



Insurance Laws Amendment Act (No. 2) 1994

No. 49 of 1994

**An Act to amend various laws relating to insurance,
and for related purposes**

[Assented to 7 April 1994]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Insurance Laws Amendment Act (No. 2) 1994*.

Commencement

2.(1) Sections 1, 2 and 3 and the amendments contained in items 1, 2, 4, 5, 7, 17, 18 and 19 of the Schedule commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the amendments contained in the remaining items of the Schedule commence on a day or days to be fixed by Proclamation.

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(3) If an amendment referred to in subsection (2) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Amendments of other Acts

3. The Acts referred to in the Schedule are amended as set out in the Schedule but the amendments commence as provided by section 2.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

General Insurance Supervisory Levy Act 1989

1. Section 6 (definition of “statutory upper limit”):

Omit paragraph (b), substitute:

- “(b) in relation to the financial year commencing on 1 July 1992 or 1 July 1993—the amount calculated by multiplying the statutory upper limit for the previous financial year by the indexation factor for the financial year starting on that day; or
- (c) in relation to the financial year commencing on 1 July 1994—\$17,000; or
- (d) in relation to a later financial year—the amount calculated by multiplying the statutory upper limit for the previous financial year by the indexation factor for the later financial year.”.

Insurance Contracts Act 1984

2. Subsection 11(1):

Insert:

“‘**Commissioner**’ means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987*, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act;”.

3. Subsection 11(1):

Insert:

“‘**consumer credit insurance**’ means insurance provided by a class of contracts of insurance:

- (a) that is declared by the regulations to be a class of contracts to which Division 1 of Part V of this Act applies; and
- (b) that is identified by those regulations as consumer credit insurance;”.

4. After Part I:

Insert:

“PART IA—ADMINISTRATION

Commissioner responsible for general administration of Act

“11A. Subject to any directions of the Treasurer, the Commissioner has the general administration of this Act.

SCHEDULE—continued

Powers of the Commissioner

“11B. For the purpose of undertaking the general administration of this Act, the Commissioner has power to do all things that are necessary or convenient to be done in connection with the administration of the Act and, without limiting the generality of that power, has power:

- (a) to promote the development of facilities for handling inquiries in relation to insurance matters; and
- (b) to monitor complaints in relation to insurance matters; and
- (c) to liaise generally with other persons or bodies having a responsibility to deal with inquiries, complaints and disputes concerning insurance matters; and
- (d) to review documents (including documents promoting particular kinds of insurance cover) issued by insurers and given to the Commissioner in compliance with section 11C; and
- (e) to review particulars, statistics and documents given to the Commissioner in compliance with section 11D; and
- (f) to monitor legal judgments, industry trends and the development of community expectations that are, or are likely to be, of relevance to the efficient operation of the Act; and
- (g) to promote the education of the insurance industry, the legal profession and consumers as to the objectives and requirements of the Act.

Supervisory powers—Commissioner may obtain insurance documents

“11C.(1) The Commissioner may, for any purpose connected with the general administration of this Act, by notice in writing given to an insurer, require the insurer to give to the Commissioner, within 30 days of receipt of the notice, or such longer period as is specified in the notice, copies of:

- (a) documents specified in the notice relating to insurance cover provided, or proposed to be provided, by the insurer; or
- (b) documents relating to insurance cover of a kind specified in the notice provided, or proposed to be provided, by the insurer.

“(2) An insurer must not fail, without reasonable excuse, to comply with the requirements of a notice under subsection (1).

Penalty: 150 penalty units.

“(3) Subsection (1) does not require an insurer to give to the Commissioner any document dealing with the insurance cover provided to a particular person unless:

SCHEDULE—continued

- (a) that person, or another person having an entitlement to claim under that insurance cover, has given a written authorisation to the Commissioner permitting the Commissioner to require the giving of that document; and
- (b) the Commissioner has given a copy of the authorisation to the insurer with the notice.

“(4) It is a reasonable excuse for an insurer to refuse or fail to comply with the requirements of a notice under subsection (1) if to do so would tend to incriminate the insurer.

Supervisory powers—Commissioner may review administrative arrangements etc.

“11D.(1) The Commissioner may, for any purpose connected with the general administration of this Act, by notice in writing given to an insurer, require the insurer to give to the Commissioner, within 30 days of receipt of the notice or such longer period as is specified in the notice:

- (a) written particulars of the organisational structure and administrative arrangements of the insurer either generally or in a particular area of insurance; or
- (b) statistics relating to the nature and volume of the insurance business of the insurer either generally or in a particular area of insurance; or
- (c) copies of any training guides, work manuals or other materials of a similar nature used by an insurer in instructing its employees or any insurance intermediaries dealing with persons who have, or may be likely to seek, insurance cover from the insurer.

“(2) An insurer must not, intentionally or recklessly, give the Commissioner, in purported compliance with a requirement under subsection (1), particulars or statistics that are false or misleading in a material particular.

Penalty: 150 penalty units.

“(3) An insurer must not fail, without reasonable excuse, to comply with the requirements of a notice under subsection (1).

Penalty: 150 penalty units.

“(4) Subsection (1) does not require an insurer to give the Commissioner a copy of any document or any information:

- (a) that reveals the identity of a particular insured or third party claimant; or
- (b) from which the identity of a particular insured or third party claimant can be deduced.

SCHEDULE—continued

“(5) It is a reasonable excuse for an insurer to refuse or fail to comply with the requirements of a notice under subsection (1) if to do so would tend to incriminate the insurer.

“(6) In this section:

‘third party claimant’ means a person, other than the insured, who is, or might be, entitled to make a claim under a contract of insurance.

Examination of documents by Commissioner not to imply compliance with Act

“11E. The fact that documents in use by an insurer previously have been given to the Commissioner under section 11C or 11D does not imply:

- (a) that the Commissioner has found that the documents comply with the requirements of this Act; or
- (b) that the Commissioner endorses any practice or procedure described in the documents.

Secrecy

“11F.(1) The object of this section is to create duties of non-disclosure for the purposes of section 70 of the *Crimes Act 1914*.

“(2) Subject to subsections (3), (4) and (6), a person who is or has been:

- (a) the Commissioner; or
- (b) a member of the staff assisting the Commissioner;

must not, either directly or indirectly, communicate to any person any information concerning the affairs of any other person if the information has been acquired by him or her:

- (c) in the exercise or the purported exercise of powers under or for the purposes of this Act; or
- (d) in the performance or the purported performance of the duties under or for the purposes of this Act.

“(3) Subsection (2) does not apply to a person who communicates the information in the performance of a duty in connection with this Act.

“(4) Subsection (2) does not prevent the communication of information or the production of a document by the Commissioner, or by a member of the staff assisting the Commissioner authorised by the Commissioner:

- (a) to the Minister; or
- (b) to a court for the purposes of this Act; or
- (c) to a person to whom, in the Minister’s opinion, it is in the public interest that the information be communicated or the document produced.

SCHEDULE—continued

“(5) A person who is or has been:

- (a) the Commissioner; or
- (b) a member of the staff assisting the Commissioner;

is not required:

- (c) to communicate to a court any information; or
- (d) to produce in a court any document;

acquired by him or her, in the exercise or the purported exercise of powers, or the performance or the purported performance of duties, for the purposes of this Act, except when it is necessary to do so for the purposes of this Act.

“(6) Subsection (2) does not prevent the communication of information or the production of a document by the Commissioner, or by a member of the staff assisting the Commissioner authorised by the Commissioner:

- (a) to the Secretary to a Department of the Commonwealth; or
- (b) to an officer of a Department of the Commonwealth, approved, in writing, by the Secretary to that Department;

for the purpose of advising the Minister administering that Department in connection with a submission:

- (c) made, or to be made, by the Minister administering that Department to the Minister administering this Act; and
- (d) relating to the administration of this Act.

“(7) If information is communicated under subsection (6) to the Secretary to a Department of the Commonwealth or to an officer of a Department of the Commonwealth, the Secretary or the officer must not, either directly or indirectly, except for the purpose mentioned in subsection (6), divulge or communicate that information to any person.

“(8) For the purposes of this section, if a person appointed under an Act (the ‘first Act’) has all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to a particular branch of the Australian Public Service:

- (a) the person is taken to be a Secretary to a Department of the Commonwealth; and
- (b) an officer in that branch is taken to be an officer of that Department; and
- (c) the Minister administering the first Act is taken to be the Minister administering that Department.

SCHEDULE—continued

Delegation

“11G. The Commissioner may by writing signed by the Commissioner delegate to a person:

- (a) who is a member of the staff appointed to assist the Commissioner in the performance of the Commissioner’s functions; and
- (b) who holds or performs the duties of a Senior Executive Service office;

any of the Commissioner’s powers under this Act or the regulations.

Annual report

“11H. The Commissioner must, within 3 months after the end of each financial year, give to the Treasurer a report on the working of this Act during that year for presentation to the Parliament.”.

5. Section 15:

Repeal the section, substitute:

Certain other laws not to apply

“15.(1) A contract of insurance is not capable of being made the subject of relief under:

- (a) any other Act; or
- (b) a State Act; or
- (c) an Act or Ordinance of a Territory.

“(2) Relief to which subsection (1) applies means relief in the form of:

- (a) the judicial review of a contract on the ground that it is harsh, oppressive, unconscionable, unjust, unfair or inequitable; or
- (b) relief for insureds from the consequences in law of making a misrepresentation;

but does not include relief in the form of compensatory damages.”.

6. Subsection 40(2):

Omit “\$5,000”, substitute “300 penalty units”.

7. After section 55:

Insert in Division 3:

Representative actions by the Commissioner

“55A.(1) If:

- (a) an insured has entered into a contract of insurance with an insurer; and
- (b) the Commissioner is satisfied that the insured has suffered damage, or is likely to suffer damage, because the terms of the contract, or the conduct of the insurer, breaches the requirements of this Act;

SCHEDULE—continued

the Commissioner may, by application, if the Commissioner is of the opinion that it is in the public interest to do so:

- (c) bring an action against the insurer on behalf of the insured under or in respect of that contract; or
- (d) take over and continue, on behalf of the insured, an action brought against the insurer by the insured under or in respect of that contract.

“(2) If:

- (a) a number of insureds have entered into contracts of insurance with an insurer; and
- (b) the Commissioner is satisfied that those insureds have suffered damage, or are likely to suffer damage, because the terms of the contracts, or the conduct of the insurer, breaches the requirements of this Act;

the Commissioner may, by application, if the Commissioner is of the opinion that it is in the public interest to do so, bring a single action against the insurer on behalf of all of those insureds under or in respect of the contracts so entered into.

“(3) The Commissioner may only bring or take over an action under subsection (1), or bring an action under subsection (2), if the Commissioner has obtained the written consent of the insured or of each of the insureds on whose behalf the action is being brought or is being continued.”.

8. Section 64:

Add at the end:

“(5) A reference in this section to a contract of life insurance does not include a reference to a contract of consumer credit insurance even though that contract extends to cover in the case of the death of the insured.”.

9. After section 64:

Insert in Part VII:

“Cooling-off” period: consumer credit insurance

“64A.(1) An insured under a contract of consumer credit insurance may cancel the contract at any time within 14 days after the insured receives a notice referred to in subsection 71A(5) in respect of the contract.

“(2) If an insured cancels a contract, the insurer must repay to the insured an amount equal to the sum of all the amounts that have been paid to the insurer under the contract.

“(3) A notice referred to in subsection 71A(5) in relation to a contract of consumer credit insurance that is sent to the insured by post is to be taken, for the purposes of subsection (1), to have been received by the insured at the

SCHEDULE—continued

time at which it would have been delivered in the ordinary course of post unless the insured proves that, through no fault on the part of the insured, it was not so received.”.

10. Subsection 65(5):

Omit “\$5,000”, substitute “300 penalty units”.

11. After section 71:

Insert:

Notices to be provided by insurer concerning certain kinds of insurance

“71A.(1) Subsection (2), (3), (4), (5) or (6) applies:

- (a) to a contract of consumer credit insurance; and
- (b) to a contract of insurance of any other kind if a contract of insurance of that kind is designated in the regulations as a contract of insurance of a kind to which the subsection applies.

“(2) Subject to subsection (6), an insurer who may, at a future time, enter into a contract of insurance of a kind to which this subsection applies with a person must ensure, in a manner specified in the regulations, that there is freely available to the person a written notice that:

- (a) is set out in a form prescribed by the regulations; and
- (b) explains the general nature of insurance of that kind in terms prescribed by the regulations.

Penalty: 300 penalty units.

“(3) An insurer must, immediately before a contract of insurance of a kind to which this subsection applies is entered into, give to the proposed insured a written notice that:

- (a) is set out in a form prescribed in the regulations; and
- (b) contains such information concerning the contract of insurance as is prescribed in the regulations.

Penalty: 300 penalty units.

“(4) Without limiting the generality of subsection (3), an insurer who enters into a contract of insurance of a kind to which subsection (3) applies may comply with the requirements of that subsection:

- (a) by incorporating the notice in a prominent place in the contract of insurance; and
- (b) by drawing the notice to the attention of the insured seeking the insurance cover; and
- (c) by giving a copy of the contract of insurance to the insured at the time the contract is entered into.

SCHEDULE—continued

“(5) An insurer must, after a contract of insurance of a kind to which this subsection applies has been entered into, send the insured by post a further written notice that:

- (a) is set out in a form prescribed by the regulations; and
- (b) confirms the sale of the insurance in a manner prescribed by the regulations; and
- (c) contains such further information concerning the contract of insurance as is prescribed; and
- (d) if the Act permits the insured to cancel the contract of insurance—inform the insured to that effect.

Penalty: 300 penalty units.

“(6) If a contract of insurance of a kind to which subsections (2) and (3) apply is entered into:

- (a) without any prior dealing between the insurer and the insured; and
- (b) at a place other than the premises of the insurer or of an agent of the insurer;

then, if the insurer gives to the insured the notice required under subsection (2) at the same time as the insurer gives the notice required under subsection (3), the insurer is to be taken to have complied with the requirements of both of those subsections.”.

12. Subsection 73(1):

Omit the penalty, substitute:

“Penalty: 60 penalty units.”.

13. After subsection 73(2):

Add:

“(3) If:

- (a) a supplier of goods or services is also the agent of an insurer; and
- (b) the contract of insurance proposed to be entered into in respect of the provision of those goods or services is a contract with that insurer of a kind to which section 71A applies; and
- (c) the information required to be given in a notice under subsection 71A(3) includes all of the information required to be given under this section;

the supplier is to be taken, by complying as agent of the insurer with section 71A, also to have complied with this section.

14. Subsection 74(1):

Omit “\$5,000”, insert “300 penalty units”.

SCHEDULE—continued

15. Subsection 75(1):

Omit “\$5,000”, insert “300 penalty units”.

16. Subsection 75(5):

Omit “\$5,000”, insert “300 penalty units”.

17. After section 76:

Insert:

Liability of directors and employees etc.

“76A.(1) A director of a company, or an employee or agent (whether of a corporation or of an individual), who intentionally or recklessly permits or authorises a contravention of this Act by the company, corporation or individual, as the case may be, is guilty of an offence against this Act and, subject to subsection (2), is punishable by the penalty provided in respect of that contravention.

“(2) If a director of a company, or an individual who is an employee or agent of a corporation, intentionally or recklessly permits or authorises a contravention by the company or corporation, the reference in subsection (1) to the penalty provided in respect of the contravention is a reference to:

- (a) the penalty that would apply to an individual in respect of the contravention; or
- (b) if there is no penalty provided for an individual—a penalty not exceeding one-fifth of the penalty applying to the company or corporation in respect of the contravention.

“(3) If:

- (a) a company or corporation is the agent of an individual; and
- (b) a director of the company, or an employee or agent of the corporation, intentionally or recklessly permits or authorises a contravention of this Act by the company or corporation in its capacity as agent of the individual;

then, despite subsection (1), the offence committed by the company or corporation as agent is punishable by a penalty not exceeding 5 times the penalty applying to the individual.”.

Life Insurance Supervisory Levy Act 1989

18. Section 6 (definition of “statutory upper limit”):

Omit paragraph (b), substitute the following:

- “(b) in relation to the financial year commencing on 1 July 1992 or 1 July 1993—the amount calculated by multiplying the statutory upper limit for the previous financial year by the indexation factor for the financial year starting on that day; or

SCHEDULE—continued

- (c) in relation to the financial year commencing on 1 July 1994—\$70,000; or
- (d) in relation to a later financial year—the amount calculated by multiplying the statutory upper limit for the previous financial year by the indexation factor for the later financial year.”.

Trade Practices Act 1974

19. Subsection 87(1E):

Omit the subsection.

NOTE ABOUT SECTION HEADING

1. On the day on which section 64 of the *Insurance Contracts Act 1984* is amended by this Act, the heading to that section is altered by omitting “‘Free-look’” and substituting “‘Cooling-off period’”.

[Minister’s second reading speech made in—
Senate on 16 December 1993
House of Representatives on 23 March 1994]