



Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

12 October 2018

James Beaton
Minter Ellison
Governor Macquarie Tower
Sydney NSW 2000

By email: [REDACTED]

Dear Mr Beaton

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (“the Royal Commission”)

I refer to the case study concerning TAL’s dealings with [REDACTED] which was heard during the sixth round of the Commission’s hearings.

As you will recall, one aspect of that case study involved certain systems and administrative errors made by TAL in respect of [REDACTED] case.¹ In the closing address made by Senior Counsel Assisting the Commission, Senior Counsel Assisting submitted that it was open to the Commissioner to find that TAL’s conduct fell below community standards and expectations because:²

TAL failed to have adequate systems in place to avoid serious administrative errors, such as erroneous notifications of policy cancellation for non-payment of premiums. As acknowledged in respect of [REDACTED], these types of errors were likely to cause significant distress to claimants.

TAL responded to this submission in its written submissions dated 1 October 2018.³ In those submissions, TAL accepted that “a number of administrative errors” were made in respect of the first insured’s case, which “[w]hilst regrettable, ... were isolated”.⁴ TAL also submitted that it was “not open to the Commission to find, based solely on [REDACTED] unique case, that TAL failed to have in place adequate systems to prevent these sorts of administrative errors”.⁵

It has recently come to the Commission’s attention that on 19 September 2018, shortly after Ms van Eeden gave evidence, TAL wrote to [REDACTED] advising her that she had failed to pay her quarterly premium by the due date, and saying that if she did not remedy this by 23

¹ Transcript, Loraine Karen van Eeden, 14 September 2018, 5757.

² Transcript, Senior Counsel Assisting, 21 September 2018, 6483.

³ TAL, *Submissions on behalf of the TAL Group*, 1 October 2018, 14-15 [44].

⁴ TAL, *Submissions on behalf of the TAL Group*, 1 October 2018, 14 [44].

⁵ TAL, *Submissions on behalf of the TAL Group*, 1 October 2018, 14 [44].



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November 2018, she would “no longer be covered” under her policy, and “[a]ny claims made after this date **cannot** be paid”. A copy of the letter sent by TAL to [REDACTED] is attached. Counsel Assisting proposes to tender this letter.

Upon tender, it may be that the Commissioner will wish to examine whether it is open to him to find that the sending of this letter went beyond a serious administrative error of the type referred to in Senior Counsel Assisting’s closing address. In particular, the Commissioner may wish to consider whether, in circumstances where TAL was on notice of a history of serious administrative errors concerning [REDACTED] file,⁶ and of the seriousness of her medical condition,⁷ sending this letter constituted a separate and distinct breach of TAL’s duty of utmost good faith. Alternatively, the Commissioner may wish to consider whether, in those circumstances, ordinary prudence would have required TAL to audit [REDACTED] file and to take steps to ensure that there was no recurrence of such errors, such that the failure to do so constituted conduct that fell below community standards and expectations. The Commissioner may also wish to consider whether the recurrence of such a serious administrative error showed a careless, even reckless, disregard for the impact that those sorts of errors had on [REDACTED] and a failure to appreciate the seriousness of errors of this kind.

The Commission invites TAL to provide any further written submission addressing the matters that have been identified above, as well as any other findings that TAL regards as available on the evidence. The contents of any further written submission should not replicate the contents of TAL’s 1 October 2018 submission, and should not exceed 2 pages.

The Commission again wishes to draw to TAL’s attention to the non-publication direction made in respect of [REDACTED]

Any further written submissions should be submitted electronically, by 10am on 24 October 2018, to FSRCSolicitor@royalcommission.gov.au in PDF format that is machine-readable and word-searchable.

Yours sincerely,

[REDACTED]

Simon Daley

Solicitor Assisting the Royal Commission

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⁶ TAL, *Submissions on behalf of the TAL Group*, 1 October 2018, 14-15 [44].

⁷ See, eg, Exhibit 6.202, 13 July 2017, Report of Dr Anthony Dinnen dated 13/07/2017.