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Utmost Good Faith and Accountability in the Spotlight of the Banking Royal Commission – Time to Revisit the Scope, Applicability and Enforcement of the Duty – *Julie-Anne Tarr, Jeanette Van Akkeren, Amanda-Jane George and Sue Taylor*

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry considered the insurance industry through case studies involving all stages of the insurance process. Serious wide ranging problems throughout the life and general insurance industry, including around case handling, settlement procedures, product sales and use of misleading and deceptive contract terms, revealed gross ignorance – if not deliberate disregard – of the inalienable obligation of utmost good faith rooted in the Common Law and enshrined in the *Insurance Contracts Act* 1984 (Cth). This article examines the current scope, applicability and enforcement of this duty along with recent cases highlighting continuing operational uncertainty. It concludes with consideration of recommendations arising out of the Banking Royal Commission and otherwise. As the intrinsic value of any insurance product lies in the ability to make a successful claim when an insured event occurs, particular attention is given to claims handling and settlement in utmost good faith contexts. 148

Blowing the Whistle: A Critical Analysis of the Treasury Laws Amendment (Enhancing Whistleblowing Protections) Act (Cth) 2019 – *David A Chaikin*

It is widely acknowledged that whistleblower protections and remedies in the private sector in Australia have limited practical utility and should be reformed. The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* (Cth) consolidates corporate and financial sector whistleblowing legislation, and enacts a new tax whistleblowing regime. It removes a number of key obstacles to whistleblowers obtaining protection, such as widening the category of whistleblowers to include former employees, removing the good faith requirement and allowing for anonymous disclosures. The Bill alters the balance of power between whistleblower employees and company employers in litigation by reversing the onus of proof in compensation proceedings and creating favourable costs rules for whistleblowers. The Bill promotes improved regulation of whistleblower disclosures by requiring large companies to implement whistleblowing policies and incentivising all companies to adopt effective internal procedures to prevent conduct that is detrimental to whistleblowers. 162

A Game-changer or a Routine Drill? Cooperation in the Indo-Pacific Securities Markets – *Sonia Khosa*

According to recent reports by World Bank and International Monetary Fund, Asia, in the coming decades, will be the "engine" for growth of the global economy. Paradoxically, the United Nations Development Programme's reports nearly 400 million people in Asia-Pacific

as trapped in abject poverty. Securities markets play an important role in the long-term development of an economy. Indo-Pacific region's securities markets, though struggling to reach their optimal capacity, offer a suitable opening for governments, regulators, academic fraternity and other stakeholders to collaborate to extract "opportunities" and remove "obstacles" that restrain the region from realising its enormous potential. This article argues for a holistic approach to securities markets cooperation that can eventually pave the way for Mutual Recognition Agreements (MRAs). As an example, a "bilateral cooperation model" is proposed between a growing and an advanced economy: India and Australia. Such cooperation can be a game-changer for the region's securities markets' development, integration and regulation. 182

The "National Interest" and Australian Agriculture – *Leopold Oscar Bailey*

Foreign investment into the Australian agricultural sector is controlled by the *Foreign Acquisitions and Takeovers Act 1975* (Cth). The Act confers a discretion on the Treasurer to reject a proposed investment or acquisition if he or she is satisfied the investment or acquisition would be contrary to the national interest. Analysis of the Treasurer's decisions in seven high-profile transactions in the agricultural sector reveals inconsistencies, which suggests that there is no clear concept of the national interest to guide the Treasurer's discretion. The impoverished basis for decision-making leads to sub-optimal legislative outcomes, with adverse implications for Australia's economic prosperity and food security. 200

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