

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
BOOK LAUNCH
INSURANCE CONTRACTS ACT HANDBOOK, 9TH EDITION
THURSDAY 31 MARCH 2016*

1. It is a great pleasure to join you this evening to launch the ninth edition of the *Insurance Contracts Act Handbook* and have the opportunity to give a few short praises to the handbook and its editors. I would particularly like to thank Pam Madafiglio for inviting me to speak tonight.
2. Outside of heading the Minter Ellison Sydney Insurance and Corporate Disputes team, Pamela has tirelessly worked over twenty years as editor in chief to put together eight editions of the Insurance Law Handbook. The Handbook serves as a crucial guide for both lawyers and other professionals involved in the insurance industry to navigate the *Insurance Contracts Act 1984*.
3. I note that this is the first edition in which Pam is not editor in chief. I express my congratulations to Chern Tan, her successor, for his hard work in putting together the latest edition of this handbook.
4. I hardly need to extol the benefits of the insurance industry to the people in this room. Insurance enables all of us, as well as organisations and corporations, to participate in vital social and economic activities through

* I express my thanks to my Research Director, Ms Sarah Schwartz, for her assistance in the preparation of this address.

transferring the risks associated with those activities. Insurance law plays a critical role in maintaining a safe, efficient and well-functioning insurance market.

5. Insurance law is constantly evolving to meet new social and economic demands in this market. The latest edition of this handbook is highly valuable as it assists the industry in navigating the 2013 changes to the *Insurance Contracts Act*, many of which only recently came into effect. For example, on the 28th of December 2015, the transition period for insurers to implement new rules about the duty of disclosure and notification of that duty ended. The Handbook explains that during the transition period, which was from 28 June 2013 to 28 December 2015, an insurer could opt in, but, before the contract was renewed, the insurer was required to clearly inform the insured in writing of the general nature and effect of the section. The Handbook explains, in plain English, the content of the duty of the insurer during and after the transition period. The discussion on that particular section, section 21B, ends with a comment that I think could be used to describe many legislative provisions, “[i]t’s a bit of a maze but it should work”.
6. The 2013 amendments have resulted in changes to areas such as the duty of utmost good faith, electronic communication, the powers of ASIC, disclosures and misrepresentations, remedies under contracts of life insurance, the rights of third party beneficiaries and subrogation.¹ The Handbook provides extensive and clear coverage of all of these changes.

¹ Explanatory Memorandum to the Insurance Contracts Amendment Bill 2013.

7. The new edition of the Handbook includes updates of significant cases in insurance law which have taken place in the last two years. For example, in its annotations to section 54 of the *Insurance Contracts Act*, which states that in certain circumstances, an insurer may not refuse to pay out claims, the Handbook includes a discussion of the recent High Court decision *Maxwell v Highway Hauliers*. That decision was important for resolving what acts or omissions fall within section 54. As stated by the Handbook, “[t]he effect of the High Court’s decision is to give section 54(1) broad application” and “[a] consequence of the High Court’s decision is that insureds’ and insurers’ attentions will be drawn to section 54(2) more than before. This is because section 54(1) does not apply if section 54(2) does”.
8. In its discussion of section 21, the Handbook also mentions an interesting recent case which came before the Full Court of the Federal Court. In obiter, the Court stated that section 21 subsection 3 provided examples of “waiver” and was not a “codification”. As stated by the Handbook, “[i]f this is correct, insurers may need to review their underwriting practices to ensure there is no inadvertent waiver of the duty by not requesting that all insureds complete the proposal form.”
9. These insights into future developments in the field of insurance law are valuable, not only to lawyers and professionals involved in litigation, but also to academics and law students. In short, this handbook provides a comprehensive guide to an area of law which is of primary importance to many lawyers, professionals and every day citizens.

10. I congratulate Pam Madafiglio, Chern Tan, and all of the lawyers and summer clerks for their dedication and hardwork in putting together such a detailed, well-researched and structured piece of work. I have no doubt that this handbook will be an excellent resource for both insurance lawyers and other insurance professionals.