Four Duties of Good Faith: Convergence and Divergence in Australian and English Approaches to Contract Performance and Termination

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The role for a duty of good faith, and its possible transformative effects on the law of contract, have long been debated by scholars and courts. This paper considers the current state of good faith in Australia and England. It argues that courts in these jurisdictions have converged in producing a bundle of modest, but nonetheless important, good faith duties that require contracting parties to show some degree of loyalty to the contract they have made. Courts have diverged in their preparedness to use the terminology of good faith and in their treatment of good faith duties of disclosure and termination. The paper argues that the convergences reflect a similar doctrine landscape and that the divergences are, at least partly, prompted by the expansive scope of Australia’s consumer protection legislation.