Insurance Law Journal (ILJ)

Volume 31 Part 1

(articles included in this part are linked to the LexisNexis platform)

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Much of this will change on 5 April 2021 when the unfair contract terms laws will be extended to contracts covered by the Insurance Contracts Act. However, the unfair contract terms laws that will apply to insurance contracts covered by the Act will be different to those that apply to other insurance contracts. This creates a new two-tier system. This article will explore the current two-tier system and the one that will begin on 5 April 2021, including some of the uncertainties of the new system.

Implications of the Royal Commission: The Royal Commission and the insurance framework

— *WIB Enright* 60

This article argues for a broader and deeper view of the work and reports of the Financial Services Royal Commission than a narrow focus on the Final Report's recommendations: the work and reports have traced an outline for change in the insurance framework itself, beyond the insurance recommendations in the reports. After sketching the background, I argue for a wider angled reading of the Final Report. The Financial Services Royal Commission's work was strongly influenced by the Treasury submissions and these were then shaped into the financial services regulatory framework through the Commissioner's consideration of norms, precepts and principles which become the foundations of the Commissioner's general rules. We are now also left with the task of finding a place in our business practices and, given the forensic intensity of the Financial Services Royal Commission, the law, for 'community standards'. I then consider a number of omissions and flaws in the Final Report. Firstly, on the 'important limitations' in the regulatory framework: consumer credit insurance regulation; approved product lists; and unregistered life insurance businesses. Secondly, on sales and products: standard cover terms. Thirdly, on disclosures and representations, the Financial Services Royal Commission's recommendations on s 29 of the Insurance Contracts Act 1984 (Cth) are flawed and the Insurance Contracts Act already deals with a duty to make a reasonably careful representation. Fourthly, the Unfair Contract Terms regime should be aligned to the statutory utmost good faith duty and adapted for insurance. Fifthly, the code proposals must find a place for ethical standards, standards should be contractually enforceable by a customer and serious or systemic code breaches should be enforceable by Australian Securities and Investments Commission. I then consider the concerns that the Financial Services Royal Commission did not touch on any issues of access and diversity for the insurance sector: family violence, mental illness and disability discrimination. It is a part of my argument that the Financial Services Royal Commission work gives some illuminating guidance on those matters. I also deal in the same spirit with some rogue products and chronic legal issues. I offer some proposals, consistent with the wider reading of the Commissioner's work, for consideration.