

Client Discussion Paper

## More banking royal commission reforms set to bite

The [Financial Sector Reform \(Hayne Royal Commission Response - Protecting Consumers \(2019 Measures\)\) Bill 2019](#) has completed its passage through both houses of parliament and is set to become law soon.

The bill addresses four recommendations from the [Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), including requiring mortgage brokers to act in the best interests of consumers when providing consumer credit assistance or face much stronger penalties.

These changes (recommendations [1.2 and 1.3](#) of the final report) also reform mortgage broker remuneration by requiring the value of upfront commissions to be linked to the amount drawn down by borrowers instead of the loan amount. Reforms also ban campaign and volume-based commissions and payments, and cap soft dollar benefits.

The issue of “conflicted remuneration” was addressed in the legislation ([see page 10](#) of the EM), and was defined as 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 credit provider or the choice of whether to provide credit assistance or not); 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.

Also among the suite of changes are new measures, such as ensuring that consumer protection provisions of the financial services law applies to funeral expenses-only insurance policies ([recommendation 4.2](#)). Providers of funeral expenses policies will also be subject to anti-hawking obligations.

The bill also bans unfair contract terms in standard insurance contracts ([recommendation 4.7](#)). Although the [unfair contract term](#) regime has applied since 2010 to most financial products and services regulated by ASIC, it has not applied to insurance contracts regulated under the Insurance Contracts Act 1984.