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WHITE PAPER

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Australia Financial Services Industry Royal Commission Leads to Class Actions Boom

Australia's landmark Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry that was conducted throughout 2018 and reported in early 2019 highlighted numerous examples of potential contraventions of the law.

The Royal Commission has triggered not just legislative reform and regulatory actions, but also a boom in class action proceedings seeking to recover compensation for bank customers and shareholders alike. As of 30 June 2020, 17 class actions, relying on a variety of causes of action, including shareholder claims of misleading or deceptive conduct, contravention of superannuation fund trustee obligations, unconscionable conduct and contravention of responsible lending obligations, have been commenced.

The Royal Commission and its aftermath serve as a clear illustration of how public inquiries and actions by regulators can act as a beacon to class action plaintiff lawyers and funders, shining a spotlight on particular industries, commercial practices and, on occasion, misconduct. As a result, corporations or individuals that that are the focus of public inquiries or regulatory action need to prepare for follow-on class actions in addition to, or concurrent with, the initial proceeding.

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BACKGROUND

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ("Royal Commission") was conducted throughout 2018. The interim report of the Royal Commission was submitted to the GovernorGeneral on 28 September 2018 and tabled in Parliament on the same date ("Interim Report"). The final report of the Commissioner was submitted to the GovernorGeneral on 1 February 2019 and tabled in Parliament on 4 February 2019 ("Final Report").

Royal Commissions are public inquiries established by the Executive Government through the appointment of one or more commissioners who are tasked with investigating and reporting on the matters set out in terms of reference (formally called Letters Patent), including making recommendations. At the Federal level in Australia, the operation and powers of Royal Commissions are set out in the *Royal Commissions Act 1902* (Cth). Royal Commissions may require persons to appear and give evidence under oath or produce documents. However, a Royal Commission is not a court and cannot make orders that a person has breached the law.

Following the Commissioner's recommendations in the Final Report, several regulatory changes have been introduced. For example, the Federal Parliament passed the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) ("Act") which put in place new maximum criminal and civil penalties for misconduct in the corporate and financial sector under the *Australian Securities and Investments Commission Act 2001* ("ASIC Act"), the *Corporations Act 2001* (Cth) ("Corporations Act") and the *National Consumer Credit Protection Act 2009* ("Credit Act"). These include substantially higher monetary penalties. The majority of the new provisions under the Act came into effect on 13 March 2019. The Act does not have retrospective effect.

The Parliament has also addressed recommendations from the Royal Commission through the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020* (Cth) and the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020* (Cth). The former extended the unfair contract terms regime under the ASIC Act to apply to insurance contracts covered by the *Insurance Contracts Act 1984* (Cth); extended consumer protection provisions to funeral expenses policies; and addressed conflicts of interest in relation to mortgage brokers. The latter enhanced search warrant powers; replaced the requirement for obtaining an Australian financial services licence ("AFS licence") that a person be of 'good fame and character' with the requirement that they be a 'fit and proper person'; and expanded the grounds on which a banning order may be made against a person.

Australia's corporate regulator, the Australian Securities and Investments Commission ("ASIC"), foreshadowed in its Financial Services Royal Commission Implementation Roadmap that it would be undertaking investigations and commencing litigation, and it has proceeded accordingly. See the Jones Day *White Paper*, Australian Financial Services Subject to Perfect Storm of Enforcement. The *Australian Financial Review* in September 2019 reported that ASIC had 86 Royal Commissionrelated investigations under way relating to Australia's four major banks and another major financial services provider, AMP Limited ("AMP"). Further, according to an ASIC update on enforcement and regulatory work published on 26 February 2020, out of the 32 Royal Commission case studies examined:

- One, relating to National Australia Bank Limited ("NAB"), was completed recently, which resulted in a former branch manager being sentenced to 12 months imprisonment to be served by way of an intensive corrections order;
- Four are the subject of civil penalty actions in the Federal Court;
- Two are being considered by the Commonwealth Director of Public Prosecutions for potential criminal prosecution;
- Seventeen are under investigation (some with external counsel involvement); and
- Eight have been concluded with no further action being taken.

ASIC's enforcement priorities in 2020 have shifted due to the COVID19 pandemic, with ASIC now pivoting to focus on challenges created by the pandemic and also taking into consideration that industry participants may be facing significant disruption. However, ASIC has reiterated that its Office of

Enforcement will continue to focus on Royal Commission referrals and case studies as strategic priorities.

As we discuss below, the Royal Commission has also (not unexpectedly, given growing class action activity in Australia generally) led to large-scale private enforcement in the form of class actions centered on the banking and financial services sector.

ROYAL COMMISSION INSPIRED CLASS ACTIONS

Seventeen class actions (not counting competing or duplicative class action filings) have been commenced as of 30 June 2020 in connection with findings made by the Royal Commission. Each class action is outlined in Annexure 1.

The class actions commenced have relied on one or more of the following five causes of action:

1. Shareholder class actions for breach of the continuous disclosure obligations;

2. Class actions for engaging in misleading or deceptive conduct;

3. Class actions brought on behalf of superannuation members for breach of the obligations of a superannuation fund trustee;

4. Class actions for engaging in unconscionable conduct; and

5. Class actions brought on behalf of customers for breach of responsible lending obligations.

SHAREHOLDER CLASS ACTIONS

Shareholder class actions have been a growing phenomenon in Australia litigation. Typically, such claims assert a contravention of the continuous disclosure regime and the prohibition on misleading or deceptive conduct.

The continuous disclosure regime is a combination of securities exchange listing rules and legislation. The Australian Securities Exchange ("ASX") Listing Rules require listed bodies to make immediate disclosure of material information to the market. Listing Rule 3.1 requires an entity to immediately inform ASX of information that a reasonable person would expect to have a material effect on the price or value of the entity's securities. Chapter 6CA of the Corporations Act gives the ASX Listing Rules legislative backing by requiring listed disclosing entities to notify the ASX of information required to be disclosed by Listing Rule 3.1 where that information is not generally available and it is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of enhanced disclosure securities of the entity. On 25 May 2020, the Federal Treasurer amended the continuous disclosure laws such that ASX-listed entities' and company directors' decisions on continuous disclosure can only attract liability under section 674(2) of the Corporations Act if they knew or were reckless or negligent with respect to whether information would, if it were generally available, have a material effect on the price or value of their securities. These changes last for six months from 26 May 2020 and are expressly targeted at making it harder for claimants to bring "opportunistic class actions". However, they do not have retrospective effect. Misleading conduct is discussed below.

Royal Commission findings that a listed company may have contravened regulatory requirements in relation to financial advice and superannuation trustee requirements have been converted into shareholder class actions against two corporations: AMP and IOOF Holdings Ltd ("IOOF"). The class action against IOOF was discontinued after the Federal Court dismissed separate proceedings brought by the Australian Prudential Regulation Authority ("APRA") against certain IOOF trustees, directors and executives. Jones Day acted for the former Chairman of IOOF in the successful defense of APRA's proceedings.

MISLEADING OR DECEPTIVE CONDUCT

Section 1041H of the Corporations Act and s 12DA of the ASIC Act contain prohibitions on misleading or deceptive conduct in relation to a financial product or a financial service. Similar prohibitions exist in other consumer protection legislation. A contravention of the provisions causing loss grounds a claim for compensatory damages against the person alleged to have contravened the section or against any person alleged to have

been involved in the contravention. The prohibitions have been relied on in the shareholder class actions discussed above, but also in relation to the sale of add-on car insurance by Insurance Australia Group Limited ("IAG") and its subsidiary, Swann Insurance (Aust) Pty Ltd ("Swann Insurance"), and the sale of consumer credit insurance by two of Australia's major banks.

SUPERANNUATION TRUSTEE OBLIGATIONS

Nine of the class actions alleged breaches of the obligations of superannuation trustees as contained in the *Superannuation Industry (Supervision) Act 1993* ("SIS Act"). In particular, all nine class actions alleged breaches of the best interests obligation contained in s 52(2)(c) of the SIS Act, which provides that a superannuation trustee covenants to perform their duties and exercise their powers in the best interests of the beneficiaries.

The best interests obligation has been interpreted to require that the trustee "do the best they can for the benefit of their beneficiaries, and not merely avoid harming them" (*Cowan v Scargill* [1985] Ch 270 at 295; [1984] 2 All ER 750 at 766, referred to with approval in *Invensys Australia Superannuation Fund Pty Ltd v Austrac Investments Ltd* (2006) 15 VR 87; [2006] VSC 112 at [107]). In *Cowan v Scargill* [1985] Ch 270 at 287; [1984] 2 All ER 750 at 760, Meggary VC also observed that "[w]hen the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their financial interests". Further, in the context of a power of investments, the power is required to be "exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in question; and the prospects of the yield of income and capital appreciation both have to be considered in judging the return from the investment".

A best interest's obligation also exists in the context of managed investment schemes. Under s 601FC(c) of the Corporations Act, the duties of a responsible entity include to act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, to give priority to the members' interests. A similarly worded provision applying to an officer of the responsible entity of a registered scheme is contained in s 601FD(c) of the Corporations Act.

A best interest's obligation also applies in the context of the provision of financial advice to retail clients. As part of the Future of Financial Advice ("FOFA") reforms, a new Div 2 of Pt 7.7A of the Corporations Act was introduced by the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth). In particular, s 961B(1) provides that a provider of financial product advice to retail clients must act in the best interests of the client in relation to the advice.

The class actions have been brought where the superannuation trustee is alleged to have taken actions that benefit related body corporates, such as investing in their financial products when better returns could be earned elsewhere, purchasing insurance from them at higher rates than available elsewhere, paying them excessive fees for services (or no services) and failing to transfer accounts to the lowcost governmentmandated option called MySuper so as to continue charging commissions.

UNCONSCIONABLE CONDUCT

Four of the class actions allege breach of the prohibition against unconscionable conduct in connection with financial services as contained in s 12CB of the ASIC Act. Conduct may be unconscionable if it is particularly harsh or oppressive. Further, s 12CC of the ASIC Act sets out a list of factors that courts may consider in determining whether a person has contravened s 12CB of the ASIC Act. These factors include the relative bargaining strengths of the parties; whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party; whether the weaker party could understand the documentation used; the use of undue influence, pressure or unfair tactics by the stronger party and the failure of the stronger party to disclose any intended conduct that might affect the interests of the weaker party.

The conduct at issue in one class action was the selling of consumer credit insurance to credit card and personal loan holders who were ineligible to claim under the terms of the insurance policy. This class action against NAB and its subsidiary MLC Limited ("MLC") settled for $49.5 million. Three similar class actions have been brought against Australia's other

three major banks in relation to the selling of consumer credit insurance which alleges unconscionable conduct as well as misleading or deceptive conduct, the failure to act in the best interest of customers and the provision of inappropriate advice to customers.

Separately, a class action has been brought against Colonial First State Investments Limited ("Colonial First State") which alleges the charging of excessive fees to pay commissions to financial advisers who were not required to provide any ongoing services.

RESPONSIBLE LENDING OBLIGATIONS

One of the class actions alleges breaches of the responsible lending obligations as contained in Chapter 3 of the Credit Act. Under the Credit Act, credit licensees must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer. The responsible lending obligations involve:

- making reasonable inquiries about the consumer's financial situation, and their requirements and objectives;
- taking reasonable steps to verify the consumer's financial situation; and
- making a preliminary assessment (for credit assistance providers) or final assessment (for credit providers) about whether the credit contract is 'not unsuitable' for the consumer.

The claim alleges that the defendant, Westpac Banking Corporation ("Westpac"), failed to comply with its responsible lending obligations in respect of loans issued on or after 1 January 2011 and entered into loans when the loans were unsuitable for the borrower. The class action had been put on hold pending the resolution of separate proceedings brought by ASIC that involved interpretation of the relevant responsible lending obligations also at issue in the class action. On 26 June 2020, the Full Court of the Federal Court dismissed ASIC's appeal after the regulator was unsuccessful at trial. The plaintiff law firm behind the class action has announced that it is "reviewing" the class action in light of the Full Court's decision.

OTHER CLASS ACTIONS IN THE FINANCIAL SERVICES INDUSTRY

While the Royal Commission has spawned numerous class actions, actions brought by regulators have also been followed by the subsequent filing of class actions. This approach was common when shareholder or cartel class actions started to be brought in Australia but has now been used in relation to other areas, most notably in the anti-money laundering and counterterrorism financing space.

Two such shareholder class actions have been brought against two of Australia's major banks in the Federal Court alleging that the relevant bank engaged in misleading or deceptive conduct and breached its continuous disclosure obligations by failing to report noncompliance with the *Anti-Money Laundering and CounterTerrorism Financing Act 2006* (Cth) ("AML/CTF Act") or breached its continuous disclosure obligations by failing to report noncompliance with the AML/CTF Act. Each class action was filed following or in parallel with regulatory proceedings brought by Australia's AML/CTF regulator, the Australian Transaction Reports and Analysis Centre ("AUSTRAC").

The allegation of noncompliance with the AML/CTF Act has also seen a class action filed in the United States against one of those major banks on behalf of holders of the bank's American Depository Receipts ("ADRs"). An ADR is a negotiable certificate issued by a U.S. depository bank and represents a specific number of shares in a company listed on a foreign stock exchange. ADRs are traded on U.S. stock exchanges or are available on the overthecounter market.

RAMIFICATIONS

Regulators such as ASIC and AUSTRAC, but also the Australian Competition and Consumer Commission, are vigorously investigating and bringing enforcement actions in Australia. Often times, such regulatory action may present opportunities for

plaintiff class action lawyers and litigation funders to seek to prosecute class actions following or in parallel with enforcement action.

Additionally, Royal Commissions and other public inquiries are a potential source of class actions. At present, three major Royal Commissions at the Federal level are ongoing, namely the Royal Commission into Aged Care Quality and Safety, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and the Royal Commission into National Natural Disaster Arrangements, which was established in response to the extreme bushfire season of 2019-20. There are also a number of government inquiries related to COVID19. In due course, these may also give rise to a number of class actions.

Public inquiries, such as Royal Commissions, and actions by regulators can act as a beacon to class action plaintiff lawyers and litigation funders, identifying potential claims for compensation. However, as has occurred in the financial services sector, it is likely that class actions will be brought not just on behalf of the persons directly impacted by the alleged contraventions (for example, customers, patients and residents), but also on behalf of shareholders of listed corporations who may have suffered loss through declining share prices.

Corporations, company officers and executives that are the focus of public inquiries or regulatory action need to prepare for followon class actions in addition to the initial proceeding. Preparation starts from an early stage and may involve considering how responses to public inquiries or regulatory investigations may arm class action proponents. So far as the potential liability of regulated entities is concerned, consideration should be given to the undertaking and timing of any capital raising and to the perceived benefits of any ADRs held in the United States, as these may increase the company's exposure to class action risk in Australia and overseas.

So far as individual officers are concerned, consideration should be given to the adequacy of directors and officers liability insurance and the extent to which such indemnities are supplemented by any Deed of Access and Indemnity between the company and the individual. In particular, individuals should ensure that they are indemnified for the costs of independent legal advice and representation if they are required to: (i) give evidence before any public inquiries, including Royal Commissions; (ii) attend any compulsory examination before a regulator; and (iii) assist the company in its investigations or defence of any inquiry or legal proceeding. Officers should also consider their level of personal exposure, including the extent to which family assets may be at risk if the officer is sued as an individual.

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Jessica Sidi, an associate in the Sydney Office, assisted in the preparation of this White Paper.

ANNEXURE 1: CLASS ACTIONS COMMENCED IN CONNECTION WITH THE ROYAL COMMISSION

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
1.	AMP class actions *Wigmans v AMP Ltd* *Fernbrook (Aust) Investments Pty Ltd v AMP Ltd* *Wileypark Pty Ltd v AMP Ltd* *Georgiou v AMP Ltd* *Komlotex Pty Ltd v AMP Ltd*	May and June 2018	Five competing NSW Supreme Court shareholder class actions against AMP alleging breaches of AMP's continuous disclosure obligations and misleading and deceptive conduct in relation to alleged 'fee for no service' conduct, that is, the charging of ongoing financial advice service fees in circumstances where the advice was not provided. In August 2018, four of the class actions were transferred to the NSW Supreme Court from the Federal Court. In May 2019, the NSW Supreme Court held that only one proceeding (which was a consolidation of the *Komlotex* and *Fernbrook* proceedings) was permitted to proceed. The remaining three proceedings were permanently stayed. The NSW Court of Appeal dismissed an appeal against this decision. On 26 April 2020, the High Court granted Quinn Emanuel, on behalf of Marion Antoinette Wigmans, special leave to appeal the decision of the NSW Supreme Court.	The Interim Report noted that AMP acknowledged conduct that it described as involving possible contraventions of the Corporations Act and the ASIC Act in relation to 'fees for no service' (see Interim Report, Vol 1, pp 108-109).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
2.	*Samantha Clark v National Australia Bank Limited & Anor*	26 September 2018	Federal Court class action against NAB and MLC alleging that by selling consumer credit insurance to credit card and personal loan holders who were ineligible to claim under the terms of the policy, NAB and MLC engaged in unconscionable conduct in contravention of the ASIC Act. The original claim was limited to credit card holders; however, in June 2019, the Federal Court granted leave for the claim to be expanded to include people who were sold a similar type of insurance for personal loans. On 20 November 2019, NAB and MLC agreed to pay a $49.5 million settlement.	The Interim Report noted that NAB provided two submissions to the Commission in which it acknowledged it had engaged in misconduct and conduct falling below community standards and expectations in relation to home lending, credit cards, personal loans and processing or administration errors (see Interim Report, Vol 1, pp 41 and 47).
3.	*Keith Kayler-Thomson v Colonial First State Investments Limited & Anor*	9 October 2018	Federal Court class action against Colonial First State and the Commonwealth Bank alleging breaches of the duty to act in the best interests of its members. It is alleged that Colonial First State invested the retirement savings of its members with its parent bank, Commonwealth Bank, from which it is said to have received uncompetitive bank interest rates.	The Commonwealth Bank case study is at section 2 of Volume 2 of the Final Report. The Commissioner found that Colonial First State was not acting in the best interests of members in relation to its cash investments (see Final Report, Vol 2, p 99).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
4.	*Ian John Tate v Westpac Banking Corporation*	21 February 2019	Federal Court class action against Westpac alleging breach of responsible lending laws. The class action is brought on behalf of people who, after 1 January 2011, were given unsuitable loans by Westpac in breach of its responsible lending obligations under the under the Credit Act. On 13 August 2019, the decision of Perram J *in ASIC v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244 was handed down by the Federal Court. The proceeding was brought against Westpac by ASIC alleging numerous breaches of responsible lending laws between 2011 and 2015, and involved issues that were similar to those addressed in the *Westpac* class action. ASIC's case was dismissed in the Federal Court by Perram J. On 16 August 2019, the plaintiff law firm in the *Westpac* class action, Maurice Blackburn, announced that it will be giving careful consideration to the judgment to determine its potential impact to the class action. In the meantime, the class action will continue. On 10 September 2019, ASIC filed an appeal to the Full Court of the Federal Court. The hearing of the appeal took place on 25 and 26 February 2020 before Middleton, Gleeson and Lee JJ of the Full Court. On 26 June 2020, the Full Court dismissed ASIC's appeal, in a decision of two judges to one. Maurice Blackburn has not commented on whether the decision of the Full Court will impact the class action.	The Interim Report noted that Westpac acknowledged that it had engaged in misconduct or conduct falling below community standards and expectations in relation to processing or administration errors for home loans (see Interim Report, Vol 1, pp 44-45).
5.	*Jones Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd*	8 April 2019	Federal Court class action against IAG and its subsidiary, Swann Insurance, alleging misleading and deceptive conduct in the sale of add-on car insurance through Swann Insurance. IAG has estimated that the class action could be worth up to $1 billion.	The IAG case study is at section 8 of Volume 2 of the Final Report. The Commissioner found that Swann Insurance may have engaged in misconduct in relation to the sale of add-on car insurance (see Final Report, Vol 2, p 411).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
6.	*RK Doudney Pty Ltd, as Trustee for the RK Doudney Superannuation Fund v IOOF Holdings Ltd*	12 April 2019	NSW Supreme Court class action against IOOF alleging breaches of IOOF's continuous disclosure obligations and misleading or deceptive conduct which allegedly resulted in shareholders paying an inflated price for ordinary shares in IOOF. On 20 September 2019, Jagot J of the Federal Court dismissed separate proceedings brought by APRA in December 2018 against certain IOOF trustees and executives. On 25 May 2020, IOOF announced that a settlement of the class action had been reached pursuant to which IOOF would make no payment to the plaintiff, its lawyers, its funder or any other class member (subject to Court approval).	The IOOF case study is at section 4 of Volume 2 of the Final Report. The Commissioner noted that APRA commenced proceedings against the IOOF trustees on 6 December 2018. The Commissioner made no findings in relation to the particular contraventions alleged in those proceedings (see Final Report, Vol 2, pp 163-165).
7.	*Dale Robert Alford, Sebastian Smith, Anne Cooper and Jodie Mitchell v AMP Superannuation Limited*	30 May 2019 26 June 2019	Federal Court consolidated class action against AMP trustees and AMP Group entities alleging breaches of the duty to act in the best interests of superannuation members. It is alleged that AMP Superannuation Limited, as trustee of superannuation funds, paid too much to related AMP entities for administration services resulting in AMP members being overcharged administration fees. The proceeding, *Anne Cooper and Jodie Mitchell v AMP Superannuation Limited*, was filed on 26 June 2019 by Slater and Gordon. The proceeding, *Dale Robert Alford and Sebastian Smith v AMP Superannuation Limited*, was filed on 30 May 2019 by Maurice Blackburn. Maurice Blackburn's claim only goes back as far as 30 May 2013, while Slater and Gordon is seeking compensation for losses as far back as 2008. On 20 August 2019, the Court made orders consolidating the two proceedings.	The AMP case study is at section 3 of Volume 2 of the Final Report. The Commissioner found that AMP trustees may have breached three covenants imposed by the SIS Act in relation to their outsourcing arrangements, including the best interests obligation (see Final Report, Vol 2, pp 153-159).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
8.	*Kerry Michael Quirk v Suncorp Portfolio Services Limited* in its capacity as trustee for the Suncorp Master Trust	21 June 2019	NSW Supreme Court class action against Suncorp Portfolio Service Limited, a trustee responsible for the administration of superannuation funds and part of Suncorp Group Limited, alleging conflicted remuneration to financial advisers using members' funds. It is alleged that Suncorp Portfolio Service Limited executed agreements to entrench fees to be used for payment of conflicted remuneration to financial advisers that would otherwise have become banned and unlawful from 1 July 2013 as a result of the FOFA reforms. In doing so, it is alleged Suncorp Portfolio Service Limited breached its duties to avoid conflicts, to act with due care and diligence and to act in the best interest of its members.	The Suncorp case study is at section 6 of Volume 2 of the Final Report. The Commissioner observed that it was difficult to understand how the agreements executed by Suncorp Portfolio Service Limited would be in members' best interest but ultimately made no findings due to the lack of oral evidence and submissions on this point (see Final Report, Vol 2, p 203).
9.	*Tracy Ghee v BT Funds Management Limited and Westpac Life Insurance Services Limited*	4 September 2019	Federal Court class action against Westpac subsidiaries alleging a breach of the duty to act in the best interests of superannuation members who invested in the cash option of a Super for Life product sold by Westpac-owned BT Financial Group. It is alleged that BT Financial Group had been short-changing its members who invested in the BT Super for Life cash-only option by investing through Westpac Life and allowing it to earn substantial fees for providing no valuable service. Westpac Life was allegedly given complete discretion about the interest rates that it would pass on to members and, at times, kept almost half of the returns on members' money for itself, resulting in members losing out on potentially thousands of dollars over many years.	The Interim Report noted that Westpac acknowledged that retail clients of BT Financial Group had been charged fees for ongoing advice, where they had not received the service paid for or evidence of such service being provided could not located (see Interim Report, Vol 1, pp 111-112).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
10.	*Mervyn Lawrence Brady v NULIS Nominees (Australia) Limited* in its capacity as trustee of the MLC Super Fund	10 October 2019	Federal Court class action against the NAB-owned MLC Super Fund trustee company, NULIS Nominees (Australia) Limited ("NULIS"), relating to excess fees charged to members of the MLC Super Fund by NULIS from 1 July 2016 onwards. It is alleged that NULIS levied these excess fees from members' accounts in order to pay commissions and other fees to advisers. These commissions became banned and unlawful from 1 July 2013 as a result of the FOFA reforms. The claim alleges NULIS breached its duty to act in the best interest of members of the MLC Super Fund, as well as its duties to exercise reasonable care and to put the interests of members above its own interests and the interests of its related parties.	The NULIS case study is at section 1 of Volume 2 of the Final Report. The Commissioner considered that NULIS may have breached its duty to act in the best interest of the affected members (see Final Report, Vol 2, p 59).
11.	*Lesley Coatman v Colonial First State Investments Limited & Anor*	17 October 2019	Federal Court class action led by Maurice Blackburn against Colonial First State, the trustee of the Colonial First State FirstChoice Superannuation Trust, and its former executive director, Linda Elkins, on behalf of MySuper account holders in relation to alleged contraventions of its statutory obligations under superannuation law in the period from 2013 to 2017. It is alleged that Colonial First State failed to transition $3.2 billion of accrued default amounts ("ADAs") to the lower-cost and higher-performing MySuper product in a timely way which resulted in members of the FirstChoice Employer Super division paying higher fees and receiving a lower investment return for an extended period of time. In doing so, it is alleged that Colonial First State failed to exercise the degree of care, skill and diligence required of a prudent superannuation trustee perform their duties and exercise their power in the best interest of beneficiaries, and give priority to the interests of beneficiaries where a conflict of interest arose.	The Commonwealth Bank case study is at section 2 of Volume 2 of the Final Report. The Commissioner considered that Colonial First State may have contravened s 29WA of the SIS Act which requires registerable superannuation entity licensees to treat any contribution to the fund in relation to which no investment direction has been given as a contribution to be paid into a MySuper product of the fund. The Commissioner also considered that the failure to transfer ADAs might have breached Colonial First State's covenants, including its duty to act in the best interests of the affected members, and might therefore constitute misconduct (see Final Report, Vol 2, pp 89-91).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
12.	*Marcel Eugene Krieger v Colonial First State Investments Limited*	18 October 2019	Federal Court class action led by Slater and Gordon against Colonial First State alleging breaches of the duty to act in the best interest of superannuation members and unconscionable conduct. It is alleged that members were charged excessive fees to pay for ongoing commissions to financial advisers who were not required to provide any ongoing services to members.	The Commonwealth Bank case study is at section 2 of Volume 2 of the Final Report. The Commissioner found that there was no justification for continuing to pay commissions to financial advisers who were not providing services to members. Further, the Commissioner found that continuing to pay these commissions was not in the best interests of members (see Final Report, Vol 2, pp 93-94).
13.	*Shimshon v MLC Nominees Pty Limited & Anor*	22 January 2020	Victorian Supreme Court class action against two of NAB's superannuation trustees, MLC Nominees and NULIS, for delaying the move of $6.3 billion belonging to more than 330,000 super customers to the low-cost government-mandated option called MySuper which allowed for the continued payment of commissions to NAB's financial advisers. It is alleged that by doing this, the trustees failed to exercise the degree of skill or care required and failed to act in the best interest of fund members.	The NULIS case study is at section 1 of Volume 2 of the Final Report. The Commissioner considered that the trustees did not pay sufficient regard to the financial interests of the fund members and instead prioritised the commercial interests of the NAB Group and / or the interests of advisers. The Commissioner also considered that the trustees might have contravened their duty to act in the best interest of members and referred their conduct to APRA to consider what action to take (see Final Report, Vol 2, p 60).
14.	*Simon Mallia v Colonial First State Investments Ltd & Anor*	22 January 2020	Victorian Supreme Court class action against Commonwealth Bank's wealth management unit, Colonial First State, alleging breaches of the duty to act in the best interest of superannuation members. It is alleged that Colonial First State forced its customers to pay more for their life insurance by tipping them into a related company, the Commonwealth Bank's insurance arm, CommInsure. It is alleged that despite there being evidence of equivalent or better policies available through other insurers for cheaper premiums, Colonial First State chose a Commonwealth Bank-owned provider, resulting in members paying higher premiums than necessary between January 2014 and January 2020.	The Commonwealth Bank case study is at section 2 of Volume 2 of the Final Report. The Commissioner made no findings due to the lack of evidence on this point (see Final Report, Vol 2, p 100). However, the Commissioner said, in relation to the AMP case study at section 3 of the Final Report, that APRA's standards and guidelines should be improved to allow for a trustee within a vertically-integrated group to adequately evaluate whether the trustee is promoting the best interests of members (see Final Report, Vol 2, p 160).

NO.	PROCEEDING	DATE FILED	SUMMARY	RELEVANT STATEMENTS IN THE ROYAL COMMISSION'S INTERIM / FINAL REPORT
15.	*Tracey Riley & Anor v Australia and New Zealand Banking Group Limited & Ors*	28 February 2020	Federal Court class action against ANZ alleging that by selling consumer credit insurance to credit card and personal loan holders who were ineligible to claim under the terms of the policy, ANZ engaged in unconscionable conduct and was misleading and deceptive in contravention of the ASIC Act and failed to act in the best interest of, and provided inappropriate advice to, ANZ customers in breach of the Corporations Act.	The Commissioner did not make any comments or findings in respect of consumer credit insurance sold by ANZ. However, the Commissioner did make recommendations about conflicted remuneration with respect to general insurance and consumer credit insurance products (Recommendation 2.6) (see Final Report, Vol 1, p 26).
16.	*Roger Kemp v Westpac Banking Corporation*	28 February 2020	Federal Court class action against Westpac alleging that by selling consumer credit insurance to credit card and personal loan holders who were ineligible to claim under the terms of the policy, Westpac engaged in unconscionable conduct and was misleading and deceptive in contravention of the ASIC Act and failed to act in the best interest of, and provided inappropriate advice to, Westpac customers in breach of the Corporations Act.	The Interim Report noted that Westpac acknowledged that it had engaged in actual or potential misconduct and conduct falling below community standards and expectations relating to home lending, credit cards, car loans, add-on insurance, processing or administration errors and unsolicited offers of credit (see Interim Report, Vol 1, p 42).
17.	*Kristy Fordham v Commonwealth Bank of Australia*	9 June 2020	A Federal Court shareholder class action against Commonwealth Bank alleging that by selling consumer credit insurance to credit card and personal loan holders who were ineligible to claim under the terms of the policy, Commonwealth Bank engaged in unconscionable conduct and was misleading and deceptive in contravention of the ASIC Act and failed to act in the best interest of, and provided inappropriate advice to, Commonwealth Bank customers in breach of the Corporations Act.	The Commissioner did not make any comments or findings in respect of consumer credit insurance sold by Commonwealth Bank. However, the Commissioner did make recommendations about conflicted remuneration with respect to general insurance and consumer credit insurance products (Recommendation 2.6) (see Final Report, Vol 1, p 26).

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