



Insurance Contracts Act 1984

No. 80, 1984 as amended

Compilation start date: 28 June 2014

Includes amendments up to: Act No. 75, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Insurance Contracts Act 1984* as in force on 28 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 28 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary	1
1 Short title	1
2 Commencement	1
3 Repeals	1
4 Previous contracts	2
5 Crown to be bound	2
6 Extension to external Territories	2
7 Effect of Act on other laws	2
8 Application of Act	3
9 Exceptions to application of Act	3
9A Exclusion of pleasure craft from the <i>Marine Insurance Act 1909</i>	6
10 Contracts of insurance	6
11 Interpretation	7
11AA Application of the <i>Criminal Code</i>	12
Part IA—Administration	13
11AAA Definition	13
11A ASIC responsible for general administration of Act	13
11B Powers of the ASIC	13
11C Supervisory powers—ASIC may obtain insurance documents	14
11D Supervisory powers—ASIC may review administrative arrangements etc.	15
11DA Supervisory powers—liability of directors, employees and agents of insurers	16
11E Examination of documents by ASIC not to imply compliance with relevant legislation	17
11F ASIC’s power to intervene in proceedings	17
Part II—The duty of the utmost good faith	19
12 This Part not to be read down	19
13 The duty of the utmost good faith	19
14 Parties not to rely on provisions except in the utmost good faith	19
14A Powers of ASIC—insurer’s failure to comply with the duty of the utmost good faith in relation to handling or settlement of claims	20
15 Certain other laws not to apply	20

Part III—Insurable interests	22
Division 1—General insurance	22
16 Insurable interest not required	22
17 Legal or equitable interest not required at time of loss	22
Division 2—Other contracts of insurance	23
18 Insurable interest not required	23
Division 3—Naming of persons benefited	24
20 Persons benefited need not be named	24
Part IV—Disclosures and misrepresentations	25
Division 1—Insured’s duty of disclosure	25
21 The insured’s duty of disclosure	25
21A Eligible contracts of insurance—disclosure of specified matters	25
21B Eligible contracts of insurance—disclosure before contract renewed	28
22 Insurer to inform of duty of disclosure	32
Division 2—Misrepresentations by insured	33
23 Ambiguous questions	33
24 Warranties of existing facts to be representations.....	33
25 Misrepresentation by life insured	33
26 Certain statements not misrepresentations.....	33
27 Failure to answer questions	34
Division 3—Remedies for non-disclosure and misrepresentations by insured	35
27A Certain contracts of life insurance may be treated as if they comprised 2 or more separate contracts of life insurance	35
28 General insurance	36
29 Life insurance	37
30 Misstatements of age	39
31 Court may disregard avoidance in certain circumstances	41
32 Non-disclosure or misrepresentation by life insured covered under group life contract.....	42
32A Non-disclosure or misrepresentation by holder of RSA	42
33 No other remedies.....	43
Division 4—Key Facts Sheets	44
33A Application of this Division	44
33B What is a <i>Key Facts Sheet</i> ?.....	44
33C Insurer’s obligation to provide Key Facts Sheet	44

33D	Provision of Key Facts Sheet does not constitute clearly informing.....	45
Part V—The contract		46
Division 1—Standard cover		46
34	Interpretation	46
35	Notification of certain provisions	46
36	Interpretation of regulations	47
37	Notification of unusual terms	47
Division 1A—Definition of flood		49
37A	Application of this Division	49
37B	Meaning of <i>flood</i> in prescribed contracts etc.	49
37C	Insurer must clearly inform insured whether prescribed contract provides insurance cover in respect of flood.....	50
37D	Circumstances in which prescribed contract is taken to provide insurance cover etc. in respect of flood	50
37E	Division not to affect provision of insurance cover for certain events.....	51
Division 2—General provisions relating to insurance contracts		52
38	Interim contracts of insurance	52
39	Instalment contracts of general insurance.....	52
40	Certain contracts of liability insurance	53
41	Contracts of liability insurance—consent of insurer required for settlement etc. of claim	54
42	Maximum cover for premium.....	54
43	Arbitration provisions.....	55
44	Average provisions.....	55
45	“Other insurance” provisions.....	57
46	Pre-existing defect or imperfection.....	57
47	Pre-existing sickness or disability.....	57
48	Contracts of general insurance—entitlements of third party beneficiaries.....	58
48AA	Life policy in connection with RSA for the benefit of third party beneficiary.....	58
48A	Life policy for the benefit of third party beneficiary	59
49	Where sum insured exceeds value of insured’s interest.....	60
50	Sale of insured property.....	62
51	Claims against insurer in respect of liability of insured or third party beneficiary	62
52	“Contracting out” prohibited	63
53	Variation of contracts of insurance.....	63

Division 3—Remedies	64
54 Insurer may not refuse to pay claims in certain circumstances	64
55 No other remedies.....	65
55A Representative actions by the ASIC	65
Part VI—Claims	67
56 Fraudulent claims	67
57 Interest on claims.....	67
Part VII—Expiration, renewal and cancellation	69
58 Insurer to notify of expiration of contracts of general insurance.....	69
59 Cancellation procedure	70
59A Cancellation of contracts of life insurance.....	71
60 Cancellation of contracts of general insurance	72
61 Insurers in liquidation	73
62 Cancellation of instalment contracts of general insurance	74
63 Cancellations of contracts of insurance void	74
Part VIII—Subrogation	75
64 Application to third party beneficiaries	75
65 Subrogation to rights against family etc.	75
66 Subrogation to rights against employees	76
67 Rights with respect to money recovered under subrogation etc.	76
68 Contracts affecting rights of subrogation.....	80
Part IX—Information, notices and reasons	81
69 Giving of information to insureds.....	81
70 Notices to be given to life insureds in certain cases.....	82
71 Agency	82
72 Content and other requirements for notices etc. to be given in writing	83
72A Method for giving written notices or documents	83
74 Policy documents to be supplied on request	84
75 Reasons for cancellation etc. to be given	84
Part X—Miscellaneous	87
76 Contribution between insurers.....	87
78 Regulations.....	87

Endnotes	88
Endnote 1—About the endnotes	88
Endnote 2—Abbreviation key	90
Endnote 3—Legislation history	91
Endnote 4—Amendment history	97
Endnote 5—Uncommenced amendments	102
Insurance Contracts Amendment Act 2013 (No. 75, 2013).....	102
Endnote 6—Modifications [none]	107
Endnote 7—Misdescribed amendments [none]	107
Endnote 8—Miscellaneous [none]	107

An Act to reform and modernise the law relating to certain contracts of insurance so that a fair balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and the practices of insurers in relation to such contracts, operate fairly, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Insurance Contracts Act 1984*.

2 Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

3 Repeals

- (1) The Imperial Acts known as The Life Assurance Act, 1774, The Fires Prevention (Metropolis) Act, 1774 and The Marine Insurance Act, 1788, in their application to a contract of insurance or proposed contract of insurance to or in relation to which this Act applies, are repealed in so far as they are part of the law of the Commonwealth or of an external Territory to which this Act extends.
- (2) Section 8 of the *Acts Interpretation Act 1901* extends to those Imperial Acts as so repealed as though they were Acts of the Parliament repealed by this Act.

Section 4

4 Previous contracts

- (1) Subject to subsection (2), this Act does not apply to or in relation to a contract of insurance that was entered into before the date of commencement of this Act.
- (2) The application of sections 32, 54 and 56 extends to and in relation to a superannuation contract (other than an individual superannuation contract) that was entered into before the date of commencement of this Act in so far as a person who becomes, on or after that date, a member of the relevant superannuation or retirement scheme is concerned.

5 Crown to be bound

- (1) This Act binds the Crown in right of the Commonwealth or of a Territory in which this Act applies or to which this Act extends but does not bind the Crown in right of a State.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth or of a Territory liable to be prosecuted for an offence arising under this Act.

6 Extension to external Territories

- (1) This Act extends to an external Territory that is for the time being declared by Proclamation to be a Territory to which this Act extends.
- (2) A reference in this Act to the date of commencement of this Act is, in relation to an external Territory to which this Act extends, a reference to that date or to the date on which this Act commences so to extend, whichever is the later.

7 Effect of Act on other laws

It is the intention of the Parliament that this Act is not, except in so far as this Act, either expressly or by necessary intendment, otherwise provides, to affect the operation of any other law of the Commonwealth, the operation of law of a State or Territory or the

operation of any principle or rule of the common law (including the law merchant) or of equity.

8 Application of Act

- (1) Subject to section 9, the application of this Act extends to contracts of insurance and proposed contracts of insurance the proper law of which is or would be the law of a State or the law of a Territory in which this Act applies or to which this Act extends.
- (2) For the purposes of subsection (1), where the proper law of a contract or proposed contract would, but for an express provision to the contrary included or to be included in the contract or in some other contract, be the law of a State or of a Territory in which this Act applies or to which this Act extends, then, notwithstanding that provision, the proper law of the contract is the law of that State or Territory.

9 Exceptions to application of Act

- (1) Except as otherwise provided by this Act, this Act does not apply to or in relation to contracts and proposed contracts:
 - (a) of reinsurance; or
 - (b) of insurance entered into, or proposed to be entered into, by a private health insurer within the meaning of the *Private Health Insurance Act 2007* in respect of its health insurance business within the meaning of Division 121 of that Act; or
 - (ba) of insurance entered into, or proposed to be entered into, by a private health insurer within the meaning of the *Private Health Insurance Act 2007* in respect of its health-related business within the meaning of section 131-15 of that Act that is conducted through a health benefits fund (as defined by section 131-10 of that Act); or
 - (c) of insurance entered into, or proposed to be entered into, by a friendly society; or
 - (ca) of insurance entered into, or proposed to be entered into, by the Export Finance and Insurance Corporation, other than short-term insurance contracts within the meaning of the *Export Finance and Insurance Corporation Act 1991* that are

Section 9

entered into on or after the commencement of this paragraph;
or

- (d) to or in relation to which the *Marine Insurance Act 1909* applies; or
- (e) entered into or proposed to be entered into for the purposes of a law (including a law of a State or Territory) that relates to:
 - (i) workers' compensation; or
 - (ii) compensation for the death of a person, or for injury to a person, arising out of the use of a motor vehicle; or
- (f) entered into or proposed to be entered into:
 - (i) for the purposes of a law (including a law of a State or a Territory) that relates to workers' compensation; and
 - (ii) to provide insurance cover in respect of an employer's liability under a rule of the common law that requires payment of damages to a person for employment-related personal injury.

- (1A) If a contract of insurance, or a proposed contract of insurance, includes:
 - (a) provisions (the ***first group of provisions***) that would, if they comprised a single contract or proposed contract, form a contract referred to in any of paragraphs (1)(a) to (f); and
 - (b) provisions (the ***second group of provisions***) that would, if they comprised a single contract or proposed contract, form a contract other than a contract referred to in any of paragraphs (1)(a) to (f);

then subsection (1) applies as if the first group of provisions and the second group of provisions were each a separate contract or proposed contract.

- (1B) Despite subsection (1A), if a contract of insurance, or a proposed contract of insurance, includes:
 - (a) provisions (the ***first group of provisions***) for the purposes of a law referred to in subparagraph (1)(f)(i); and
 - (b) provisions (the ***second group of provisions***) that provide insurance cover of the kind referred to in subparagraph (1)(f)(ii);

then subsection (1) applies as if the first group of provisions and the second group of provisions were together a separate contract or proposed contract.

(1C) If:

- (a) a provision (a *related provision*) of a contract of insurance, or a proposed contract of insurance, relates to or affects the operation of a group or groups of provisions included in the contract or proposed contract; and
- (b) because of subsection (1A) or (1B), subsection (1) applies as if that group or those groups of provisions were a separate contract or proposed contract;

then the related provision is, for the purposes of subsection (1), to be regarded as a provision included in that separate contract or proposed contract.

- (2) This Act does not apply to or in relation to contracts and proposed contracts of insurance entered into, or proposed to be entered into, in the course of State insurance or Northern Territory insurance, including contracts and proposed contracts entered into, or proposed to be entered into, by:
 - (a) a State or the Northern Territory; and
 - (b) some other insurer;as joint insurers.
- (3) Sections 37, 41, 58, 59, 60, 63, 69 and 74 do not apply in relation to contracts, and proposed contracts, of insurance against the risk of the loss of an aircraft, or damage to the hull of an aircraft, as a result of war.
- (4) Sections 53 and 63 do not apply in relation to a provision of a contract, or a proposed contract, of insurance to the extent that:
 - (a) the provision authorises or permits the insurer to vary or cancel either or both of the following:
 - (i) cover for risks related to war;
 - (ii) cover for risks related to terrorism; and
 - (b) the provision is prescribed or otherwise identified by the regulations.

Section 9A

9A Exclusion of pleasure craft from the *Marine Insurance Act 1909*

- (1) The *Marine Insurance Act 1909* does not apply to a contract of marine insurance made in respect of a pleasure craft unless the contract is made in connection with the pleasure craft's capacity as cargo.
- (2) For the purposes of this section, a ***pleasure craft*** is a ship that is:
 - (a) used or intended to be used:
 - (i) wholly for recreational activities, sporting activities, or both; and
 - (ii) otherwise than for reward; and
 - (b) legally and beneficially owned by one or more individuals; and
 - (c) not declared by the regulations to be exempt from this subsection.
- (3) For the purposes of paragraph (2)(a), any minor, infrequent and irregular use of a ship for activities other than:
 - (a) recreational activities; or
 - (b) sporting activities;is to be ignored.
- (4) In this section:

contract of marine insurance has the same meaning as in the *Marine Insurance Act 1909*.

10 Contracts of insurance

- (1) A reference in this Act to a contract of insurance includes a reference to a contract that would ordinarily be regarded as a contract of insurance although some of its provisions are not by way of insurance.
- (2) A reference in this Act to a contract of insurance includes a reference to a contract that includes provisions of insurance in so far as those provisions are concerned, although the contract would not ordinarily be regarded as a contract of insurance.

- (3) Where a provision included in a contract that would not ordinarily be regarded as a contract of insurance affects the operation of a contract of insurance to which this Act applies, that provision shall, for the purposes of this Act, be regarded as a provision included in the contract of insurance.

11 Interpretation

- (1) In this Act, unless the contrary intention appears:

ASIC means the Australian Securities and Investments Commission.

avoid, in relation to a contract of insurance, means avoid from its inception.

binder means an authority given by an insurer to an insurance intermediary to enter into, as agent for the insurer, contracts of insurance on behalf of the insurer as insurer.

broker's placing slip means a document that:

- (a) is evidence of a contract of insurance; and
- (b) bears a notation by an insurer setting out the extent of the insurance cover that the insurer agrees to provide under the contract.

business day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday.

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.

continuous disability insurance policy means a contract that is a continuous disability policy within the meaning of the *Life Insurance Act 1995*.

Section 11

contract of life insurance means a contract that constitutes a life policy within the meaning of the *Life Insurance Act 1995*.

duty of disclosure means the duty referred to in section 21.

duty of the utmost good faith means the duty referred to in subsection 13(1).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

friendly society means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression **friendly society**; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory.

group life contract means a contract of life insurance that is maintained for the purposes of:

- (a) a superannuation or retirement scheme under which there can be more than one life insured; or
- (b) another kind of group life scheme (including a scheme that is not related to employment) under which there can be more than one life insured.

guardian, in relation to a person who has not attained the age of 18 years, means a person who acts in the place of a parent of the person but does not include a person who so acts only for limited or particular purposes or periods.

holder has the same meaning as in the *Retirement Savings Accounts Act 1997*.

insurance broker means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds.

insurance intermediary means a person who:

- (a) for reward; and
- (b) as an agent for one or more insurers or as an agent for intending insureds;

arranges contracts of insurance in Australia or elsewhere, and includes an insurance broker.

insured and **insurer** include a proposed insured and a proposed insurer, respectively.

policy document, in relation to a contract of insurance, means:

- (a) a document prepared by the insurer as evidence of the contract; or
- (b) a broker's placing slip that constitutes evidence of the contract;

and includes, in relation to an interim contract of insurance, a document of the kind usually known as a cover note prepared by the insurer or by an insurance intermediary with the authority of the insurer.

proposal form includes:

- (a) a document containing questions to which a person is asked to give answers (whether in the document or not), where the answers are intended (whether by the person who answered them, by the insurer or by some other person) to be used in connection with a proposed contract of insurance; and
- (b) a form relating to the proposed membership of a person of a superannuation, retirement or other group life scheme.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Section 11

third party beneficiary, under a contract of insurance, means a person who is not a party to the contract but is specified or referred to in the contract, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends.

this Act includes the regulations.

writing means writing in the English language or in another language agreed between the insurer and the insured.

- (2) For the purposes of this Act, an interim contract of insurance is a contract of insurance that is intended by the insurer:
- (a) to provide temporary insurance cover; and
 - (b) to be replaced or superseded by another contract of insurance;
- whether or not the contract is evidenced by a document of the kind usually known as a cover note.
- (4) For the purposes of this Act:
- (a) a superannuation contract is a contract of life insurance that is being maintained for the purposes of a superannuation or retirement scheme, where the insured is a trustee for the purposes of the scheme; and
 - (b) an individual superannuation contract is a superannuation contract as referred to in paragraph (a) under which there can be one life insured only.
- (6) For the purposes of this Act, a contract of general insurance is a contract of insurance that is not a contract of life insurance.
- (7) For the purposes of this Act, a contract of liability insurance is a contract of general insurance that provides insurance cover in respect of the insured's liability for loss or damage caused to a person who is not the insured.
- (8) For the purposes of this Act, an instalment contract of general insurance is a contract of general insurance the premium for which is, by virtue of a provision of the contract, payable by 7 or more instalments in a year.

- (9) Subject to subsection (10), a reference in this Act to the entering into of a contract of insurance includes a reference to:
- (a) in the case of a contract of life insurance—the making of an agreement by the parties to the contract to extend or vary the contract;
 - (b) in the case of any other contract of insurance—the making of an agreement by the parties to the contract to renew, extend or vary the contract; or
 - (c) the reinstatement of any previous contract of insurance.
- (10) Notwithstanding subsection (9):
- (a) subject to paragraph (c), where, after the commencement of this Act and at or before the original entering into, or the renewal, extension or reinstatement, of a contract of insurance, the insurer has given information to the insured as required by section 22, 35, 37, 37C, 40, 44, 49 or 68, the requirement by that section to give information to the insured shall be deemed to be satisfied at or before any subsequent renewal, extension or reinstatement of the contract;
 - (b) sections 22 and 40 do not require an insurer to give information to the insured at or before a variation of the relevant contract of insurance except where the variation is involved in a renewal, extension or reinstatement of the contract; and
 - (c) sections 35, 37, 37C, 44, 49 and 68 require an insurer to give information to the insured at or before a variation of the relevant contract of insurance, but only to the extent that the information relates to the provision or provisions varied or proposed to be varied.
- (11) Where a provision of this Act requires anything to be done before a particular contract is entered into, it is sufficient compliance with that provision if that thing is done at the time when the contract is entered into.

11AA Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part IA—Administration

11AAA Definition

In this Part, unless the contrary intention appears:

relevant legislation means:

- (a) this Act; or
- (b) Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

11A ASIC responsible for general administration of Act

Subject to any directions of the Treasurer, ASIC has the general administration of this Act.

11B Powers of the ASIC

For the purpose of undertaking the general administration of the relevant legislation, ASIC has power to do all things that are necessary or convenient to be done in connection with the administration of the relevant legislation 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 ASIC in compliance with section 11C; and
- (e) to review particulars, statistics and documents given to ASIC in compliance with section 11D; and
- (f) to monitor legal judgments, industry trends and the development of community expectations that are, or are

Section 11C

likely to be, of relevance to the efficient operation of the relevant legislation; and

- (g) to promote the education of the insurance industry, the legal profession and consumers as to the objectives and requirements of the relevant legislation.

11C Supervisory powers—ASIC may obtain insurance documents

- (1) ASIC may, for any purpose connected with the general administration of the relevant legislation, by notice in writing given to an insurer, require the insurer to give to ASIC, 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.

Note: For the liability of a director, employee or agent of an insurer, see section 11DA.

- (2A) An offence against subsection (2) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not require an insurer to give to ASIC any document dealing with the insurance cover provided to a particular person unless:
 - (a) that person, or another person having an entitlement to claim under that insurance cover, has given a written authorisation to ASIC permitting ASIC to require the giving of that document; and
 - (b) ASIC has given a copy of the authorisation to the insurer with the notice.

Section 11D

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (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.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

11D Supervisory powers—ASIC may review administrative arrangements etc.

- (1) ASIC may, for any purpose connected with the general administration of the relevant legislation, by notice in writing given to an insurer, require the insurer to give to ASIC, 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 ASIC, 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.

Note: For the liability of a director, employee or agent of an insurer, see section 11DA.

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

Section 11DA

Penalty: 150 penalty units.

Note: For the liability of a director, employee or agent of an insurer, see section 11DA.

(3A) An offence against subsection (3) is a strict liability offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(4) Subsection (1) does not require an insurer to give ASIC 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.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

(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.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

(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.

11DA Supervisory powers—liability of directors, employees and agents of insurers

(1) A person commits an offence if:

- (a) the person is:
 - (i) a director of a company that is an insurer; or
 - (ii) an employee or agent of an insurer; and
- (b) the person permits or authorises the insurer to engage in conduct; and
- (c) the conduct constitutes an offence (the ***insurer offence***) against subsection 11C(2) or 11D(2) or (3); and

(d) the insurer commits the insurer offence.

Penalty: 150 penalty units.

- (2) There is no fault element for the physical element described in paragraph (1)(d) other than the fault elements (if any) for the physical elements of the insurer offence.
- (3) To avoid doubt:
- (a) an insurer does not commit the insurer offence, for the purposes of subsection (1), if the insurer has a defence to the insurer offence; and
 - (b) a person may be convicted of an offence against subsection (1) even if the insurer concerned has not been prosecuted for, or convicted of, the insurer offence.

(4) In this section:

conduct means:

- (a) an act; or
- (b) an omission to perform an act.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

11E Examination of documents by ASIC not to imply compliance with relevant legislation

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

- (a) that ASIC has found that the documents comply with the requirements of the relevant legislation; or
- (b) that ASIC endorses any practice or procedure described in the documents.

11F ASIC's power to intervene in proceedings

- (1) ASIC may intervene in any proceeding relating to a matter arising under:
-

Section 11F

- (a) this Act; or
 - (b) Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.
- (2) If ASIC intervenes in a proceeding under subsection (1):
- (a) ASIC is taken to be a party to the proceeding; and
 - (b) ASIC has all the rights, duties and liabilities of such a party (subject to this Act or Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, as the case requires).
- (3) Without limiting subsection (2), ASIC may appear and be represented in a proceeding in which it intervenes under subsection (1):
- (a) by a staff member of ASIC; or
 - (b) by a natural person or body to whom ASIC has delegated its functions and powers under this Act; or
 - (c) by a solicitor or by counsel.

Part II—The duty of the utmost good faith

12 This Part not to be read down

The effect of this Part is not limited or restricted in any way by any other law, including the subsequent provisions of this Act, but this Part does not have the effect of imposing on an insured, in relation to the disclosure of a matter to the insurer, a duty other than the duty of disclosure.

13 The duty of the utmost good faith

- (1) A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.
- (2) A failure by a party to a contract of insurance to comply with the provision implied in the contract by subsection (1) is a breach of the requirements of this Act.
- (3) A reference in this section to a party to a contract of insurance includes a reference to a third party beneficiary under the contract.
- (4) This section applies in relation to a third party beneficiary under a contract of insurance only after the contract is entered into.

14 Parties not to rely on provisions except in the utmost good faith

- (1) If reliance by a party to a contract of insurance on a provision of the contract would be to fail to act with the utmost good faith, the party may not rely on the provision.
- (2) Subsection (1) does not limit the operation of section 13.
- (3) In deciding whether reliance by an insurer on a provision of the contract of insurance would be to fail to act with the utmost good faith, the court shall have regard to any notification of the

Section 14A

provision that was given to the insured, whether a notification of a kind mentioned in section 37 or otherwise.

14A Powers of ASIC—insurer’s failure to comply with the duty of the utmost good faith in relation to handling or settlement of claims

- (1) This section applies if an insurer under a contract of insurance has failed to comply with the duty of the utmost good faith in the handling or settlement of a claim or potential claim under the contract.
- (2) Despite any provision of Chapter 7 of the *Corporations Act 2001* or any regulation made under that Chapter, ASIC may exercise its powers under Subdivision C of Division 4 of Part 7.6 of that Act or Subdivision A of Division 8 of that Part in relation to the insurer as if the insurer’s failure to comply with the duty of the utmost good faith were a failure by the insurer to comply with a financial services law.

Note: Subdivision C of Division 4 of Part 7.6 of the *Corporations Act 2001* deals with variation, suspension and cancellation of an Australian financial services licence, and Subdivision A of Division 8 of that Part deals with banning persons from providing financial services.

- (3) In this section:

financial services law has the meaning given by section 761A of the *Corporations Act 2001*.

15 Certain other laws not to apply

- (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.

Part III—Insurable interests

Division 1—General insurance

16 Insurable interest not required

- (1) A contract of general insurance is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject-matter of the contract.

17 Legal or equitable interest not required at time of loss

Where the insured under a contract of general insurance has suffered a pecuniary or economic loss by reason that property the subject-matter of the contract has been damaged or destroyed, the insurer is not relieved of liability under the contract by reason only that, at the time of the loss, the insured did not have an interest at law or in equity in the property.

Division 2—Other contracts of insurance

18 Insurable interest not required

- (1) This section applies to:
 - (a) a contract of life insurance; or
 - (b) a contract that provides for the payment of money on the death of a person by sickness or accident.
- (2) A contract to which this section applies is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject-matter of the contract.

Part III Insurable interests

Division 3 Naming of persons benefited

Section 20

Division 3—Naming of persons benefited

20 Persons benefited need not be named

An insurer under a contract of insurance is not relieved of liability under the contract by reason only that the names of the persons who may benefit under the contract are not specified in the policy document.

Part IV—Disclosures and misrepresentations

Division 1—Insured's duty of disclosure

21 The insured's duty of disclosure

- (1) Subject to this Act, an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that:
 - (a) the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
 - (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.
- (2) The duty of disclosure does not require the disclosure of a matter:
 - (a) that diminishes the risk;
 - (b) that is of common knowledge;
 - (c) that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or
 - (d) as to which compliance with the duty of disclosure is waived by the insurer.
- (3) Where a person:
 - (a) failed to answer; or
 - (b) gave an obviously incomplete or irrelevant answer to;a question included in a proposal form about a matter, the insurer shall be deemed to have waived compliance with the duty of disclosure in relation to the matter.

21A Eligible contracts of insurance—disclosure of specified matters

- (1) This section applies to an eligible contract of insurance unless it is entered into by way of renewal.

Note: Section 21B applies in relation to the renewal of an eligible contract of insurance.

Part IV Disclosures and misrepresentations

Division 1 Insured's duty of disclosure

Section 21A

Position of the insurer

- (2) The insurer is taken to have waived compliance with the duty of disclosure in relation to the contract unless the insurer complies with either subsection (3) or (4).
- (3) Before the contract is entered into, the insurer requests the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.
- (4) Before the contract is entered into, both:
 - (a) the insurer requests the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; and
 - (b) the insurer expressly requests the insured to disclose each exceptional circumstance that:
 - (i) is known to the insured; and
 - (ii) the insured knows, or a reasonable person in the circumstances could be expected to know, is a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; and
 - (iii) is not a matter that the insurer could reasonably be expected to make the subject of a question under paragraph (a); and
 - (iv) is not a matter covered by subsection 21(2).
- (5) If:
 - (a) the insurer complies with subsection (3) or (4); and
 - (b) the insurer asks the insured to disclose to the insurer any other matters that would be covered by the duty of disclosure in relation to the contract;the insurer is taken to have waived compliance with the duty of disclosure in relation to those matters.

Position of the insured

- (6) If:
-

Section 21A

- (a) the insurer complies with subsection (3); and
 - (b) in answer to each question referred to in subsection (3), the insured discloses each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;the insured is taken to have complied with the duty of disclosure in relation to the contract.
- (7) If:
- (a) the insurer complies with subsection (4); and
 - (b) in answer to each question referred to in paragraph (4)(a), the insured discloses each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question; and
 - (c) the insured complies with the request referred to in paragraph (4)(b);
- the insured is taken to have complied with the duty of disclosure in relation to the contract.

Onus of proof—exceptional circumstance

- (8) In any proceedings relating to this section, the onus of proving that a matter is an exceptional circumstance covered by subparagraph (4)(b)(iii) lies on the insurer.

Definition

- (9) In this section:

eligible contract of insurance means a contract of insurance that is specified in the regulations.

Section 21B

21B Eligible contracts of insurance—disclosure before contract renewed

Scope

- (1) This section applies in relation to the renewal of an eligible contract of insurance after the commencement of this section (regardless of when the contract was originally entered into).
- (2) However, this section does not apply in relation to the renewal of an eligible contract of insurance during the transition period unless, before the contract is renewed, the insurer has clearly informed the insured in writing of the general nature and effect of this section.

Note: Before the contract is renewed, the insurer must also clearly inform the insured in writing of the general nature and effect of the duty of disclosure (see section 22).

Position of the insurer

- (3) Before the contract is renewed, the insurer may do either or both of the following things:
 - (a) request the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms;
 - (b) give the insured a copy of any matter previously disclosed by the insured in relation to the contract and request the insured:
 - (i) to disclose to the insurer any change to that matter; or
 - (ii) to inform the insurer that there is no change to that matter.

Note: **Change**, to a matter previously disclosed by an insured in relation to an eligible contract of insurance, is defined in subsection (13).

- (4) If the insurer does not:
 - (a) make a request in accordance with paragraph (3)(a); or
 - (b) give the insured a copy of any matter previously disclosed by the insured and make a request in accordance with paragraph (3)(b);then the insurer is taken to have waived compliance with the duty of disclosure in relation to the renewed contract.

Section 21B

Note: This subsection is affected by subsection (12).

- (5) If the insurer:
- (a) makes a request in accordance with paragraph (3)(a); and
 - (b) also requests (other than in accordance with paragraph (3)(b)) the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the renewed contract;
- then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

Note: This subsection is affected by subsection (12).

- (6) If the insurer:
- (a) gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and
 - (b) also requests (other than in accordance with paragraph (3)(a)) the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the renewed contract;
- then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

Note: This subsection is affected by subsection (12).

Position of the insured

- (7) If:
- (a) the insurer makes a request in accordance with paragraph (3)(a), but does not give the insured a copy of any matter previously disclosed by the insured or make a request in accordance with paragraph (3)(b); and
 - (b) before the contract is renewed, the insured discloses, in answer to each specific question included in the request, each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;

Part IV Disclosures and misrepresentations

Division 1 Insured's duty of disclosure

Section 21B

then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract.

Note: This subsection is affected by subsection (12).

(8) If:

(a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b), but does not make a request in accordance with paragraph (3)(a); and

(b) before the contract is renewed, the insured:

(i) discloses any change to the matter; or

(ii) if there is no change to the matter—informs the insurer that there is no change to the matter;

then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract.

Note: This subsection is affected by subsection (12).

(9) If:

(a) the insurer:

(i) makes a request in accordance with paragraph (3)(a); and

(ii) gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and

(b) before the contract is renewed, the insured:

(i) discloses each matter referred to in paragraph (7)(b); and

(ii) does either of the things referred to in paragraph (8)(b);

then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract.

Note: This subsection is affected by subsection (12).

(10) If:

(a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and

Section 21B

- (b) before the contract is renewed, the insured does not disclose any change to the matter;
then the insured is taken to have informed the insurer that there is no change to the matter.
- (11) If:
- (a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and
 - (b) before the contract is renewed, the insured informs the insurer under subsection (8) or (9), or is taken to have informed the insurer under subsection (10), that there is no change to the matter;
- then neither subsection 21(3) nor section 27 applies in relation to any failure by the insured to disclose any change to the matter.

Effect of failure to comply with duty of disclosure in relation to original contract of insurance or previous renewal

- (12) If the insured failed to comply with the duty of disclosure in relation to the contract as originally entered into or any renewal of that contract, then, despite any other provision of this section:
- (a) the insurer is not taken to have waived compliance with the duty of disclosure in relation to the earlier failure; and
 - (b) the insured is not taken to have complied with the duty of disclosure in relation to the earlier failure.

Definitions

- (13) In this section:

change, to a matter previously disclosed by an insured in relation to an eligible contract of insurance, means a change to the matter that:

- (a) is known to the insured; and
- (b) a reasonable person in the circumstances could be expected to disclose in relation to that matter.

eligible contract of insurance has the same meaning as in section 21A.

Section 22

renewed contract means an eligible contract of insurance that is entered into by way of renewal.

transition period means the period of 30 months beginning on the day this section commences.

22 Insurer to inform of duty of disclosure

- (1) The insurer shall, before a contract of insurance is entered into, clearly inform the insured in writing of the general nature and effect of the duty of disclosure and, if section 21A applies to the contract, also clearly inform the insured in writing of the general nature and effect of section 21A.

Note: If the insurer wishes to rely on section 21B during the transition period (within the meaning of section 21B) in relation to the renewal of an eligible contract of insurance, the insurer must also comply with subsection 21B(2) before the contract is renewed.

- (2) If the regulations prescribe a form of writing to be used for informing an insured of the matters referred to in subsection (1), the writing to be used may be in accordance with the form so prescribed.
- (3) An insurer who has not complied with subsection (1) may not exercise a right in respect of a failure to comply with the duty of disclosure unless that failure was fraudulent.

Division 2—Misrepresentations by insured

23 Ambiguous questions

Where:

- (a) a statement is made in answer to a question asked in relation to a proposed contract of insurance or the provision of insurance cover in respect of a person who is seeking to become a member of a superannuation, retirement or other group life scheme; and
 - (b) a reasonable person in the circumstances would have understood the question to have the meaning that the person answering the question apparently understood it to have;
- that meaning shall, in relation to the person who made the statement, be deemed to be the meaning of the question.

24 Warranties of existing facts to be representations

A statement made in or in connection with a contract of insurance, being a statement made by or attributable to the insured, with respect to the existence of a state of affairs does not have effect as a warranty but has effect as though it were a statement made to the insurer by the insured during the negotiations for the contract but before it was entered into.

25 Misrepresentation by life insured

Where, during the negotiations for a contract of life insurance but before it was entered into, a misrepresentation was made to the insurer by a person who, under the contract, became the life insured or one of the life insureds, this Act has effect as though the misrepresentation had been so made by the insured.

26 Certain statements not misrepresentations

- (1) Where a statement that was made by a person in connection with a proposed contract of insurance was in fact untrue but was made on the basis of a belief that the person held, being a belief that a

Part IV Disclosures and misrepresentations

Division 2 Misrepresentations by insured

Section 27

reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation.

- (2) A statement that was made by a person in connection with a proposed contract of insurance shall not be taken to be a misrepresentation unless the person who made the statement knew, or a reasonable person in the circumstances could be expected to have known, that the statement would have been relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.
- (3) This section extends to the provision of insurance cover in respect of:
 - (a) a person who is seeking to become a member of a superannuation, retirement or other group life scheme; or
 - (b) a person who is a holder, or is applying to become a holder, of an RSA.

27 Failure to answer questions

A person shall not be taken to have made a misrepresentation by reason only that the person failed to answer a question included in a proposal form or gave an obviously incomplete or irrelevant answer to such a question.

Division 3—Remedies for non-disclosure and misrepresentations by insured

27A Certain contracts of life insurance may be treated as if they comprised 2 or more separate contracts of life insurance

(1) If:

- (a) a contract of life insurance includes 2 or more groups of provisions (for example, provisions that are grouped into 2 or more separate parts); and
- (b) each group of provisions could form a single contract of life insurance;

then this Division applies as if each group of provisions were a separate contract of life insurance.

(2) If:

- (a) a contract of life insurance includes 2 or more groups of provisions (for example, provisions that are grouped into 2 or more separate parts); and
- (b) because of subsection (1), this Division applies as if each group of provisions were a separate contract of life insurance; and
- (c) the contract also includes provisions (*related provisions*) that relate to or affect the operation of one or more of the groups of provisions referred to in paragraph (a);

then the related provisions are, for the purposes of this Division, to be regarded as provisions included in each relevant separate contract of life insurance referred to in paragraph (b).

(3) If a contract of life insurance provides insurance cover in relation to 2 or more life insureds, this Division applies as if the insurance cover provided in relation to each life insured were provided by a separate contract of life insurance.

(4) If a contract of life insurance provides:

- (a) insurance cover in relation to a life insured that is underwritten on particular terms; and

Part IV Disclosures and misrepresentations

Division 3 Remedies for non-disclosure and misrepresentations by insured

Section 28

(b) insurance cover in relation to that life insured that:

(i) is not underwritten; or

(ii) is underwritten on different terms;

then this Division applies as if the insurance cover referred to in paragraph (a) and the insurance cover referred to in paragraph (b) were each provided by a separate contract of life insurance.

Note: The effect of this section in relation to a contract of life insurance to which subsection (1), (3) or (4) applies is that different remedies may be available to the insurer in respect of each separate contract of life insurance that is taken to exist by virtue of the relevant subsection.

28 General insurance

(1) This section applies where the person who became the insured under a contract of general insurance upon the contract being entered into:

(a) failed to comply with the duty of disclosure; or

(b) made a misrepresentation to the insurer before the contract was entered into;

but does not apply where the insurer would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into.

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

(3) If the insurer is not entitled to avoid the contract or, being entitled to avoid the contract (whether under subsection (2) or otherwise) has not done so, the liability of the insurer in respect of a claim is reduced to the amount that would place the insurer in a position in which the insurer would have been if the failure had not occurred or the misrepresentation had not been made.

29 Life insurance

Scope

- (1) This section applies where the person who became the insured under a contract of life insurance upon the contract being entered into:
- (a) failed to comply with the duty of disclosure; or
 - (b) made a misrepresentation to the insurer before the contract was entered into;
- but does not apply where:
- (c) the insurer would have entered into the contract even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or
 - (d) the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds.

Note: If subsection 27A(1), (3) or (4) applies to the contract of life insurance, different remedies may be available to the insurer in respect of each separate contract of life insurance that is taken to exist by virtue of the relevant subsection.

Insurer may avoid contract

- (2) If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.
- (3) If the failure was not fraudulent or the misrepresentation was not made fraudulently, the insurer may, within 3 years after the contract was entered into, avoid the contract.

Insurer may vary contract

- (4) If the insurer has not avoided the contract, whether under subsection (2) or (3) or otherwise, the insurer may, by notice in writing given to the insured, vary the contract by substituting for the sum insured (including any bonuses) a sum that is not less than the sum ascertained in accordance with the formula

Section 29

$$\frac{SP}{Q}$$

where:

S is the number of dollars that is equal to the sum insured (including any bonuses).

P is the number of dollars that is equal to the premium that has, or to the sum of the premiums that have, become payable under the contract; and

Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that the insurer would have been likely to have charged if the duty of disclosure had been complied with or the misrepresentation had not been made.

Note: This subsection applies differently in relation to a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured (see subsection (10)).

- (5) In the application of subsection (4) in relation to a contract that provides for periodic payments, **the sum insured** means each such payment (including any bonuses).
- (6) If the insurer has not avoided the contract or has not varied the contract under subsection (4), the insurer may, by notice in writing given to the insured, vary the contract in such a way as to place the insurer in the position (subject to subsection (7)) in which the insurer would have been if the duty of disclosure had been complied with or the misrepresentation had not been made.

Note: This subsection does not apply in relation to a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured (see subsection (10)).

- (7) The position of the insurer under a contract (the **relevant contract**) that is varied under subsection (6) must not be inconsistent with the position in which other reasonable and prudent insurers would have been if:
 - (a) they had entered into similar contracts of life insurance to the relevant contract; and

- (b) there had been no failure to comply with the duty of disclosure, and no misrepresentation, by the insureds under the similar contracts before they were entered into.
- (8) For the purposes of subsection (7), a contract of life insurance (the *similar contract*) is similar to another contract of life insurance (the *relevant contract*) if:
 - (a) the similar contract provides insurance cover that is the same as, or similar to, the kind of insurance cover provided by the relevant contract; and
 - (b) the similar contract was entered into at, or close to, the time the relevant contract was entered into.

Date of effect of variation of contract

- (9) A variation of a contract under subsection (4) or (6) has effect from the time when the contract was entered into.

Exception for contracts with a surrender value or that provide cover on death

- (10) If the contract is a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured:
 - (a) the insurer may vary the contract under subsection (4) before the expiration of 3 years after the contract was entered into, but not after that period; and
 - (b) subsections (6), (7) and (8) do not apply in relation to the contract.

30 Misstatements of age

- (1) In this section, *the standard formula*, in relation to a contract of life insurance means the formula

$$\frac{SP}{Q}$$

where:

Section 30

S is the number of dollars that is equal to the sum insured (including any bonuses).

P is the number of dollars that is equal to the premium that has, or to the sum of the premiums that have, become payable under the contract; and

Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that would have become payable under the contract if it or they had been ascertained on the basis of the correct date of birth or dates of birth.

- (2) If the date of birth of one or more of the life insureds under a contract of life insurance was not correctly stated to the insurer at the time when the contract was entered into:
- (a) where the sum insured (including any bonuses) exceeds the amount in dollars ascertained in accordance with the standard formula—the insurer may at any time vary the contract by substituting for the sum insured (including any bonuses) an amount that is not less than the amount in dollars so ascertained; and
 - (b) where the sum insured (including any bonuses) is less than the amount so ascertained, the insurer shall either:
 - (i) reduce, as from the date on which the contract was entered into, the premium payable to the amount that would have been payable if the contract had been based on the correct date of birth or correct dates of birth and repay the amount of overpayments of premium (less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the contract had been based on the correct date of birth or correct dates of birth) together with interest on that amount at the prescribed rate computed from the date on which the contract was entered into; or
 - (ii) vary the contract by substituting for the sum insured (including any bonuses) the amount in dollars so ascertained.

- (3) In the application of subsection (2) in relation to a contract that provides for periodic payments, *the sum insured* means each such payment (including any bonuses).
- (3A) If:
- (a) the expiration date of a contract of life insurance is calculated by reference to the date of birth of a person who is a life insured under the contract; and
 - (b) the person's date of birth was not correctly stated to the insurer at the time when the contract was entered into;
- then the insurer may (instead of doing any of the things referred to in subsection (2)) vary the contract by changing its expiration date to the date that would have been the expiration date if the contract had been based on the correct date of birth.
- (4) A variation of a contract under subsection (2) or (3A) has effect from the time when the contract was entered into.

31 Court may disregard avoidance in certain circumstances

- (1) In any proceedings by the insured in respect of a contract of insurance that has been avoided on the ground of fraudulent failure to comply with the duty of disclosure or fraudulent misrepresentation, the court may, if it would be harsh and unfair not to do so, but subject to this section, disregard the avoidance and, if it does so, shall allow the insured to recover the whole, or such part as the court thinks just and equitable in the circumstances, of the amount that would have been payable if the contract had not been avoided.
- (2) The power conferred by subsection (1) may be exercised only where the court is of the opinion that, in respect of the loss that is the subject of the proceedings before the court, the insurer has not been prejudiced by the failure or misrepresentation or, if the insurer has been so prejudiced, the prejudice is minimal or insignificant.
- (3) In exercising the power conferred by subsection (1), the court:
- (a) shall have regard to the need to deter fraudulent conduct in relation to insurance; and

Section 32

- (b) shall weigh the extent of the culpability of the insured in the fraudulent conduct against the magnitude of the loss that would be suffered by the insured if the avoidance were not disregarded;
but may also have regard to any other relevant matter.
- (4) The power conferred by subsection (1) applies only in relation to the loss that is the subject of the proceedings before the court, and any disregard by the court of the avoidance does not otherwise operate to reinstate the contract.

32 Non-disclosure or misrepresentation by life insured covered under group life contract

- (1) This Division extends to the case where there was a failure to comply with the duty of disclosure, or a misrepresentation was made to the insurer, in respect of a proposed life insured under a group life contract, as if:
 - (a) the insurance cover provided by the group life contract in respect of the life insured were provided by an individual contract of life insurance between the insurer and the insured;
and
 - (b) the group life contract had been entered into at the time when the proposed life insured became a life insured under the group life contract.
- (2) For the purposes of this Division, if the failure to comply with the duty of disclosure, or the misrepresentation, occurred after the proposed life insured became a member of the relevant superannuation, retirement or other group life scheme but before the insurance cover was provided by the group life contract in respect of the life insured, then the failure or misrepresentation is taken to have occurred before the proposed life insured became a life insured under the group life contract.

32A Non-disclosure or misrepresentation by holder of RSA

This Division extends to the case where there was a failure to comply with the duty of disclosure, or a misrepresentation was

made to the insurer, in relation to a holder, or a person applying to become a holder, of an RSA as though:

- (a) the insurance cover provided in relation to that RSA in respect of that person were provided by a contract between the insurer as insurer and the RSA provider as the insured; and
- (b) that contract has been entered into at the time when the holder became the holder, or the person applying to become the holder, became the holder.

33 No other remedies

The provisions of this Division are exclusive of any right that the insurer has otherwise than under this Act in respect of a failure by the insured to disclose a matter to the insurer before the contract was entered into and in respect of a misrepresentation or incorrect statement.

Division 4—Key Facts Sheets

33A Application of this Division

This Division applies in relation to:

- (a) a contract of insurance (in this Division called a *prescribed contract*) that is included in a class of contracts of insurance declared by the regulations to be a class of contracts in relation to which this Division applies; and
- (b) a proposed or possible contract of insurance (in this Division called a *potential prescribed contract*) that would, if entered into, be a prescribed contract.

33B What is a *Key Facts Sheet*?

For the purposes of this Division, a *Key Facts Sheet* for a prescribed contract, or a potential prescribed contract, is a document:

- (a) that contains the information relating to the prescribed contract, or the potential prescribed contract, that is required by the regulations; and
- (b) that complies with any other requirements prescribed by the regulations.

33C Insurer's obligation to provide *Key Facts Sheet*

- (1) An insurer must provide a *Key Facts Sheet* for a prescribed contract, or a potential prescribed contract, in the circumstances, and in the manner, prescribed by the regulations.
- (2) Regulations made for the purposes of subsection (1) may prescribe circumstances in which a *Key Facts Sheet* may or must be provided by electronic means. The regulations have effect despite subsection 77(1).
- (3) The regulations may prescribe exceptions to the requirement in subsection (1).

Section 33D

Note: A defendant bears an evidential burden in relation to a matter prescribed for the purposes of subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) The following provisions do not apply in relation to the requirement in subsection (1):
- (a) subsection 11(11);
 - (b) section 69.

Offence

- (5) An insurer commits an offence if:
- (a) the insurer is subject to a requirement under subsection (1); and
 - (b) the insurer engages in conduct; and
 - (c) the conduct contravenes the requirement.

Penalty: 150 penalty units.

33D Provision of Key Facts Sheet does not constitute clearly informing

For the purposes of this Act, the provision by an insurer of a Key Facts Sheet to a person does not constitute clearly informing the person of the matters contained in the Key Facts Sheet.

Part V—The contract

Division 1—Standard cover

34 Interpretation

In this Division:

minimum amount, in relation to a claim, means the amount declared by the regulations to be the minimum amount in relation to a class of claims in which that claim is included.

prescribed contract means a contract of insurance that is included in a class of contracts of insurance declared by the regulations to be a class of contracts in relation to which this Division applies.

prescribed event, in relation to a prescribed contract, means an event that is declared by the regulations to be a prescribed event in relation to that contract.

35 Notification of certain provisions

(1) Where:

- (a) a claim is made under a prescribed contract; and
- (b) the event the happening of which gave rise to the claim is a prescribed event in relation to the contract;

the insurer may not refuse to pay an amount equal to the minimum amount in relation to the claim by reason only that the effect of the contract, but for this subsection, would be that the event the happening of which gave rise to the claim was an event in respect of which:

- (c) the amount of the insurance cover provided by the contract was less than the minimum amount; or
- (d) insurance cover was not provided by the contract.

- (2) Subsection (1) does not have effect where the insurer proves that, before the contract was entered into, the insurer clearly informed the insured in writing (whether by providing the insured with a document containing the provisions, or the relevant provisions, of the proposed contract or otherwise) or the insured knew, or a reasonable person in the circumstances could be expected to have known:
- (a) where the effect of the contract, but for subsection (1), would be that the liability of the insurer in respect of a claim arising upon the happening of the event would be less than the minimum amount—what the extent of the insurer’s liability under the contract in respect of such a claim would be; or
 - (b) where the effect of the contract, but for subsection (1), would be that the insurer would be under no liability in respect of such a claim—that the contract would not provide insurance cover in respect of the happening of that event.
- (3) Regulations made for the purposes of this section take effect at the expiration of 60 days after the day on which they are notified in the *Gazette*.
- (4) Where regulations made for the purposes of this section are amended after the day on which a particular contract of insurance is entered into, the amendments shall be disregarded in relation to the application of subsection (1) to that contract.

36 Interpretation of regulations

If a question arises whether an event is a prescribed event, the relevant provisions of the regulations shall be construed as though they were provisions of a contract put forward by the insurer.

37 Notification of unusual terms

An insurer may not rely on a provision included in a contract of insurance (not being a prescribed contract) of a kind that is not usually included in contracts of insurance that provide similar insurance cover unless, before the contract was entered into the insurer clearly informed the insured in writing of the effect of the provision (whether by providing the insured with a document

Part V The contract
Division 1 Standard cover

Section 37

containing the provisions, or the relevant provisions, of the proposed contract or otherwise).

Division 1A—Definition of flood

37A Application of this Division

- (1) This Division applies in relation to a contract of insurance (in this Division called a *prescribed contract*) if:
 - (a) the contract is included in a class of contracts of insurance declared by the regulations to be a class of contracts in relation to which this Division applies; and
 - (b) the contract was entered into after the day on which those regulations were made.
- (2) However, this Division does not apply in relation to a prescribed contract at any time before the transition time for the prescribed contract.
- (3) Also, this Division does not affect the operation of a prescribed contract in relation to an event that occurred before the transition time for the prescribed contract.
- (4) In this section:

transition time, for a prescribed contract, means the time when regulations made for the purposes of paragraph (1)(a), declaring a class of contracts of insurance including the contract to be a class of contracts in relation to which this Division applies, commence.

37B Meaning of *flood* in prescribed contracts etc.

- (1) The regulations must define the meaning of *flood* for the purposes of this Division.
- (2) In a prescribed contract (or a notice or other document or information given by the insurer in relation to a prescribed contract):
 - (a) the word *flood* has the meaning given by the regulations; and
 - (b) other parts of speech or grammatical forms of that word have corresponding meanings.

Section 37C

- (3) Subsection (2) has effect in relation to a prescribed contract (or a notice or other document or information given by the insurer in relation to a prescribed contract) even if the meaning of the word ***flood*** (or other parts of speech or grammatical forms of that word) provided by the contract (or the notice or other document or information) is different from the meaning of ***flood*** given by the regulations.

37C Insurer must clearly inform insured whether prescribed contract provides insurance cover in respect of flood

Before entering into a prescribed contract, the insurer must clearly inform the insured in writing whether the contract provides insurance cover in respect of loss or damage caused by, or resulting from, flood as defined by the regulations.

37D Circumstances in which prescribed contract is taken to provide insurance cover etc. in respect of flood

- (1) This section applies in relation to a prescribed contract that includes provisions (***flood provisions***) that provide insurance cover in respect of loss or damage caused by, or resulting from, one or more flood events (whether or not the contract expressly provides insurance cover for flood as defined by the regulations).
- (2) The flood provisions of the prescribed contract are taken to provide insurance cover in respect of loss or damage caused by, or resulting from, flood as defined by the regulations.
- (3) The insurer under the prescribed contract may not refuse to pay a claim in respect of loss or damage caused by, or resulting from, the happening of a flood event by reason only that, but for subsection (2), insurance cover in respect of loss or damage caused by, or resulting from, that event was not provided by the contract.
- (4) If the prescribed contract includes provisions (also ***flood provisions***) that provide different maximum amounts of insurance cover in respect of different flood events, those provisions are taken to provide a maximum amount of insurance cover in respect of loss or damage caused by, or resulting from, flood, as defined by

Section 37E

the regulations, equal to the highest maximum amount (the ***maximum flood cover amount***) of insurance cover provided by those provisions in respect of any flood event.

- (5) The insurer under the prescribed contract may not refuse to pay an amount equal to the maximum flood cover amount in relation to a claim in respect of loss or damage caused by, or resulting from, the happening of a flood event by reason only that, but for subsection (4), the maximum amount of insurance cover provided by the contract in respect of loss or damage caused by, or resulting from, that event was less than the maximum flood cover amount.
- (5A) To avoid doubt, this section does not affect the operation of any provisions of a prescribed contract that are not flood provisions.
- (6) This section has effect in relation to a prescribed contract whether or not the insurer clearly informed the insured of the purported effect of the flood provisions in the contract.
- (7) In this section:

flood event means an event that is, or would be, a flood as defined by the regulations.

37E Division not to affect provision of insurance cover for certain events

If:

- (a) a prescribed contract is expressed to provide insurance cover in respect of loss or damage caused by, or resulting from, a particular event; and
 - (b) the effect of another provision of this Division is that the contract would not provide that insurance cover;
- then that provision is taken not to have that effect.

Division 2—General provisions relating to insurance contracts

38 Interim contracts of insurance

- (1) Where, under a provision included in an interim contract of insurance, the liability of the insurer is dependent upon the submission to, or the acceptance by, the insurer of a proposal for a contract of insurance intended to replace the interim contract of insurance, the provision is void.
- (2) Where:
 - (a) an insurer has entered into an interim contract of insurance; and
 - (b) before the insurance cover provided by the contract has expired, the insured has submitted a proposal to the insurer for a contract of insurance intended to replace the interim contract of insurance;the insurer remains liable in accordance with the interim contract of insurance until the earliest of the following times:
 - (c) the time when insurance cover commences under another contract of insurance (whether or not it is an interim contract of insurance) between the insured and the insurer or some other insurer, being insurance cover that is intended to replace the insurance cover provided by the interim contract of insurance;
 - (d) the time when the interim contract of insurance is cancelled;
 - (e) if the insured withdraws the proposal—the time of withdrawal.
- (3) Sections 35, 37, 37C, 40 and 44 and subsection 68(1) do not apply in relation to interim contracts of insurance.

39 Instalment contracts of general insurance

Where a provision included in an instalment contract of general insurance has the effect of limiting the liability of the insurer by reference to non-payment of an instalment of the premium, the

insurer may not refuse to pay a claim, in whole or in part, by reason only of the operation of that provision unless:

- (a) at least one instalment of the premium has remained unpaid for a period of at least 14 days; and
- (b) before the contract was entered into, the insurer clearly informed the insured, in writing, of the effect of the provision.

40 Certain contracts of liability insurance

- (1) This section applies in relation to a contract of liability insurance the effect of which is that the insurer's liability is excluded or limited by reason that notice of a claim against the insured in respect of a loss suffered by some other person is not given to the insurer before the expiration of the period of the insurance cover provided by the contract.
- (2) The insurer shall, before the contract is entered into:
 - (a) clearly inform the insured in writing of the effect of subsection (3); and
 - (b) if the contract does not provide insurance cover in relation to events that occurred before the contract was entered into, clearly inform the insured in writing that the contract does not provide such cover.

Penalty: 300 penalty units.

- (3) Where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.

Section 41

41 Contracts of liability insurance—consent of insurer required for settlement etc. of claim

- (1) This section applies in relation to a contract of liability insurance if it would constitute a breach of the contract if, without the consent of the insurer, the insured or any third party beneficiary were:
 - (a) to settle or compromise a claim against the insured or third party beneficiary; or
 - (b) to make an admission or payment in respect of such a claim.
- (2) If the insured or any third party beneficiary (the *claimant*) under the contract has made a claim under the contract, the claimant may at any time, by notice in writing given to the insurer, require the insurer to inform the claimant in writing:
 - (a) whether the insurer admits that the contract applies to the claim; and
 - (b) if the insurer so admits—whether the insurer proposes to conduct, on behalf of the claimant, the negotiations and any legal proceedings in respect of the claim made against the claimant.
- (3) If the insurer does not, within a reasonable time after being given a notice under subsection (2), inform the claimant:
 - (a) that the insurer admits that the contract of liability insurance applies to the claim; and
 - (b) that the insurer proposes to conduct, on behalf of the claimant, the negotiations and any legal proceedings in respect of the claim made against the claimant;then:
 - (c) the insurer may not refuse payment of the claim; and
 - (d) the amount payable in respect of the claim is not reduced;by reason only that the claimant breached the contract as mentioned in subsection (1).

42 Maximum cover for premium

The maximum liability of the insurer under a contract of general insurance is the highest amount of insurance cover that the insurer would, at the time when the contract was entered into, have been

prepared to provide under a contract that was, apart from the maximum liability under that contract, in the same terms and in respect of the same subject-matter and risk as those of the first-mentioned contract.

43 Arbitration provisions

- (1) Where a provision included in a contract of insurance has the effect of:
 - (a) requiring, authorizing or otherwise providing for differences or disputes in connection with the contract to be referred to arbitration; or
 - (b) limiting the rights otherwise conferred by the contract on the insured by reference to an agreement to submit a difference or dispute to arbitration;the provision is void.
- (2) Subsection (1) does not affect an agreement to submit a dispute or difference to arbitration if the agreement was made after the dispute or difference arose.

44 Average provisions

- (1) An insurer may not rely on an average provision included in a contract of general insurance unless, before the contract was entered into, the insurer clearly informed the insured in writing of the nature and effect of the provision including whether the provision is based on indemnity or on replacement value of the property that is the subject-matter of the contract.
- (2) Where the sum insured in respect of property that is the subject-matter of a contract of general insurance that provides insurance cover in respect of loss of or damage to a building used primarily and principally as a residence for the insured, for persons with whom the insured has a family or personal relationship, or for both the insured and such persons, or loss of or damage to the contents of such a building, or both, is not less than 80% of the value of the property, the liability of the insurer in respect of loss of or damage to the property is not reduced by reason only of the operation of an average provision included in the contract.

Section 44

(3) Where:

- (a) the sum insured in respect of property that is the subject-matter of such a contract is less than 80% of the value of the property; and
- (b) but for this subsection, an average provision included in the contract would have the effect of reducing the liability of the insurer in respect of loss of or damage to the property to an amount that is less than the amount ascertained in accordance with the formula

$$\frac{AS}{P}$$

where:

A is the number of dollars equal to the amount of the loss or damage.

S is the amount of the sum insured under the contract in respect of the property; and

P is 80% of the number of dollars equal to the value of the property.

the average provision has the effect of reducing the liability of the insurer to the amount so ascertained.

(4) In this section:

value, in relation to property, means:

- (a) if the relevant contract provides for indemnifying the insured in respect of loss of or damage to the property—the indemnity value of the property; or
 - (b) if the relevant contract provides for reinstatement or replacement of the property—the reinstatement or replacement value of the property;
- at the time when the relevant contract was entered into.

45 “Other insurance” provisions

- (1) Where a provision included in a contract of general insurance has the effect of limiting or excluding the liability of the insurer under the contract by reason that the insured has entered into some other contract of insurance, not being a contract required to be effected by or under a law, including a law of a State or Territory, the provision is void.
- (2) Subsection (1) does not apply in relation to a contract that provides insurance cover in respect of some or all of so much of a loss as is not covered by a contract of insurance that is specified in the first-mentioned contract.

46 Pre-existing defect or imperfection

- (1) This section applies where a claim under a contract of insurance (other than a contract of insurance that is included in a class of contracts declared by the regulations to be a class of contracts in relation to which this section does not apply) is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing.
- (2) Where, at the time when the contract was entered into, the insured was not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection, the insurer may not rely on a provision included in the contract that has the effect of limiting or excluding the insurer’s liability under the contract by reference to the condition, at a time before the contract was entered into, of the thing.

47 Pre-existing sickness or disability

- (1) This section applies where a claim under a contract of insurance is made in respect of a loss that occurred as a result, in whole or in part, of a sickness or disability to which a person was subject or had at any time been subject.

Section 48

- (2) Where, at the time when the contract was entered into, the insured was not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the sickness or disability, the insurer may not rely on a provision included in the contract that has the effect of limiting or excluding the insurer's liability under the contract by reference to a sickness or disability to which the insured was subject at a time before the contract was entered into.

48 Contracts of general insurance—entitlements of third party beneficiaries

- (1) A third party beneficiary under a contract of general insurance has a right to recover from the insurer, in accordance with the contract, the amount of any loss suffered by the third party beneficiary even though the third party beneficiary is not a party to the contract.
- (2) Subject to the contract, the third party beneficiary:
 - (a) has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and
 - (b) may discharge the insured's obligations in relation to the loss.
- (3) The insurer has the same defences to an action under this section as the insurer would have in an action by the insured, including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into).

48AA Life policy in connection with RSA for the benefit of third party beneficiary

- (1) This section applies in relation to a contract of life insurance if:
 - (a) the contract is entered into in connection with an RSA; and
 - (b) the owner of the policy is an RSA provider.

- (1A) A third party beneficiary under the contract has a right to recover a benefit from the insurer in accordance with the contract even though the third party beneficiary is not a party to the contract.
- (2) Subject to the contract, the third party beneficiary:
- (a) has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and
 - (b) may discharge the insured's obligations in relation to the payment of a benefit.
- (3) The insurer has the same defences to an action under this section as the insurer would have in an action by the insured, including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into).

48A Life policy for the benefit of third party beneficiary

- (1) The following paragraphs have effect in relation to a contract of life insurance to the extent that the contract is expressed to be for the benefit of a third party beneficiary (who may be the life insured):
- (a) the third party beneficiary has a right to recover from the insurer any money that becomes payable under the contract even though the third party beneficiary is not a party to the contract;
 - (b) if the third party beneficiary is not the life insured, any money paid to the third party beneficiary under the contract does not form part of the estate of the life insured.
- (1A) Paragraph (1)(a) has effect in relation to a contract of life insurance that is maintained for the purposes of a superannuation or retirement scheme, subject to:
- (a) the terms of the contract and the scheme; and
 - (b) any other law;
- relating to the payment of money under the contract or the scheme.
- (2) Subject to the contract, the third party beneficiary:
-

Section 49

- (a) has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and
 - (b) may discharge the insured's obligations in relation to the payment of any money to the third party beneficiary under the contract.
- (3) Nothing in this section restricts the capacity of a person to exercise any right or power under a contract of life insurance to which the person is a party. In particular, nothing in this section restricts the capacity of a person:
- (a) to surrender a contract of life insurance to which the person is a party; or
 - (b) to borrow money on the security of a contract of life insurance; or
 - (c) to obtain a variation of a contract of life insurance, including a variation having the result that the contract ceases to be a contract to which this section applies.

49 Where sum insured exceeds value of insured's interest

- (1) This section applies where:
- (a) a loss occurs in respect of property that is the subject-matter of a contract of general insurance; and
 - (b) the insured and some other person each have an interest in the property;
- but does not apply where:
- (c) the contract of insurance does not provide insurance cover in respect of an interest in the property that is not the insured's interest; and
 - (d) before the contract was entered into, the insurer clearly informed the insured in writing that the insurance cover provided by the contract would not extend to such an interest.
- (2) A reference in this section to the amount of the insurer's notional liability is a reference to the amount for which the insurer would have been liable to the insured in respect of the particular claim if

the insured had been the only person who had an interest in the property.

(3) Where:

- (a) the amount of the insurer's notional liability exceeds the amount of the insurer's liability to the insured in respect of the loss; and
- (b) within 3 months after the day on which the loss occurred, a person who is not the insured but has an interest in the property gives to the insurer a notice in writing informing the insurer of the person's interest;

the insurer is liable, at the expiration of that period, to pay to that person an amount equal to the amount by which the amount of the insurer's notional liability exceeds the amount of the insured's loss.

(4) Where 2 or more persons have served notices under this section, the amount ascertained under subsection (3) shall be divided between them in proportion to the values of their interests in the property.

(5) Nothing in subsection (3) renders the insurer liable to pay to a person an amount exceeding the amount of the loss suffered by that person.

(6) Where:

- (a) the amount of the insurer's notional liability exceeds the amount of the liability to the insured in respect of the loss;
- (b) the insurer has paid to the insured the amount of the notional liability; and
- (c) the insurer did not know, and could not reasonably be expected to have known, that a person other than the insured had an interest in the property;

subsection (3) does not apply, but a person who is not the insured may recover from the insured an amount that bears to the amount of the notional liability the same proportion as the value of that person's interests in the property bears to the total value of all persons' interests in the property.

Section 50

50 Sale of insured property

(1) Where:

- (a) a person (in this section called the *purchaser*) agrees to purchase, or to take an assignment of, property and in consequence the purchaser has, or will have, a right to occupy or use a building;
- (b) the building is the subject-matter of a contract of general insurance to which the vendor or assignor under the agreement is a party; and
- (c) the risk in respect of loss of or damage to the building has passed to the purchaser;

the purchaser shall be deemed to be an insured under the contract of insurance, so far as the contract provides insurance cover in respect of loss of or damage to the building and such of the contents of the building as are being sold or assigned to the purchaser at the same time, during the period commencing on the day on which the risk so passed and ending at whichever of the following times is the earliest:

- (d) the time when the sale or assignment is completed;
 - (e) the time when the purchaser enters into possession of the building;
 - (f) the time when insurance cover under a contract of insurance effected by the purchaser in respect of the building commences;
 - (g) the time when the sale or assignment is terminated.
- (2) A reference in this section to a building includes a reference to a part of a building and also includes a reference to a structure.

51 Claims against insurer in respect of liability of insured or third party beneficiary

(1) If:

- (a) the insured or any third party beneficiary under a contract of liability insurance is liable in damages to another person; and
- (b) the contract provides insurance cover in respect of the liability; and

- (c) the insured or third party beneficiary has died or cannot, after reasonable inquiry, be found;
then the other person may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the liability of the insured or third party beneficiary.
- (2) A payment under subsection (1) is a discharge, to the extent of the payment, in respect of:
- (a) the insurer's liability under the contract; and
 - (b) the liability of the insured or third party beneficiary, or the legal personal representative of the insured or third party beneficiary, to the other person.
- (3) This section does not affect any right that the other person has in respect of the liability of the insured or third party beneficiary, being a right under some other law of the Commonwealth or under a law of a State or Territory.

52 "Contracting out" prohibited

- (1) Where a provision of a contract of insurance (including a provision that is not set out in the contract but is incorporated in the contract by another provision of the contract) purports to exclude, restrict or modify, or would, but for this subsection, have the effect of excluding, restricting or modifying, to the prejudice of a person other than the insurer, the operation of this Act, the provision is void.
- (2) Subsection (1) does not apply to or in relation to a provision the inclusion of which in the contract is expressly authorized by this Act.

53 Variation of contracts of insurance

Where a provision included in a contract of insurance (other than a contract of insurance that is included in a class of contracts declared by the regulations to be a class of contracts in relation to which this section does not apply) authorizes or permits the insurer to vary, to the prejudice of a person other than the insurer, the contract, the provision is void.

Division 3—Remedies

54 Insurer may not refuse to pay claims in certain circumstances

- (1) Subject to this section, where the effect of a contract of insurance would, but for this section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured or of some other person, being an act that occurred after the contract was entered into but not being an act in respect of which subsection (2) applies, the insurer may not refuse to pay the claim by reason only of that act but the insurer's liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of that act.
- (2) Subject to the succeeding provisions of this section, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the contract, the insurer may refuse to pay the claim.
- (3) Where the insured proves that no part of the loss that gave rise to the claim was caused by the act, the insurer may not refuse to pay the claim by reason only of the act.
- (4) Where the insured proves that some part of the loss that gave rise to the claim was not caused by the act, the insurer may not refuse to pay the claim, so far as it concerns that part of the loss, by reason only of the act.
- (5) Where:
 - (a) the act was necessary to protect the safety of a person or to preserve property; or
 - (b) it was not reasonably possible for the insured or other person not to do the act;the insurer may not refuse to pay the claim by reason only of the act.
- (6) A reference in this section to an act includes a reference to:
 - (a) an omission; and

- (b) an act or omission that has the effect of altering the state or condition of the subject-matter of the contract or of allowing the state or condition of that subject-matter to alter.

55 No other remedies

The provisions of this Division with respect to an act or omission are exclusive of any right that the insurer has otherwise than under this Act in respect of the act or omission.

55A Representative actions by the ASIC

(1) If:

- (a) an insured has entered into a contract of insurance with an insurer; and
- (b) ASIC is satisfied that the insured or any third party beneficiary under the contract 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;

ASIC may, by application, if ASIC 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 or third party beneficiary under or in respect of that contract; or
- (d) take over and continue, on behalf of the insured or third party beneficiary, an action brought against the insurer by the insured or third party beneficiary 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) ASIC is satisfied that those insureds or any third party beneficiaries under the contract 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;

ASIC may, by application, if ASIC is of the opinion that it is in the public interest to do so, bring a single action against the insurer on

Section 55A

behalf of all of those insureds or third party beneficiaries under or in respect of the contracts so entered into.

- (3) ASIC may only bring or take over an action under subsection (1), or bring an action under subsection (2), if ASIC has obtained the written consent of the insured or third party beneficiary, or of each of the insureds or third party beneficiaries, on whose behalf the action is being brought or is being continued.

Part VI—Claims

56 Fraudulent claims

- (1) Where a claim under a contract of insurance, or a claim made under this Act against an insurer by a person who is not the insured under a contract of insurance, is made fraudulently, the insurer may not avoid the contract but may refuse payment of the claim.
- (2) In any proceedings in relation to such a claim, the court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order the insurer to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.
- (3) In exercising the power conferred by subsection (2), the court shall have regard to the need to deter fraudulent conduct in relation to insurance but may also have regard to any other relevant matter.

57 Interest on claims

- (1) Where an insurer is liable to pay to a person an amount under a contract of insurance or under this Act in relation to a contract of insurance, the insurer is also liable to pay interest on the amount to that person in accordance with this section.
- (2) The period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for the insurer to have withheld payment of the amount and ending on whichever is the earlier of the following days:
 - (a) the day on which the payment is made;
 - (b) the day on which the payment is sent by post to the person to whom it is payable.

Section 57

(3) The rate at which interest is payable in respect of a day included in the period referred to in subsection (2) is the rate applicable in respect of that day that is prescribed by, or worked out in a manner prescribed by, the regulations.

(4) This section applies to the exclusion of any other law that would otherwise apply.

(5) In subsection (4):

law means:

- (a) a statutory law of the Commonwealth, a State or a Territory;
or
- (b) a rule of common law or equity.

Part VII—Expiration, renewal and cancellation**58 Insurer to notify of expiration of contracts of general insurance**

- (1) In this section, *renewable insurance cover* means insurance cover that:
 - (a) is provided for a particular period of time; and
 - (b) is of a kind that it is usual to renew or for the renewal of which it is usual to negotiate.
- (2) Not later than 14 days before the day on which renewable insurance cover provided under a contract of general insurance (in this section called the *original contract*) expires, the insurer shall give to the insured or a person acting as agent for the insured a notice in writing informing the person to whom the notice is given of the day on which and the time at which the cover will expire and whether the insurer is prepared to negotiate to renew or extend the cover.
- (3) Where:
 - (a) an insurer has failed to comply with subsection (2); and
 - (b) before the original contract expired, the insured had not obtained from some other insurer insurance cover to replace that provided by the original contract;then, by force of this section, there exists between the parties to the original contract a contract of insurance that provides insurance cover as provided by the original contract, except that the cover provided is in respect of the period that:
 - (c) commences immediately after the insurance cover provided by the original contract expires; and
 - (d) expires, unless the contract is sooner cancelled, at:
 - (i) the expiration of a period equal to the period during which insurance cover was provided by the original contract; or
 - (ii) the time when the insured obtains from the original insurer or some other insurer insurance cover to replace that provided by the original contract;

Section 59

whichever is the earlier.

- (4) Where a contract of insurance is in force by virtue of subsection (3):
- (a) except in a case to which paragraph (b) applies, no premium is payable in respect of the contract; but
 - (b) if a claim is made under the contract, there is payable by the insured to the insurer, as a premium in respect of the contract, an amount worked out in accordance with subsection (5) or (6), as the case requires.
- (5) If the claim is for total loss of the property insured, the premium is an amount equal to the amount (the *hypothetical premium*) that, if the original contract had been renewed for the same period and on the same terms and conditions (including the same subject-matter and risk), would have been payable by the insured in respect of the renewal.
- (6) If the claim is not for total loss of the property insured, the premium is an amount worked out in accordance with the formula:

$$\frac{\text{Period until claim} \times \text{Hypothetical premium}}{\text{Period of original contract}}$$

where:

period until claim means the number of days in the period that began on the day on which the contract came into force and ended on the day on which the claim was made.

hypothetical premium has the meaning given in subsection (5).

period of original contract means the number of days in the period of the original contract.

59 Cancellation procedure

- (1) An insurer who wishes to exercise a right to cancel a contract of insurance shall give notice in writing of the proposed cancellation to the insured.

- (2) The notice has effect to cancel the contract at whichever is the earlier of the following times:
- (a) the time when another contract of insurance between the insured and the insurer or some other insurer, being a contract that is intended by the insured to replace the first-mentioned contract, is entered into;
 - (b) whichever is the latest of the following times:
 - (i) 4 pm on the applicable business day;
 - (ii) if a time is specified for the purpose in the contract—that time;
 - (iii) if a time is specified in the notice—that time.
- (2A) In subparagraph (2)(b)(i):
- applicable business day*** means:
- (a) in respect of a contract that is not a contract of life insurance:
 - (i) if the contract is in force because of section 58—the fourteenth business day; or
 - (ii) otherwise—the third business day; or
 - (b) in respect of a contract of life insurance—the twentieth business day;
- after the day on which the notice was given to the insured.
- (3) This section does not apply to a contract of life insurance if the life policy that is constituted by the contract may be forfeited in accordance with subsection 210(5) of the *Life Insurance Act 1995*.

59A Cancellation of contracts of life insurance

- (1) An insurer under a contract of life insurance (the ***first contract***) may cancel the contract if the insured has made a fraudulent claim:
 - (a) under the first contract; or
 - (b) under another contract of insurance with the insurer that provides insurance cover during any part of the period during which the first contract provides insurance cover.
- (2) If an insurer has cancelled a contract of life insurance under subsection (1) because of a fraudulent claim by the insured under

Section 60

that contract, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:

- (a) disregard the cancellation of the contract; and
 - (b) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and
 - (c) order the insurer to reinstate the contract.
- (3) If an insurer has cancelled a contract of life insurance (the *cancelled contract*) under subsection (1) because of a fraudulent claim by the insured under another contract of insurance with the insurer, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:
- (a) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and
 - (b) order the insurer to reinstate the cancelled contract.
- (4) If an insurer has cancelled a contract of life insurance under subsection (1), then, in any proceedings in relation to the cancellation, the court may, if it would be harsh and unfair not to do so, order the insurer to reinstate the contract. This subsection does not limit, and is not limited by, subsection (2) or (3).
- (5) In exercising the power conferred by subsection (2), (3) or (4), the court:
- (a) must have regard to the need to deter fraudulent conduct in relation to insurance; and
 - (b) may also have regard to any other relevant matter.

60 Cancellation of contracts of general insurance

- (1) Where, in relation to a contract of general insurance:
 - (a) a person who is or was at any time the insured failed to comply with the duty of the utmost good faith;
 - (b) the person who was the insured at the time when the contract was entered into failed to comply with the duty of disclosure;
 - (c) the person who was the insured at the time when the contract was entered into made a misrepresentation to the insurer
-

during the negotiations for the contract but before it was entered into;

- (d) a person who is or was at any time the insured failed to comply with a provision of the contract, including a provision with respect to payment of the premium; or
 - (e) the insured has made a fraudulent claim under the contract or under some other contract of insurance (whether with the insurer concerned or with some other insurer) that provides insurance cover during any part of the period during which the first-mentioned contract provides insurance cover;
- the insurer may cancel the contract.

(2) Where:

- (a) a contract of general insurance includes a provision that requires the insured to notify the insurer of a specified act or omission of the insured; or
- (b) the effect of the contract is to authorize the insurer to refuse to pay a claim, either in whole or in part, by reason of an act or omission of the insured or of some other person;

and, after the contract was entered into, such an act or omission has occurred, the insurer may cancel the contract.

(3) A reference in subsection (2) to an act or omission of the insured includes a reference to an act or omission of the insured that has the effect of altering the state or condition of the subject-matter of the contract or of allowing the state or condition of that subject-matter to alter.

(4) Where a contract of insurance is:

- (a) a contract that is in force by virtue of section 58; or
- (b) an interim contract of general insurance;

the insurer may at any time cancel the contract.

61 Insurers in liquidation

- (1) Where an insurer under a contract of general insurance is a company that is in liquidation, the insurer may at any time cancel the contract.

Section 62

- (2) Subsection (1) does not affect the operation of a law (including a law of a State or Territory) that relates to the disclaimer of unprofitable contracts to which a company that is in liquidation is a party.

62 Cancellation of instalment contracts of general insurance

- (1) An instalment contract of general insurance may include provisions inconsistent with section 59 with respect to the cancellation of the contract for non-payment of an instalment of the premium.
- (2) An insurer may not rely on such a provision unless:
 - (a) at least one instalment of the premium has remained unpaid, at the time when the contract is sought to be cancelled, for a period of at least one month; and
 - (b) before the contract was entered into, the insurer clearly informed the insured in writing of the effect of the provision.

63 Cancellations of contracts of insurance void

- (1) Except as provided by this Act, an insurer must not cancel a contract of general insurance.
- (2) Except as provided by this Act or section 210 of the *Life Insurance Act 1995*, an insurer must not cancel a contract of life insurance.

Note: Section 210 of the *Life Insurance Act 1995* deals with cancellation of a contract of life insurance because of non-payment of a premium.
- (3) Any purported cancellation of a contract of insurance in contravention of subsection (1) or (2) is of no effect.

Part VIII—Subrogation

64 Application to third party beneficiaries

In this Part, a reference to an insured includes a reference to a third party beneficiary.

65 Subrogation to rights against family etc.

- (1) Subject to subsection (2), this section applies where:
 - (a) an insurer is liable under a contract of general insurance in respect of a loss;
 - (b) but for this section, the insurer would be entitled to be subrogated to the rights of the insured against some other person (in this section called the *third party*); and
 - (c) the insured has not exercised those rights and might reasonably be expected not to exercise those rights by reason of:
 - (i) a family or other personal relationship between the insured and the third party; or
 - (ii) the insured having expressly or impliedly consented to the use, by the third party, of a road motor vehicle that is the subject-matter of the contract.
- (2) This section does not apply where the conduct of the third party that gave rise to the loss:
 - (a) occurred in the course of or arose out of the third party's employment by the insured; or
 - (b) was serious or wilful misconduct.
- (3) Where the third party is not insured in respect of the third party's liability to the insured, the insurer does not have the right to be subrogated to the rights of the insured against the third party in respect of the loss.
- (4) Where the third party is so insured, the insurer may not, in the exercise of the insurer's rights of subrogation, recover from the

Section 66

third party an amount that exceeds the amount that the third party may recover under the third party's contract of insurance in respect of the loss.

- (5) An insured need not comply with a condition requiring the insured to assign those rights to the insurer in order to be entitled to payment in respect of the loss and an insurer shall not purport to impose such a condition on the making of such a payment or, before making such a payment, invite the insured so to assign those rights, or suggest that the insured so assign them.

Penalty: 300 penalty units.

- (6) An assignment made in compliance with such a condition or in pursuance of such an invitation or suggestion is void.
- (7) In subsection (1), *road motor vehicle* means a motor vehicle that is so constructed as to be capable of carrying by road at least one person other than the driver.

66 Subrogation to rights against employees

Where:

- (a) the rights of an insured under a contract of general insurance in respect of a loss are exercisable against a person who is the insured's employee; and
- (b) the conduct of the employee that gave rise to the loss occurred in the course of or arose out of the employment and was not serious or wilful misconduct;

the insurer does not have the right to be subrogated to the rights of the insured against the employee.

67 Rights with respect to money recovered under subrogation etc.

Scope

- (1) This section applies if:
- (a) an insurer is liable under a contract of general insurance in respect of a loss; and

- (b) the insurer has a right of subrogation in respect of the loss; and
- (c) an amount is recovered (whether by the insurer or the insured) from another person in respect of the loss.

Amount recovered by insurer

- (2) If the amount is recovered by the insurer in exercising the insurer's right of subrogation in respect of the loss:
 - (a) the insurer is entitled under this paragraph to so much of the amount as does not exceed the sum of:
 - (i) the amount paid by the insurer to the insured in respect of the loss; and
 - (ii) the amount paid by the insurer for administrative and legal costs incurred in connection with the recovery; and
 - (b) if the amount recovered exceeds the amount to which the insurer is entitled under paragraph (a)—the insured is entitled under this paragraph to so much of the excess as does not exceed the insured's overall loss; and
 - (c) if the amount recovered exceeds the sum of:
 - (i) the amount to which the insurer is entitled under paragraph (a); and
 - (ii) the amount (if any) to which the insured is entitled under paragraph (b);the insurer is entitled to the excess.

Amount recovered by insured

- (3) If the amount is recovered by the insured:
 - (a) the insured is entitled under this paragraph to so much of the amount as does not exceed the sum of:
 - (i) the insured's overall loss; and
 - (ii) the amount paid by the insured for administrative and legal costs incurred in connection with the recovery; and
 - (b) if the amount recovered exceeds the amount to which the insured is entitled under paragraph (a)—the insurer is entitled to so much of the excess as does not exceed the amount paid by the insurer to the insured in respect of the loss; and

Section 67

- (c) if the amount recovered exceeds the sum of:
 - (i) the amount to which the insured is entitled under paragraph (a); and
 - (ii) the amount (if any) to which the insurer is entitled under paragraph (b);the insured is entitled to the excess.

Amount recovered by insurer and insured jointly

- (4) Subsections (5), (6) and (7) apply if the amount is recovered by the insurer and the insured jointly.
- (5) If the amount recovered is less than the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount, the insurer and the insured are each entitled to a portion of the amount recovered, calculated on a pro rata basis in proportion to the paragraph (2)(a) amount and the paragraph (3)(a) amount.
- (6) If the amount recovered is equal to the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount:
 - (a) the insurer is entitled to the paragraph (2)(a) amount; and
 - (b) the insured is entitled to the paragraph (3)(a) amount.
- (7) If the amount recovered exceeds the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount, then:
 - (a) the insurer is entitled to the paragraph (2)(a) amount; and
 - (b) the insured is entitled to the paragraph (3)(a) amount; and
 - (c) in addition to those amounts, the insurer and the insured are each entitled to a portion of the remainder of the amount recovered, calculated on a pro rata basis in proportion to the amounts referred to in subparagraphs (2)(a)(ii) and (3)(a)(ii).

Amount awarded by way of interest

- (8) If an amount (the ***interest amount***) by way of interest is awarded in respect of the amount recovered (the ***principal amount***), the following apply:
 - (a) if the principal amount was recovered by the insurer, the insurer is entitled to the interest amount;

- (b) if the principal amount was recovered by the insured, the insured is entitled to the interest amount;
- (c) if the principal amount was recovered by the insurer and the insured jointly, the interest amount is to be divided fairly between the insurer and the insured, having regard to:
 - (i) the amounts to which the insurer and the insured are each entitled under subsection (5), (6) or (7), as the case requires; and
 - (ii) the periods of time during which the insurer and the insured have lost the use of their money.

Rights of insurer and insured are subject to contract and any agreement

- (9) The rights of the insurer and the insured under this section in respect of a loss are subject to:
 - (a) the relevant contract of insurance; and
 - (b) any agreement made between the insurer and the insured after the loss occurred.

Definitions

- (10) In this section:

insured's overall loss, in relation to a loss incurred by an insured to which this section applies, means the amount of the loss reduced by any amount paid to the insured by the insurer in respect of the loss.

paragraph (2)(a) amount means the sum of the amounts referred to in subparagraphs (2)(a)(i) and (ii).

paragraph (3)(a) amount means the sum of the amounts referred to in subparagraphs (3)(a)(i) and (ii).

68 Contracts affecting rights of subrogation

- (1) Where a contract of general insurance includes a provision that has the effect of excluding or limiting the insurer's liability in respect of a loss by reason that the insured is a party to an agreement that excludes or limits a right of the insured to recover damages from a person other than the insurer in respect of the loss, the insurer may not rely on the provision unless the insurer clearly informed the insured in writing, before the contract of insurance was entered into, of the effect of the provision.
- (2) The duty of disclosure does not require the insured to disclose the existence of a contract that so limits the insured's rights.

Part IX—Information, notices and reasons**69 Giving of information to insureds**

(1) Where:

- (a) by reason of a provision of this Act, information in relation to a contract of insurance is to be or may be given in writing to a person before the contract is entered into; and
- (b) it is not reasonably practicable for the information to be so given in writing but it is reasonably practicable for it to be so given orally;

the provision shall be deemed to have been complied with if:

- (c) the information is so given orally; and
- (d) the information is also given in writing within 14 days after the day on which the contract was entered into.

(1A) If:

- (a) an insured may, because of subsection (1), be informed orally of the matters referred to in subsection 22(1); and
- (b) the regulations prescribe a form of words to be used in giving the information orally;

the information may be given using the prescribed form of words.

(2) Where, by reason of a provision of this Act:

- (a) information in relation to a contract of insurance is to be or may be given in writing to a person before the contract is entered into; and
- (b) it was not reasonably practicable for the information to be so given orally or in writing;

the provision shall be deemed to have been complied with, and the information shall be deemed to have been given, if the information is given in writing within 14 days after the day on which the contract was entered into.

(3) Where information as mentioned in subsection (1) or (2) is given in writing after the contract was entered into, but at a time later than 14 days after the day on which the contract was entered into:

Section 70

- (a) the rights of a person other than the insurer in respect of a loss that occurred during the period commencing at the expiration of 14 days after the day on which the contract was entered into and ending at the time when the information was so given are the same as though the information had not been given; and
 - (b) the rights of a person other than the insurer in respect of a loss that occurred at any other time are the same as though the information had been given in writing before the contract was entered into.
- (4) Where:
- (a) by reason of this Act, information in relation to a contract of insurance is to be or may be given in writing by the insurer to a person before, or at the time when, the contract is entered into;
 - (b) it is reasonably practicable for the information to be so given; and
 - (c) the information is not so given, but is given in writing at a later time;
- the rights of a person other than the insurer in respect of a loss that occurred after the contract was entered into but before the information was given are the same as though the information had not been given.

70 Notices to be given to life insureds in certain cases

Where, by this Act, provision is made with respect to the giving of a notice or other document or information to an insured, then, in the case of an individual superannuation contract, a reference in the provision to the insured shall be read as a reference to the life insured.

71 Agency

- (1) A provision of this Act (other than subsection 58(2)) for or with respect to the giving of a notice or other document or information to an insured before a contract of insurance is entered into does not apply where the contract was arranged by an insurance broker, not

being an insurance broker acting under a binder, as agent of the insured.

- (2) Where:
- (a) a person who is not an insurance intermediary acted as agent of an insured in arranging a contract of insurance; and
 - (b) the insurer gave that person a notice or other document or information as mentioned in this Act;
- the insurer shall be deemed to have given the notice, other document or information to the insured.
- (3) An insurance intermediary, other than an insurance broker who is not acting under a binder, shall, in relation to the giving of a notice or other document or information that, by this Act, is required or permitted to be given, be deemed to be the agent of the insurer and not of the insured.

72 Content and other requirements for notices etc. to be given in writing

A reference in this Act to the giving of a notice or other document or information to a person, in writing, is a reference to giving the person a notice or other document or information in writing that complies with the requirements (if any) prescribed as to:

- (a) the content and legibility of the notice, other document or information; and
- (b) the material that may accompany the notice, other document or information.

72A Method for giving written notices or documents

A notice or other document that is required or permitted by this Act to be given to a person in writing may be given:

- (a) to a body corporate in any way in which documents may be served on the body corporate; or
- (b) to a natural person:
 - (i) personally; or
 - (ii) by post to that person at the person's last-known address.

Section 74

Note: A notice or other document may also be given to a person by electronic communication in accordance with the *Electronic Transactions Act 1999* and any regulations made under that Act.

74 Policy documents to be supplied on request

- (1) Where the insured under a contract of insurance so requests in writing given to the insurer, the insurer shall give to the insured a statement in writing that sets out all the provisions of the contract.

Penalty: 300 penalty units.

- (2) An insurer need not comply with the requirements of subsection (1) if the insurer has already given to the insured such a statement, whether as required by this Act or otherwise.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

75 Reasons for cancellation etc. to be given

- (1) Where an insurer:
- (a) does not accept an offer to enter into a contract of insurance;
 - (b) cancels a contract of insurance;
 - (c) indicates to the insured that the insurer does not propose to renew the insurance cover provided under a contract of insurance; or
 - (d) by reason of some special risk relating to the insured or to the subject-matter of the contract, offers insurance cover to the insured on terms that are less advantageous to the insured than the terms that the insurer would otherwise offer;

the insurer shall, if the insured so requests in writing given to the insurer, give to the insured a statement in writing setting out the insurer's reasons for not accepting the offer, for cancelling the contract, for not renewing the insurance cover or for offering insurance cover on less advantageous terms, as the case may be.

Penalty: 300 penalty units.

- (2) In relation to a contract of general insurance, if the state of health of the insured was the reason, or one of the reasons, that the insurer did not accept the offer, cancelled the contract, did not renew the
-

insurance cover or offered insurance cover on less advantageous terms, as the case may be, the insurer may require the insured to inform the insurer in writing of the name of a legally qualified medical practitioner to whom the statement may be given on behalf of the insured and, where the statement is given to the medical practitioner so nominated, the insurer shall be taken to have complied with subsection (1) in relation to the request.

- (3) In relation to a contract of life insurance where the insured is not the life insured, subsection (1) does not apply if the state of health of the life insured was the only reason that the insurer did not accept the offer, cancelled the contract, did not renew the insurance cover or offered insurance cover on less advantageous terms, as the case may be.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) In relation to a contract of life insurance where the insured is not the life insured, a statement given under subsection (1) shall not include any reference to the state of health of the life insured.
- (5) Where an insurer:
- (a) does not accept an offer to enter into a contract of life insurance;
 - (b) cancels such a contract;
 - (c) indicates to the insured that the insurer does not propose to renew the insurance cover provided under such a contract; or
 - (d) by reason of some special risk relating to the life insured, offers life insurance cover to the insured on terms that are less advantageous to the insured than the terms that the insurer would otherwise offer;

the insurer shall, if the life insured so requests in writing given to the insurer, give to the life insured a statement in writing setting out the insurer's reasons for not accepting the offer, for cancelling the contract, for not renewing the insurance cover or for offering life insurance cover on less advantageous terms, as the case may be, being reasons that relate to the state of health of the life insured.

Penalty: 300 penalty units.

Section 75

- (6) The insurer may require the life insured to inform the insurer in writing of the name of a legally qualified medical practitioner to whom the statement may be given on behalf of the life insured and, where the statement is given to the medical practitioner so nominated, the insurer shall be taken to have complied with subsection (5) in relation to the request.
- (7) It is a defence to a prosecution for an offence arising under this section if the insurer proves that compliance with this section would have unreasonably put at risk the interests of the insurer or of some other person.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (7), see section 13.4 of the *Criminal Code*.

Part X—Miscellaneous**76 Contribution between insurers**

- (1) When 2 or more insurers are liable under separate contracts of general insurance to the same insured in respect of the same loss, the insured is, subject to subsection (2), entitled immediately to recover from any one or more of those insurers such amount as will, or such amounts as will in the aggregate, indemnify the insured fully in respect of the loss.
- (2) Nothing in subsection (1) entitles an insured:
 - (a) to recover from an insurer an amount that exceeds the sum insured under the contract between the insured and that insurer; or
 - (b) to recover an amount that exceeds, or amounts that in the aggregate exceed, the amount of the loss.
- (3) Nothing in this section prejudices the rights of an insurer or insurers from whom the insured recovers an amount or amounts in accordance with this section to contribution from any other insurer liable in respect of the same loss.

78 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed;
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) amending the time limits provided for in sections 39, 58 and 69.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Insurance Contracts Act 1984	80, 1984	25 June 1984	1 Jan 1986 (<i>see Gazette</i> 1985, No. S487)	
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 3 July 1985 (<i>a</i>)	—
Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985	187, 1985	16 Dec 1985	Part VIII (s. 60): 6 Jan 1986 (<i>see Gazette</i> 1985, No. S551) (<i>b</i>)	s. 60(3)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s. 3: 1 Jan 1986 (<i>see Gazette</i> 1985, No. S487) (<i>c</i>)	s. 16
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s. 3: 1 Jan 1986 (<i>see Gazette</i> 1985, No. S487) (<i>d</i>)	s. 9
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	s. 3: 1 Jan 1986 (<i>e</i>)	s. 5(1)
Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991	149, 1991	21 Oct 1991	1 Nov 1991	s. 50(2)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Insurance Laws Amendment Act (No. 2) 1994	49, 1994	7 Apr 1994	ss. 1–3 and Schedule (items 1, 2, 4, 5, 7, 7–19): Royal Assent Remainder: 1 Oct 1994 (see <i>Gazette</i> 1994, No. GN38)	—
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 (see s. 2 and <i>Gazette</i> 1995, No. GN24)	—
Crimes and Other Legislation Amendment Act 1997	20, 1997	7 Apr 1997	Schedule 2 (item 6): Royal Assent (<i>f</i>)	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Schedule 8: Royal Assent (<i>g</i>)	—
Insurance Laws Amendment Act 1998	35, 1998	22 Apr 1998	Schedule 1 (items 77–84): 30 Apr 1998 (see <i>Gazette</i> 1998, S188) (<i>h</i>)	Sch. 1 (items 82–84)
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Schedule 12: 1 July 1998 (see <i>Gazette</i> 1998, S316) (<i>i</i>)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 7 (item 117): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (<i>j</i>)	s. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
Export Finance and Insurance Corporation Amendment Act 2000	11, 2000	15 Mar 2000	Schedule 1 (item 4): 1 July 1998 Schedule 2 (items 2–4): 1 July 2000 Remainder: Royal Assent	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	s. 4 and Schedule 3 (items 5–14): 15 Dec 2001 (<i>k</i>)	s. 4
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Schedule 1 (items 246–249): 11 Mar 2002 (<i>see Gazette</i> 2001, No. GN42) (<i>l</i>)	—
Insurance and Aviation Liability Legislation Amendment Act 2002	96, 2002	10 Nov 2002	Schedule 1 (items 1–4): 23 July 1998 (<i>see s. 2(1)</i>) Remainder: Royal Assent	s. 4
Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003	36, 2003	2 May 2003	1 July 2003	—
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Schedule 2 (item 54): 1 Apr 2007 (<i>see s. 2(1)</i>)	—
Private Health Insurance Legislation Amendment Act 2008	54, 2008	25 June 2008	Schedule 1 (item 5): Royal Assent	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (items 343–347): 4 July 2008	—
Insurance Contracts Amendment Act 2012	41, 2012	15 Apr 2012	15 Apr 2012	—
Personal Liability for Corporate Fault Reform Act 2012	180, 2012	10 Dec 2012	Schedule 6 (items 20–22): 11 Dec 2012	—
Insurance Contracts Amendment Act 2013	75, 2013	28 June 2013	Schedule 1, Schedule 3, Schedule 4 (items 3–5), Schedule 5 (items 1–3, 12–17) and Schedule 6 (items 23–29): Royal Assent Schedule 2: 28 Dec 2013 Schedule 4 (items 1, 2, 6–15): [see Endnote 5] Schedule 5 (items 4–11) and Schedule 6 (items 1–22, 30–40): 28 June 2014 Schedule 7: 28 Dec 2013	Sch. 1 (items 6, 8, 10), Sch. 2 (item 9), Sch. 3 (item 2), Sch. 4 (items 2, 7, 8, 13, 15), Sch. 5 (items 3, 11, 14, 17), Sch. 6 (items 2, 14, 17, 22, 29, 40) and Sch. 7 (item 3)

- (a) The *Insurance Contracts Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
[see also (c)]
- (b) The *Insurance Contracts Act 1984* was amended by Part VIII (section 60) only of the *Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act shall come into operation on the commencing day.

Endnote 3—Legislation history

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- Section 3 of the *Australian Trade Commission Act 1985* defines “commencing day” as the day fixed by Proclamation for the purposes of subsection 2(2) of that Act.
- (c) The *Insurance Contracts Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(8) of which provides as follows:
- (8) Notwithstanding subsection 2(1) of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, the amendments of the *Insurance Contracts Act 1984* made by the first-mentioned Act and the amendment of the *Insurance Contracts Act 1984* made by this Act shall come into operation on the day on which the *Insurance Contracts Act 1984* comes into operation.
- (d) The *Insurance Contracts Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(11) of which provides as follows:
- (11) The amendments of the *Insurance Contracts Act 1984* made by this Act shall be deemed to have come into operation immediately after that Act came into operation.
- (e) The *Insurance Contracts Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsections 2(1) and (6) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (6) The amendments of section 11 of the *Insurance Contracts Act 1984* made by this Act shall be deemed to have come into operation on 1 January 1986.
- (f) The *Insurance Contracts Act 1984* was amended by Schedule 2 (item 6) only of the *Crimes and Other Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (g) The *Insurance Contracts Act 1984* was amended by Schedule 8 only of the *Financial Laws Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Insurance Contracts Act 1984* was amended by Schedule 1 (items 77–84) only of the *Insurance Laws Amendment Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.
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Endnotes

Endnote 3—Legislation history

- (i) The *Insurance Contracts Act 1984* was amended by Schedule 12 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsection 2(2)(j) of which provides as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (j) Schedule 12, subject to subsection (12);
- (j) The *Insurance Contracts Act 1984* was amended by Schedule 7 (item 117) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
- (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
- (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (k) The *Insurance Contracts Act 1984* was amended by Schedule 3 (item 5–14) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (l) The *Insurance Contracts Act 1984* was amended by Schedule 1 (items 246–249) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
- FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s. 4.....	am No 75, 2013
s. 9.....	am. Nos. 65 and 187, 1985; No. 76, 1986; No. 149, 1991; No. 107, 1997; No. 11, 2000; No. 96, 2002; No. 32, 2007; No. 54, 2008; No. 75, 2013
s. 9A.....	ad. No. 35, 1998
s. 11.....	am. No. 65, 1985; No. 168, 1986; No. 49, 1994; No. 5, 1995; Nos. 62 and 107, 1997; No. 54, 1998; No. 44, 1999; No. 123, 2001; No. 41, 2012; No 75, 2013
s. 11AA.....	ad. No. 117, 2001
Part IA	
Part IA.....	ad. No. 49, 1994
s. 11AAA.....	ad. No. 36, 2003
s. 11A.....	ad. No. 49, 1994 rs. No. 54, 1998
Heading to s. 11B.....	am. No. 54, 1998
s. 11B.....	ad. No. 49, 1994 am. No. 54, 1998; No. 36, 2003
Heading to s. 11C.....	am. No. 54, 1998
s. 11C.....	ad. No. 49, 1994 am. No. 54, 1998; No. 117, 2001; No. 36, 2003
Note to s. 11C(2).....	ad. No. 180, 2012
Note to s. 11C(3).....	ad. No. 117, 2001
Note to s. 11C(4).....	ad. No. 117, 2001
Heading to s. 11D.....	am. No. 54, 1998
s. 11D.....	ad. No. 49, 1994 am. No. 54, 1998; No. 117, 2001; No. 36, 2003
Note to s. 11D(2).....	ad. No. 180, 2012
Note to s. 11D(3).....	ad. No. 180, 2012
Note to s. 11D(4).....	ad. No. 117, 2001
Note to s. 11D(5).....	ad. No. 117, 2001

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 11DA	ad. No. 180, 2012
Heading to s. 11E	am. No. 54, 1998; No. 36, 2003
s. 11E.....	ad. No. 49, 1994
	am. No. 54, 1998; No. 36, 2003
s. 11F.....	ad. No. 49, 1994
	rs. No. 107, 1997
	rep. No. 54, 1998
	ad. No. 75, 2013
ss. 11G, 11H.....	ad. No. 49, 1994
	rep. No. 54, 1998
Part II	
s. 13	am. No. 75, 2013
s. 14A	ad. No. 75, 2013
s. 15	rs. No. 65, 1985; No. 49, 1994
Part III	
Division 1	
s. 16.....	am. No. 5, 1995
Division 2	
Div. 2 of Part III	rs. No. 5, 1995
s. 18.....	rs. No. 5, 1995
s. 19.....	rep. No. 5, 1995
Part IV	
Division 1	
Heading to Div. 1 of	rs. No. 41, 2012
Part IV	
s. 21	am. No. 107, 1997
s. 21A	ad. No. 35, 1998
Note to s. 21A(1).....	ad. No. 75, 2013
s. 21B	ad. No. 75, 2013
s. 22.....	am. No. 35, 1998
Note to s. 22(1).....	ad. No. 75, 2013
Division 2	

Endnote 4—Amendment history

Provision affected	How affected
Heading to Div. 2 of Part IV	rs. No. 41, 2012
s. 23	am No 75, 2013
s. 26	am. Nos. 62 and 107, 1997; No 75, 2013
s. 27	am. No. 107, 1997
Division 3	
Heading to Div. 3 of Part IV	rs. No. 41, 2012
s. 27A	ad. No. 75, 2013
s. 28	am. No. 107, 1997
Subhead to s. 29(1)	ad No 75, 2013
Subhead to s. 29(2)	ad No 75, 2013
Subhead to s. 29(4)	ad No 75, 2013
s. 29	am. No. 107, 1997; No 75, 2013
Note to s. 29(1)	ad. No. 75, 2013
Note to s. 29(4)	ad. No. 75, 2013
s. 30	am. No. 75, 2013
s. 32	rs No 75, 2013
s. 32A	ad. No. 62, 1997 am No 75, 2013
Division 4	
Div. 4 of Part IV	ad. No. 41, 2012
ss. 33A–33D	ad. No. 41, 2012
Part V	
Division 1	
s. 35	am. Nos. 65 and 193, 1985; No. 107, 1997
s. 37	am. No. 65, 1985; No. 168, 1986
Division 1A	
Div. 1A of Part V	ad. No. 41, 2012
ss. 37A–37E	ad. No. 41, 2012
Division 2	
s. 38	am. No. 41, 2012
s. 40	am. No. 49, 1994

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 41	am. No. 65, 1985; No. 107, 1997 rs No 75, 2013
s. 44	am. No. 107, 1997
ss. 46, 47	am. No. 107, 1997
hdg to s 48	rs No 75, 2013
s. 48	am. No. 5, 1995; No. 107, 1997; No. 73, 2008; No 75, 2013
hdg to s 48AA	rs No 75, 2013
s. 48AA	ad. No. 62, 1997; No 75, 2013
hdg to s 48A	rs No 75, 2013
s. 48A	ad. No. 5, 1995 am No 75, 2013
s. 49	am. No. 168, 1986; No. 107, 1997
hdg to s 51	rs No 75, 2013
s. 51	am. No. 107, 1997; No 75, 2013
Division 3	
s. 54	am. No. 65, 1985; No. 107, 1997
Heading to s. 55A	am. No. 54, 1998
s. 55A	ad. No. 49, 1994 am. No. 54, 1998; No. 75, 2013
Part VI	
s. 57	am. No. 107, 1997; No. 35, 1998
Part VII	
s. 58	am. No. 168, 1986; No. 107, 1997
s. 59	am. No. 5, 1995; No. 107, 1997
s. 59A	ad. No. 75, 2013
s 62	am No 75, 2013
s. 63	rs. No. 75, 2013
Heading to s. 64	am. No. 49, 1994 rep. No. 123, 2001
s. 64	am. No. 49, 1994; No. 5, 1995; Nos. 62 and 107, 1997 rep. No. 123, 2001 ad No 75, 2013

Endnote 4—Amendment history

Provision affected	How affected
s. 64A	ad. No. 49, 1994 rep. No. 123, 2001
s. 64B	ad. No. 5, 1995 rep. No. 123, 2001
Part VIII	
s. 65	am. No. 49, 1994; No. 107, 1997; No. 73, 2008
s. 66	am. No. 107, 1997; No. 54, 1998
s. 67	rs No 75, 2013
s. 68	am. No. 107, 1997
Part IX	
s. 69	am. No. 65, 1985; No. 168, 1986; No. 35, 1998
s. 70	am No 75, 2013
s. 71	am. No. 168, 1986; No 75, 2013
s. 71A	ad. No. 49, 1994 rep. No. 123, 2001
s. 72	am. No. 107, 1997 rs No 75, 2013
s. 72A	ad No 75, 2013
s. 73	am. No. 65, 1985; Nos. 76 and 168, 1986; No. 49, 1994 rep. No. 123, 2001
s. 74	am. No. 49, 1994; No. 107, 1997
Note to s. 74(2)	ad. No. 117, 2001
s. 75	am. No. 49, 1994; Nos. 20 and 107, 1997; No. 73, 2008
Note to s. 75(3)	ad. No. 117, 2001
Note to s. 75(7)	ad. No. 117, 2001
Part X	
s. 76	am. No. 107, 1997
s. 76A	ad. No. 49, 1994 rep. No. 180, 2012
s. 77	am. No. 107, 1997 rep No 75, 2013

Endnote 5—Uncommenced amendments

Insurance Contracts Amendment Act 2013 (No. 75, 2013)

Schedule 4

1 Paragraph 21(1)(b)

Repeal the paragraph, substitute:

- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant, having regard to factors including, but not limited to:
 - (i) the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and
 - (ii) the class of persons who would ordinarily be expected to apply for insurance cover of that kind.

6 Section 21A

Repeal the section, substitute:

21A Eligible contracts of insurance—disclosure before contract originally entered into

Scope

- (1) This section applies in relation to the original entering into of an eligible contract of insurance.

Note: This section does not apply in relation to the renewal, extension, reinstatement or variation of an eligible contract of insurance. Section 21B applies in relation to the renewal of an eligible contract of insurance.

Position of the insurer

- (2) Before the contract is originally entered into, the insurer may request the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.

Endnote 5—Uncommenced amendments

- (3) If the insurer does not make a request in accordance with subsection (2), the insurer is taken to have waived compliance with the duty of disclosure in relation to the contract.
- (4) If the insurer:
- (a) makes a request in accordance with subsection (2); and
 - (b) requests the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the contract;
- then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

Position of the insured

- (5) If:
- (a) the insurer makes a request in accordance with subsection (2); and
 - (b) in answer to each specific question included in the request, the insured discloses each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;
- then the insured is taken to have complied with the duty of disclosure in relation to the contract.

Definition

- (6) In this section:

eligible contract of insurance means a contract of insurance that is specified in the regulations for the purposes of this section.

9 Subsection 11(1)

Insert:

life insured includes a proposed life insured.

10 Paragraph 11(10)(b)

Omit “except where the variation is involved in a renewal, extension or reinstatement of the contract”, substitute “, unless subsection (10A) applies to the variation”.

11 After subsection 11(10)

Insert:

(10A) This subsection applies to a variation of a contract of insurance if:

- (a) the variation:
 - (i) is involved in a renewal, extension or reinstatement of the contract; or
 - (ii) will provide a kind of insurance cover that was not provided by the contract immediately before the variation; or
 - (iii) in the case of a contract of life insurance—will increase a sum insured under the contract in respect of one or more of the life insureds; and
- (b) the variation is not an automatic variation but is required to be expressly agreed between the insurer and the insured before the contract is varied.

12 Section 22

Repeal the section, substitute:

22 Insurer to inform of duty of disclosure

- (1) The insurer must, before a contract of insurance is entered into, clearly inform the insured in writing:
 - (a) of the general nature and effect of the duty of disclosure; and
 - (b) if section 21A or 21B applies to the contract—of the general nature and effect of that section; and
 - (c) if the contract is a contract of life insurance—of the effect of section 31A; and
 - (d) that the duty of disclosure applies until the proposed contract is entered into.

Endnote 5—Uncommenced amendments

- (2) If the proposed contract is a contract of life insurance, the insurer must also, before the contract is entered into, clearly inform, in writing, any person (other than the insured) who, under the contract, would become a life insured of the matters referred to in subsection (1).
- (3) If:
- (a) an insurer complies with subsection (1) in relation to a proposed contract of insurance; and
 - (b) the insurer accepts an offer by the insured to enter into the proposed contract, or makes a counter-offer to enter into another contract of insurance with the insured; and
 - (c) the insurer's acceptance or counter-offer is made more than 2 months after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the proposed contract;
- then the insurer must give to the insured, with the acceptance or counter-offer, a reminder notice stating that the duty of disclosure applies until the proposed or other contract is entered into.
- (4) If the regulations prescribe a form of writing to be used:
- (a) for informing a person of the matters referred to in subsection (1); or
 - (b) for the reminder notice referred to in subsection (3);
- the writing to be used may be in accordance with the prescribed form.
- (5) An insurer who has not complied with subsection (1) and (if applicable) subsection (2) may not exercise a right in respect of a failure to comply with the duty of disclosure, unless the failure was fraudulent.
- (6) If:
- (a) an insurer is required to comply with subsection (3) in relation to a contract of insurance; and
 - (b) the insurer does not do so;
- then the insurer may not exercise a right in respect of a failure to comply with the duty of disclosure in relation to a new matter relating to the contract, unless the failure was fraudulent.
-

- (7) For the purposes of subsection (6), a *new matter* relating to a contract of insurance is a matter of which the insured first becomes aware after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the contract.

14 After section 31

Insert:

31A Non-disclosure by life insured

- (1) This section applies in relation to a contract of life insurance under which a person (other than the insured) would become a life insured.
- (2) If, during the negotiations for the contract but before it was entered into, the person (the *life insured*) failed to disclose to the insurer a matter that was known to the life insured, being a matter that:
- (a) the life insured knew to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
 - (b) a reasonable person in the circumstances could have been expected to know to be a matter so relevant, having regard to factors including, but not limited to:
 - (i) the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and
 - (ii) the class of persons who would ordinarily be expected to apply for insurance cover of that kind;
- this Act has effect as if the failure to disclose the matter had been a failure by the insured to comply with the duty of disclosure in relation to the matter.
- (3) Subsection (2) does not apply in relation to a failure by the life insured to disclose a matter:
- (a) that diminishes the risk; or
 - (b) that is of common knowledge; or
 - (c) that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or
 - (d) as to which compliance with the duty of disclosure is waived by the insurer.

Endnote 6—Modifications [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]