

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/09/2019 4:34:16 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1420/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BANK OF QUEENSLAND LIMITED ABN 32 009 656 740
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 3/09/2019 5:08:34 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Originating process

No. of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: General

IN THE MATTER OF BANK OF QUEENSLAND LIMITED (ABN 32 009 656 740)

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**BANK OF QUEENSLAND LIMITED (ABN 32 009 656 740)**  
Defendant

### A. DETAILS OF APPLICATION

This application is made under ss 12GND, 12GNB and 12GD of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (FCA).

The plaintiff seeks declarations of contraventions of the ASIC Act pursuant to s 12GND and 12GNB of the ASIC Act and s 21 of the FCA and injunctions pursuant to s 12GD of the ASIC Act.

On the facts stated in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff claims:

#### First BOQ Contract

1. A declaration pursuant to s 12GND of ASIC Act that each of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Guarantee, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the First BOQ Party (as

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Conrad Gray, Litigation Counsel
Law firm (if applicable)	N/A
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Email	Conrad.Gray@asic.gov.au
Address for service (include state and postcode)	Level 5, 100 Market Street Sydney NSW 2000 marked to the attention of Tim Brooks



identified in a confidential schedule provided to the defendant) dated 16 August 2017

**(First BOQ Contract)** is an unfair term within the meaning of s 12BG of the ASIC Act.

2. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the First BOQ Contract is void *ab initio*.
3. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the First BOQ Contract.

#### Second BOQ Contract

4. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Guarantee, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Second BOQ Party (as identified in a confidential schedule provided to the defendant) dated 20 February 2017 **(Second BOQ Contract)** is an unfair term within the meaning of s 12BG of the ASIC Act.
5. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Second BOQ Contract is void *ab initio*.
6. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Second BOQ Contract.

#### Third BOQ Contract

7. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Term Loan, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Third BOQ Party (as identified in a confidential schedule provided to the defendant) dated 30 June 2017 **(Third BOQ Contract)** is an unfair term within the meaning of s 12BG of the ASIC Act.
8. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Third BOQ Contract is void *ab initio*.



9. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Third BOQ Contract.

#### Fourth BOQ Contract

10. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Term Loan, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Fourth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 27 July 2017 (**Fourth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
11. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Fourth BOQ Contract is void *ab initio*.
12. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Fourth BOQ Contract.

#### Fifth BOQ Contract

13. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Commercial Rate Loan, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Fifth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 29 March 2019 (**Fifth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
14. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Fifth BOQ Contract is void *ab initio*.
15. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Fifth BOQ Contract.

#### Sixth BOQ Contract

16. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Commercial Rate Loan, as defined



in the Concise Statement, that comprises part of the small business contract between the defendant and the Sixth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 24 September 2018 (**Sixth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.

17. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Sixth BOQ Contract is void *ab initio*.
18. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Sixth BOQ Contract.

#### Seventh BOQ Contract

19. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Overdraft, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Seventh BOQ Party (as identified in a confidential schedule provided to the defendant) dated 24 August 2017 (**Seventh BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
20. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Seventh BOQ Contract is void *ab initio*.
21. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Seventh BOQ Contract.

#### Eighth BOQ Contract

22. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Overdraft, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Eighth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 4 February 2019 (**Eighth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.



23. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Eighth BOQ Contract is void *ab initio*.
24. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Eighth BOQ Contract.

#### Ninth BOQ Contract

25. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the General Conditions, as defined in the Concise Statement, that comprises part of the small business contract between the defendant the Ninth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 4 February 2019 (**Ninth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
26. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Ninth BOQ Contract is void *ab initio*.
27. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Ninth BOQ Contract.

#### Tenth BOQ Contract

28. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the General Conditions, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Tenth BOQ Party (as identified in a confidential schedule provided to the defendant) dated 20 November 2018 (**Tenth BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
29. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Tenth BOQ Contract is void *ab initio*.
30. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Tenth BOQ Contract.





### Eleventh BOQ Contract

31. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the General Conditions, as defined in the Concise Statement, that comprises part of the small business contract between the defendant and the Eleventh BOQ Party (as identified in a confidential schedule provided to the defendant) dated 20 November 2018 (**Eleventh BOQ Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
32. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Eleventh BOQ Contract is void *ab initio*.
33. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the Eleventh BOQ Contract.

### General Orders

34. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Guarantee, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Guarantee and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.
35. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Term Loan as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Term Loan and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a



contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.

36. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Commercial Rate Loan as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Commercial Rate Loan and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.
37. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Overdraft as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Overdraft and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.
38. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the General Conditions, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the General Conditions and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of





financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.

39. An order pursuant to section 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 5, 11(a) (bullets 6, 7 and 17) and 12 of the Guarantee, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Guarantee and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.
40. An order pursuant to section 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 10(c), 13(a) (bullets 5, 6 and 15) and 14 of the Term Loan as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Term Loan and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.
41. An order pursuant to section 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 17(c), 17(d), 17(e), 17(g), 22(e), 22(l), 22(t), 25.2, 35 and 39 of the Commercial Rate Loan as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Commercial Rate Loan and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.
42. An order pursuant to section 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 8(c), 9(c), 12(a) (bullets 5, 6 and 15) and 13 of the Overdraft as defined in the Concise Statement, in any



small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Coverdraft and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.

43. An order pursuant to section 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 10.1(c), 10.1(d), 10.1(e), 10.1(f) and 10.1(h), 13(e), 13(l), 13(t), 16.2, 28 and 32 of the General Conditions, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the General Conditions and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.

44. Costs.

45. Such further or other orders as this Honourable Court sees fit.

Date: 3 September 2019

Signed by Conrad Gray  
Lawyer for the Applicant

This application will be heard by ..... at ..... at  
..... \*am/\*pm on .....



**B. NOTICE TO DEFENDANT**

TO: Bank of Queensland Limited (ABN 32 009 656 740)  
Level 6, 100 Skyring Terrace, Newstead QLD 4006

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

Date of filing: 3 September 2019

.....  
*Registrar*

This originating process is filed by Conrad Gray for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is Level 5, 100 Market Street SYDNEY NSW 2000 (marked to the attention of Tim Brooks).

It is intended to serve a copy of this originating process on each defendant.