



26 February 2020

Luke Spear
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The Treasury

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Dear Mr Spears

Financial Services Royal Commission Recommendations 4.6 - Limiting avoidance of life insurance contracts

Thank you for the opportunity to comment on the Treasury's exposure draft legislation and materials re: Limiting avoidance of life insurance contracts – implementing recommendation 1.15 of the Banking, Superannuation & Financial Services Royal Commission, including:

- *Exposure Draft– Financial Sector Reform (Hayne Royal Commission Response–Protecting Consumers (2020 Measures)) Bill 2020: Avoidance of life insurance contracts 7 (FSRC Rec 4.6) (ED);*
- Exposure Draft Explanatory Materials (EM);

This is a joint consumer submission from the Financial Rights Legal Centre (**Financial Rights**) Consumer Action Law Centre (**Consumer Action**), CHOICE, the Public Interest Advocacy Centre (**PIAC**), Financial Counselling Australia (**FCA**) and Consumer Credit Legal Service (WA) Inc (**CLSWA**). We strongly support the exposure draft and explanatory materials as drafted.

The Banking Royal Commission found that the current section 29(3) of the *Insurance Contracts Act 1984* ('the Act') has resulted in an 'avoidance' regime that unfairly favours insurers. Consumer groups and a number of other industry stakeholders provided evidence to the Royal Commission that demonstrated the unfair impact of this subsection on people. -This evidence was recognised and accepted by the Commissioner in making his recommendation¹

¹ PIAC, Module 6 Policy Submission, 11–12; Slater + Gordon Lawyers, Module 6 Policy Submission, 13 [49]–[50]; Westpac, Module 6 Policy Submission, 35–6 [114]–[116]; CALC, Module 6 Policy Submission, 33 [125]–[126]; FRLC, Module 6 Policy Submission, 31. See more generally ASIC, Module 6 Policy Submission, 38–9 [160]–[162] as referenced at footnote 172 on Page 302, Final Report Royal

We acknowledge the ED and EM is a straightforward implementation of Recommendation 4.6 that largely reverting Section 29(3) to its previous drafting. As noted in the EM, before the 2013 amendments, the insurer could not avoid the contract unless it could demonstrate that it would not have entered into a contract of life insurance *on any terms* with the insured, had it known the information that was non-fraudulently omitted or misrepresented. Following the 2013 amendments, insurers were given significantly more scope to avoid contracts of life insurance, leading to unfair outcomes for policyholders and their families. Insurers were able to avoid paying out claims where there was non-fraudulent misrepresentation or omissions, even if the insurer would still have entered a contract of life insurance with the insured.

We strongly support the amendments in the ED that would implement Recommendation 4.6 to return to the pre-2013 position, which would ensure that insurers could only avoid a contract of life insurance where the insurer could not have entered into a contract on any terms.

Prior to 2013, Section 29(3) of the Act stated:

If the insurer would not have been prepared to enter into a contract of life insurance with the insured on any terms if the duty of disclosure had been complied with or the misrepresentation had not been made, the insurer may, within 3 years after the contract was entered into, avoid the contract.

The ED is drafted slightly differently but has a very similar meaning to the pre-2014 drafting. It states:

If:

(a) the failure was not fraudulent or the misrepresentation was not made fraudulently; and

(b) the insurer would not have been prepared to enter into a contract of life insurance with the insured on any terms, if the duty of disclosure had been complied with or the misrepresentation had not been made;

the insurer may, within 3 years after the contract was entered into, avoid the contract.


The inclusion of (a) makes explicit what was previously implied. That is, if the failure was fraudulent or the misrepresentation was made fraudulently, then this would fall under Section 29(2) of the Act which states:

If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

We therefore support this ED as drafted.

Please contact Policy and Advocacy Officer **Drew MacRae** at **Financial Rights Legal Centre** on 02 8204 1386 or at drew.macrae@financialrights.org.au if you have any questions.

Kind Regards,



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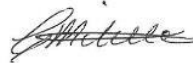
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