the law's requirements to make reasonable inquiries about, and verify, the consumer's financial situation, amending legislation to fill in that gap should be enacted as soon as reasonably practicable." (page 57, violume 1).

But there is nothing in the decision that suggests there is a deficiency in the law. Justice Perram decided that ASIC's interpretation of the law was wrong in this case.

AFCA may still take a different view of a matter based on its fairness approach.

What is clear is that lenders need to satisfy themselves that their assessments meet the minimum statutory requirements as interpreted by Justice Perram.

Case study: unlicensed credit introducers

One of the fundamental elements of the National Credit Act licensing regime is section 31(1) which prohibits credit licensees from conducting business with parties engaging in credit activity without an Australian credit licence.

ASIC has announced that it has commenced Federal Court proceedings against NAB seeking declarations and penalties in relation to ASIC's claims that between 3 September 2013 and 29 July 2016, NAB accepted information and documents in support of consumer loan applications from third party introducers who were not licensed to engage in credit activity. The introducers were paid commissions to "spot and refer" customers.

As a result, ASIC alleges NAB breached section 31(1) of the National Credit Act. ASIC also alleges that NAB breached its obligations under section 47 of the National Credit Act requiring it to engage in credit activities efficiently, honestly and fairly and to comply with the Act.

The proceedings relate to the conduct of 16 bankers accepting loan information and documentation from 25 unlicensed introducers in relation to 297 loans.

Those introducers did not hold an ACL and provided NAB's employees with information and documents beyond the consumer's name and contact details including, for example, completed home loan applications, tax returns, payslips, letters of employment and other material. In some cases, information or documents provided by introducers to bank officers were false. The NAB advanced loans to these customers and commission was paid to the relevant introducers.

ASIC claims that NAB, by its contraventions of sections 31 and 47 of the National

Credit Act, exposed each borrower under the Loans:
(a) to a risk of wrongful conduct by the Introducer, such as the provision of false or incomplete information and possible fraud;
(b) to the risk of entering into a credit contract that was not suitable for them, including because the customers may not have been able to repay the Loans, or may not
have been able to do so without substantial hardship.

The matter was part of a Financial Services Royal Commission case study contained in Volume 2 of the Final Report.

ASIC says that on 25 March 2019, NAB announced that it will be terminating the Introducer Program on 1 October 2019.

The proceedings have been listed for the first Case Management hearing on 16 September 2019 in the Federal Court.

ASIC approves AFCA rule change enabling the naming of firms

ASIC has announced that it has approved changes to the Australian Financial Complaints Authority (AFCA) Rules to allow the scheme to name financial firms in published determinations.

While determinations have been published by AFCA's predecessor external dispute resolution schemes, the names of firms involved in financial services, superannuation and credit complaints have not been published to date.

Consumers who are a party to a complaint will continue to be anonymised in all determinations.

To support the new Rules, AFCA will shortly be issuing updated operational guidelines which set out examples of the circumstances in which a determination naming a financial firm would not be published. This includes where naming may expose confidential information about a firm's systems or policies.

UPDATE: The Australian Financial Complaints Authority (AFCA) Rules and Operational Guidelines have been updated to allow AFCA to name financial firms in determinations that are issued and published from 1 October 2019.

Draft Mandatory Comprehensive Credit Reporting Bill 2019

The Government has released for consultation an exposure draft of the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting and Other Measures) Bill 2019. It is based on the 2018 Bill which lapsed when the election was called earlier this year but contains additional provisions relating to financial hardship information.

Mandatory comprehensive credit reporting regime

The Bill amends the National Credit Act to establish a mandatory comprehensive credit reporting regime which applies from 1 April 2020. The amendments do not require or allow disclosure, use or collection of credit information beyond what is already permitted under the Privacy Act 1988 and the Privacy (Credit Reporting) Code 2014.

The mandatory regime applies to 'eligible licensees' which initially are large ADIs that hold an Australian Credit Licence. An ADI is considered large when its total resident assets are greater than $100 billion. Other credit providers will be subject to the regime if they are prescribed in regulations.

Participation by other lenders will remain optional.

The supply of information under the mandatory regime includes an initial bulk supply of credit information and an ongoing requirement to keep information up-to-date and accurate.

The initial bulk supply is split across two years:

• By 29 June 2020, large ADIs must supply credit information on 50 percent of the consumer credit accounts within the banking group to all credit reporting bodies the large ADI had a contract with on 2 November 2017.
• By 29 June 2021, large ADIs must supply credit information on the remaining accounts, including those that open after 1 April 2020 and those held by subsidiaries of the large ADI to the same credit reporting bodies as the first bulk supply.

Regulations will set out the circumstances when a credit reporting body can share the credit information supplied through the mandatory regime.

ASIC will be responsible for monitoring compliance with the mandatory regime. It will have new powers to collect information and require audits to confirm the supply requirements are being met. ASIC can also prescribe the technical standards for the reported credit information.

Financial hardship information

The Bill will amend the Privacy Act 1988 to permit reporting of “financial hardship information” within the credit reporting framework.

This new category of “credit information” would comprise a ‘hardship arrangement indicator’ and a ‘contract variation indicator’.

The hardship arrangement indicator would appear on a consumer’s credit report from the first month that they make a repayment under a temporary hardship arrangement. The indicator would recur every month a hardship arrangement is in place.

The contract variation indicator would appear on a consumer’s credit report in the month that they make the first repayment under a permanently varied contract. This indicator would only appear once in the month that the varied contract takes effect.

Credit providers will be permitted to disclose financial hardship information to credit reporting bodies.

Credit reporting bodies will be permitted to collect, use, disclose and retain hardship information.

Credit reporting bodies do not currently incorporate financial hardship information in the calculation of consumer’s credit scores. There will be no change to the current position.

Variations to the Privacy (Credit Reporting) Code 2014 will be discussed with industry and the OAIC to provide detailed guidance on the implementation of new credit reporting obligations.

Consumer Data Right and Open Banking

The Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019 has been registered. Background. It is the next step towards Open Banking.

The Treasury Laws Amendment (Consumer Data Right) Act 2019 amended the Competition and Consumer Act 2010 to establish a consumer data right.

The purpose of the Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019 is to designate the banking sector as subject to the consumer data right.

The banking data specified as information by this designation is customer provided data, data about the use of banking products, and data about banking products.

Data holders may be required to disclose CDR data in accordance with the consumer data rules. The rules may also authorise data holders to choose to share this data through the consumer data right.

The Government has also introduced the Treasury Laws Amendment (2019 Measures No. 2) Bill 2019 to create a requirement that consumer data rules include an obligation on accredited data recipients to delete CDR data in response to a request from a CDR consumer for that CDR data.

Consumer data right CDR Rules (banking)

The ACCC has published the final version of the proposed Competition and Consumer (Consumer Data Right) Rules 2019 that it is submitting to the Treasurer for consent.

These rules cover the foundational rules required to implement the Consumer Data Right in banking.

The objective of the CDR is to provide consumers with the ability to efficiently and conveniently access specified data held about them by businesses (data holders) and to authorise the secure disclosure of that data to third parties (accredited data recipients) or to themselves.

The CDR also requires businesses to provide public access to information on specified products that they offer. The right is designed to give consumers more control over their data, leading, for example, to more choice in where they take their business and more convenience in managing their services.

The CDR regime will operate in addition to existing data sharing arrangements and practices. In the banking sector, the CDR operates in addition to the mechanisms by which banks currently provide information to their customers, such as through bank statements that are available online, for download. The CDR also does not prevent alternative data sharing arrangements that are used by consumers to access goods or services.

The three types of CDR data requests that can be made under the rules are:
a. product data requests made by any person
b. consumer data requests made by CDR consumers
c. consumer data requests made on behalf of CDR consumers by accredited data

recipients.

Product data is data for which there are no CDR consumers while consumer data relates to an identifiable, or reasonably identifiable, CDR consumer.

Currency (Restrictions on the Use of Cash) Bill introduced

The Currency (Restrictions on the Use of Cash) Bill has been introduced into the House of Representatives.

This Bill introduces offences for entities that make or accept cash payments or series of payments of $10,000 or more.

Entity includes, among other things, individuals, bodies corporate, bodies politic, trusts and partnerships

Cash is defined as physical and digital currency within the meaning of the AML/CTF Act.

Payment is used in its broadest sense encompassing any transfer of financial value. It is not limited to payments that are payments ‘for’ something and includes gifts and loans. Examples of payments include the provision of wages and a donation to a charity.

The offences are committed regardless of whether the entity intended to or was reckless about whether the payment or series of payments included such an amount of cash.

However, the offence does not apply if the payment is either of a kind specified in the rules made under the Bill or made or accepted in circumstances of a kind specified in the rules. Discussed here.

The cash payment limit applies to payments made or received from 1 January 2020.

The maximum penalty for an individual is a fine of 60 penalty units (currently $12,600). The maximum penalty for a body corporate would be 300 penalty units (currently $63,000).

Nothing in the Bill makes it an offence to be in possession of cash of any amount.

Mortgage Brokers Draft Bill released

Treasury has released for consultation an exposure draft of the National Consumer Credit Protection Amendment (Mortgage Brokers) Bill which will amend the National Credit Act to require mortgage brokers to act in the best interests of consumers when providing credit assistance.

Conflicted remuneration

The Bill also deals with conflicted remuneration by providing that:

- Where there is a conflict of interest, mortgage brokers must give priority to consumers in providing credit assistance in relation to credit contracts.
- Mortgage brokers and mortgage intermediaries must not accept conflicted remuneration.
- Employers, credit providers and mortgage intermediaries must not give conflicted remuneration to mortgage brokers or mortgage intermediaries.

Conflicted remuneration means any benefit, whether monetary or non-monetary, that is:

• given to a licensee, or a representative of a licensee, who provides credit assistance to consumers that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence the credit assistance provided (including, therefore, the choice of credit contract or choice of credit provider); or

• given to a licensee, or a representative of a licensee, who acts as an intermediary and because of the nature of the benefit of the circumstances in which it is given, could be reasonably expected to influence whether or how the licensee or representative acts as an intermediary.

The Regulations will prescribe that a monetary benefit is not conflicted remuneration if the benefit is given by a consumer in relation to a credit service provided to the consumer by the licensee or representative.

A benefit is also not conflicted remuneration if:

(a) the benefit relates to a credit service provided by the licensee or representative to a consumer in relation to a credit contract; and
(b) the benefit is not a volume-based benefit; and
(c) the benefit is not a campaign-based benefit; and
(d) for a credit contract that relates to:
(i) the provision of credit wholly or predominantly for the purpose of purchasing residential property; or
(ii) the provision of credit wholly or predominantly for the purpose of refinancing credit that was provided wholly or predominantly for the purpose of purchasing residential property;
the benefit is one of the following:
(a) an amount given on the basis of the credit service provided to the consumer in relation to the credit contract, without reference to a particular amount of credit provided to, or drawn down by, the consumer under the credit contract;
(b) a benefit that is calculated as a percentage of an amount that is no more than the drawdown amount for the credit contract;
(c) a benefit that is a combination of either or both of paragraphs (a) and (b).; and
(e) the clawback requirements are satisfied in relation to the benefit (if applicable).

The draft regulations limit the period over which commissions can be clawed back from aggregators and mortgage brokers to two years and prohibit the cost of clawbacks being passed on to consumers.

Penalties
New penalties will include:

- Failure of a licensee to act in the best interests of the consumer: 5,000 penalty units (currently $1.05 million);
- Failure of a licensee to give priority to the consumer's interests: 5,000 penalty units;
- Licensee accepting conflicted remuneration: 5,000 penalty units;
- Credit representative accepting conflicted remuneration: 5,000 penalty units.

Commencement

The obligations relating to the best interests obligations will apply in relation to the provision of credit assistance to a consumer after 1 July 2020, whether or not the assistance was sought, or commenced being provided before that day.

The obligations relating to the ban on conflicted remuneration will apply in relation to conflicted remuneration given after 1 July 2020, subject to regulations being made prescribing the circumstances in which the ban applies.

The ban on conflicted remuneration will apply to benefits given after 1 July 2020, regardless of whether any arrangement under which those benefits are given was in place prior to 1 July 2020.

OAIC Notifiable Data Breaches report: 1 April to 30 June 2019

The Office of the Australian Information Commissioner has published their report on notifications received by them under the Notifiable Data Breaches (NDB) scheme between 1 April 2019 and 30 June 2019.

Malicious or criminal attacks accounted for 151 data breaches in the quarter, while human error accounted for 84 data breaches. System faults accounted for 10 data breaches.

Data breaches caused by human error included sending personal information to the wrong recipient via email (35 percent), unauthorised disclosure through the unintended release or publication of personal information (18 percent), as well as the loss of paperwork or data storage device (12 percent).

In the quarter the unintended release or publication of personal information affected the largest number of people (an average of 9,479 affected individuals per data breach). Failure to use BCC when sending emails affected an average of 601 individuals per data breach.

From April to June 2019, the top sector to report data breaches under the NDB scheme was the private health service provider sector (health sector) (19 percent). The second-largest source of data breaches was the finance sector (17 percent). This was followed by the legal, accounting and management services sector (10 percent), the private education sector (education) (9 percent), and the retail sector (6 percent).

ASIC issues first small business loan unfair contracts actions

ASIC has announced that it has issued separate proceedings against the Bank of Queensland and Bendigo and Adelaide Bank concerning unfair contract terms in their small business loan contracts.

These are the first actions since its Report 565 which set out the details of the changes made by the four major banks to remove unfair terms from their small business loan contracts of up to $1 million.

ASIC contends that certain terms in these contracts are unfair within the meaning of section 12BF of the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) and are void or unenforceable.

Bendigo and Adelaide Bank

The action against Bendigo and Adelaide Bank relates to two of its divisions, Delphi Bank and Rural Bank and the Delphi Bank's General Conditions and the Rural Bank's Facility Terms.

ASIC claims that between 16 November 2016 and 30 June 2019, Bendigo and Adelaide Bank entered into 3,490 relevant standard form contracts with businesses which incorporated the Delphi Conditions. As at 30 June 2019, Bendigo and Adelaide Bank had 15,529 current relevant standard form contracts with businesses which incorporated the Rural Conditions.

ASIC's claims relate to Standard Form Terms for the Delphi Bank and Rural Bank which include:

a. indemnification clauses that:
1. apply to losses not caused by a customer's default; and
2. have the effect of limiting the bank's vicarious liability for its agents;
b. event of default clauses that allow the bank to unilaterally determine whether a default has occurred;
c. event of default clauses that do not permit the customer to remedy a default capable of remedy;
d. event of default clauses that create defaults based on events that may or may not involve any credit risk;
e. event of default clauses that create defaults based on events that are within the control of the bank, not the customer;
f. unilateral variation or termination clauses which permit the defendants to vary the upfront price of the contract, the financial services to be supplied under the contract and other terms of the contract; and
g. conclusive evidence clauses that have the effect of imposing the evidential burden on the customer in proceedings relating to the contract. These clauses also have the effect of allowing the bank but not the customer to terminate the contract if the customer does not pay an amount stated in a certificate by a stated date.

Bank of Queensland

The action against Bank of Queensland relates to the Bank's Guarantee Facility General Conditions, Business Term Loan General Conditions, Commercial Rate Loan Facility General Conditions, Business Overdraft and Business Line of Credit General Conditions and Facility General Conditions.

ASIC claims that between 16 November 2016 and 30 June 2019, Bank of Queensland entered into 3,754 relevant standard form contracts with businesses which incorporated one or more of the Standard Form Terms. As at 30 June 2019, Bank of Queensland had 3,018 relevant current standard form contracts on foot with businesses, which
incorporated one or more of the Standard Form Terms.

ASIC's claims relate to the Bank of Queensland's Standard Form Terms which include:
a. indemnification clauses that:
1. apply to losses not caused by a customer's default; and

2.. have the effect of limiting the Bank of Queensland's vicarious liability for its agents;
b. event of default clauses that allow the Bank of Queensland to unilaterally determine whether a default has occurred;
c. event of default clauses that do not permit the customer to remedy a default capable of remedy and which create defaults based on events which may or may not involve any credit risk;
d. event of default clauses that create defaults based on events that may or may not involve any credit risk;
e. unilateral variation or termination clauses which permit the Bank of Queensland to vary the upfront price of the contract, the financial services to be supplied under the contract and other terms of the contract; and
f.conclusive evidence clauses that have the effect of imposing an evidential burden on the customer in proceedings relating to the contract. These clauses also have the effect of allowing the Bank of Queensland but not the customer to terminate the contract if the customer does not pay an amount stated in a certificate by a stated date.

Reforms to the sale of add-on insurance products

Treasury has published for consultation a Proposal paper on reforms to the sale of add-on insurance products.

The paper outlines the Government's proposal for an industry-wide deferred sales model for add-on insurance products.

It is proposed for the deferred sales model to apply to those insurance products that are offered or sold at the same time as when a consumer purchases the primary product or acquires finance for which the insurance covers associated risks.

Add-on insurance sold in a standalone market would remain outside the scope of the model.

The model achieves this by introducing an enforced pause in the sales process between the purchase of a primary product and their decision to purchase addon insurance. The deferral period will enable and encourage consumers to consider the merits of the insurance offered and to consult alternative providers.

The Government recognises the diversity of add-on insurance products available and acknowledges that different products cause varying degrees of consumer harm. That is why the Government proposes a 'graduated' deferred sales model of three tiers. Each tier will be regulated differently.

Tier 1: Products causing significant consumer detriment (ASIC Product Intervention Powe).

Tier 2: Default tier for all add-on insurance products (not in tiers one and three)

(Legislated deferred sales model).

Tier 3: Case-by-case exemptions for products that meet relevant criteria (Legislated ASIC exemptions power).

The Government intends to consult on and introduce legislation by 30 June 2020 to implement the model.

Final report of the ACCC Foreign Currency Conversion Services Inquiry

The government has released the final report of the ACCC Foreign Currency Conversion Services Inquiry. Background.

The ACCC found that while there were signs that recent competition from new non-bank entrants is delivering better consumer outcomes through lower prices and improved services there is scope for more competition in the supply of international money transfers (IMTs).

The ACCC's recommendations include measures aimed at:

- reducing a key barrier to entry and expansion for non-bank suppliers of IMTs, and
- making the prices of foreign currency conversion services (FX services) more transparent for consumers.

Access to banking services
The ACCC says potential gains from increased competition may be lost if non-bank IMT suppliers are unable to access banking services. Non-bank IMT suppliers often rely on obtaining banking services from their vertically integrated competitors (banks) to compete for the supply of IMTs.

The need to comply with Australia's anti-money laundering and counter-terrorism financing (AML/CTF)laws has been a factor in the banks' decisions to withdraw access to banking services for non-bank rivals (known as de-banking). To address this issue, the ACCC recommends a scheme through which IMT suppliers can address the due diligence requirements of the banks, including in relation to

AML/CTF requirements.

Recommendations

Due diligence scheme for access to banking services

The ACCC recommends that the Australian Government should form a working group tasked with consulting on the development of a scheme through which IMT suppliers can address the due diligence requirements of the banks or providers of payment system infrastructure, including in relation to AML/CTF requirements.

It recommends that by 31 December 2020, the scheme should be operational or the Working Group should have set out any alternative approach it will initiate to ensure that non-bank IMT suppliers are able to obtain efficient access to the banking and payment services they need to compete in the supply of IMT services to Australian consumers.

Measures to improve how prices are presented to consumers

Up-front correspondent banking fees: IMT suppliers should take the necessary steps to inform their customers up-front of the total price of an IMT, including correspondent banking fees.

Online calculator: Suppliers of IMTs and foreign cash should offer digital tools on their websites to calculate the total price for those services for consumers.

Foreign cash prices on rate boards: Foreign cash suppliers should ensure that they provide price information that will enable an in-store consumer to understand the total price of foreign cash transactions.

Disclosure of international transaction fees: Merchants offering goods and services online to Australian consumers should inform consumers if they are likely to be charged an international transaction fee. Merchants should provide this information prominently and clearly before a customer enters into a transaction. If consumers are charged an unexpected international transaction fee, they should contact their bank or card scheme to request a refund of the fee.

ASIC guidance on whistleblower policies

ASIC is consulting on a draft Regulatory Guide on Whistleblower policies which will give guidance for entities that must have a whistleblower policy from 1 January 2020: public companies, large proprietary companies and proprietary companies that are trustees of registrable superannuation entities. Background.

The ASIC consultation paper also seeks feedback on whether ASIC should provide legislative relief to public companies that are small not-for-profits or charities as well as small proprietary companies and small companies limited by guarantee.

At the same time a project led by Griffith University's Centre for Governance & Public Policy has separately published Clean as a Whistle – a five step guide to better whistleblowing policy and practice in business and government.

The proposed ASIC Regulatory Guide explains how companies can establish, implement and maintain a policy. It covers the information that companies must include in their whistleblower policy, including how they will support and protect whistleblowers and handle and investigate whistleblower disclosures.

The draft RG also includes some good practice guidance.

The proposed guidance reflects that, if a discloser seeks compensation and other remedies through the courts because they have suffered detriment, including because the discloser's employer failed to prevent detriment from occurring, the court may take into account the extent to which the employer gave effect to their whistleblower policy (if the entity has a policy in place).

ASIC intends to release the regulatory guide in October 2019.

Ending Grandfathered Conflicted Remuneration

The Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 has been introduced into the House of Representatives.

If passed the bill will amend the Corporations Act from 1 January 2021 to end the grandfathering arrangements for conflicted remuneration in relation to financial advice provided to retail clients.

The Bill also enables the regulations to provide for a scheme under which amounts that would otherwise have been paid as conflicted remuneration are rebated to affected customers.

This means that from 1 January 2021 all remuneration of a kind banned by Divisions 4 or 5 of Part 7.7A of the Act will be subject to the bans in those Divisions.

Under the grandfathering provisions:

- the bans on accepting and giving conflicted remuneration do not apply to benefits paid under arrangements entered into before 1 July 2013 except with respect to benefits given by a platform operator ;
- the ban on charging volume-based shelf space fees does not apply to benefits given under arrangements entered into before 1 July 2013 ; and
- the ban on charging asset-based fees to retail clients on borrowed amounts only applies to the extent that the borrowed amounts are used or are to be used to acquire financial products on or after 1 July 2013 .

The change responds to recommendation 2.4 of the Financial Services Royal Commission final report.

Unfair contract terms in insurance contracts

Treasury has released for consultation an exposure draft of the Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019 which will amend the Insurance Contracts Act to enable the unfair contract terms (UCT) regime under the ASIC Act to apply to insurance contracts covered by the Insurance Contracts Act.

Although the UCT laws apply to most financial products and services regulated by the ASIC Act, they do not currently apply to insurance contracts regulated under the Insurance Contracts Act 1984. The draft Bill extends the UCT regime to insurance contracts in response to Recommendation 4.7 of the Financial Services Royal Commission.

The Bill also amends the ASIC Act to tailor the existing UCT regime in its application to insurance contracts.

These changes are :

- Main subject matter: The ASIC Act presently excludes terms that define the main subject matter of a contract from the UCT regime. The Bill will amend the ASIC Act to provide that the main subject matter of an insurance contract is limited to the description of what is being insured.
- Transparent excess terms: The Bill will amend the ASIC Act to exclude terms that set the quantum or existence of the excess or deductible in an insurance contract from the UCT regime, as long as they are presented transparently.
- Third party beneficiary: The Bill will amend the ASIC Act to allow for third party beneficiaries of insurance contracts to bring actions against insurers under the

- UCT regime.

Under the Insurance Contracts Act, parties to insurance contracts have an obligation to act with the utmost good faith. The Bill does not impact this obligation, with the duty of the utmost good faith operating independently of the UCT regime.

The UCT regime will apply to new insurance contracts from the date of commencement of the amendments. The amendments will commence 18 months after the date of Royal Assent.