



# **Insurance Contracts Act 1984**

## **Act No. 80 of 1984 as amended**

This compilation was prepared on 1 July 2003  
taking into account amendments up to Act No. 36 of 2003

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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**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** *[see Note 1]*

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

### **2 Commencement** *[see Note 1]*

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to a contract of insurance or proposed contract of insurance to or in relation to which this Act applies, are repealed in so far as they are part of the law of the Commonwealth or of an external Territory to which this Act extends.
- (2) Section 8 of the *Acts Interpretation Act 1901* extends to those Imperial Acts as so repealed as though they were Acts of the Parliament repealed by this Act.

### **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.

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- (2) The application of sections 32, 54 and 56 extends to and in relation to a blanket 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 registered health benefits organization, as an insurer, in respect of its business as a registered organization within the meaning of Part VI of the *National Health Act 1953*; 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 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.
- (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,

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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.

### 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

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- (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*.

***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 section 13.

***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.

***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

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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 or retirement scheme.

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

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

***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;
  - (b) an individual superannuation contract is a superannuation contract as referred to in paragraph (a) under which there can be one life insured only; and
  - (c) a blanket superannuation contract is a superannuation contract as referred to in paragraph (a) that is not an individual superannuation contract.
- (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:

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- (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, 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, 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 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.

- (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.

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

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- (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.

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

Penalty: 150 penalty units.

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

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

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- (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.

### **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.

## **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**

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.

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

### **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.

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- (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.

## **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—The 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.

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*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:
    - (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:
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(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.

## 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.

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- (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**

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

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- (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 or retirement 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 misrepresentation**

### **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**

- (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

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- (d) the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds.
- (2) If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.
- (3) If the insurer would not have been prepared to enter into a contract of life insurance with the insured on any terms if the duty of disclosure had been complied with or the misrepresentation had not been made, the insurer may, within 3 years after the contract was entered into, avoid the 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 before the expiration of 3 years after the contract was entered into, 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

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

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.

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



### 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:

*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

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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).
- (4) A variation of a contract under subsection (2) 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
  - (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 member of scheme**

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 under a blanket superannuation contract in respect of a proposed member of the relevant superannuation or retirement scheme as though:

- (a) the insurance cover provided by that contract in respect of that member were provided by an individual superannuation contract between the insurer as insurer and the trustee for the purposes of the scheme as the insured; and
- (b) that contract had been entered into at the time when the proposed member became a member of the scheme.

### **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.

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

## **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, 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.

#### **41 Liability insurance: insured may require insurer to elect**

- (1) This section applies where it would constitute a breach of a contract of liability insurance if, without the consent of the insurer, the insured were to:
  - (a) settle or compromise a claim made against the insured; or

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- (b) make an admission or payment in respect of such a claim.
- (2) An insured who has made a claim under a contract of liability insurance may at any time, by notice in writing given to the insurer, require the insurer to inform the insured 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 insured, the negotiations and any legal proceedings in respect of the claim made against the insured.
- (3) Where the insurer does not, within a reasonable time after the notice was given, inform the insured that the insurer admits that the contract of liability insurance applies to the claim and that the insurer proposes to conduct, on behalf of the insured, the negotiations and any legal proceedings in respect of the claim made against the insured, the insurer may not refuse payment of the claim, and the amount payable in respect of the claim is not reduced, by reason only that the insured 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.
- (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

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

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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.
- (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 Entitlement of named persons to claim**

- (1) Where a person who is not a party to a contract of general insurance is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by the contract extends, that person has a right to recover the amount of the person's loss from the insurer in accordance with the contract notwithstanding that the person is not a party to the contract.
- (2) Subject to the contract, a person who has such a right:

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- (a) has, in relation to the person's claim, the same obligations to the insurer as the person would have if he 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.

### **48AA Life policy in connection with an RSA for the benefit of another person**

- (1) Where a person who is not a party to a contract of life insurance entered into in connection with an RSA, where the owner of the policy is an RSA provider, is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by the contract extends, that person has a right to recover a benefit from the insurer in accordance with the contract notwithstanding that he or she is not a party to the contract.
- (2) Subject to the contract, a person who has such a right:
  - (a) has, in relation to his or her claim, the same obligations to the insurer as he or she would have if he or she 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 he or she would have in an action by the insured.

### **48A Life policy for the benefit of another person**

- (1) This section applies to a contract of life insurance effected on the life of a person but expressed to be for the benefit of another person specified in the contract (the *third party*).
- (2) The following provisions have effect in relation to a contract to which this section applies:
  - (a) any money that becomes payable under the contract is payable to the third party, even though he or she is not a party to the contract;

- (b) money paid under the contract does not form part of the estate of the person whose life is insured.
- (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

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- (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.

**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
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- (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 Right of third party to recover against insurer

- (1) Where:
  - (a) the insured under a contract of liability insurance is liable in damages to a person (in this section called the *third party*);
  - (b) the insured has died or cannot, after reasonable enquiry, be found; and
  - (c) the contract provides insurance cover in respect of the liability;the third party may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the insured's liability in damages.
- (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 of the insured's legal personal representative to the third party.

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- (3) This section does not affect any right that the third party has in respect of the insured's liability, 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.

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

(2) If:

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

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 behalf of all of those insureds 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 of each of the insureds 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.
- (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.

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(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;whichever is the earlier.

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- (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*.

## 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

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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.
- (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 or 77 with respect to the cancellation of the contract for non-payment of an instalment of the premium.
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- (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 void**

Except as provided by this Act, an insurer may not cancel a contract of general insurance and any purported cancellation in contravention of this section is of no effect.

## Part VIII—Subrogation

### 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 third party an amount that exceeds the amount that the third party may recover under his 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 moneys recovered under subrogation

- (1) Where an insurer, in exercising a right of subrogation in respect of a loss, recovers an amount, the insured may recover that amount from the insurer.
- (2) Unless the contract expressly provides otherwise, the insured may not recover under subsection (1):
  - (a) an amount greater than the amount (if any) by which the amount recovered by the insurer exceeds the amount paid to the insured by the insurer in relation to the loss; or
  - (b) an amount that, together with the amount paid to the insured under the contract, is greater than the amount of the insured's loss.

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- (3) The rights of an insured and insurer under the preceding provisions of this section are subject to any agreement made between them after the loss occurred.
- (4) A reference in this section to an amount recovered by an insurer shall be construed as a reference to the amount so recovered less the administrative and legal costs incurred in connection with the recovery of the amount.

**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:

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- (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, a statement 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, a statement, any other document or any 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, a statement, any other document or any information as mentioned in this Act;
- the insurer shall be deemed to have given the notice, statement, 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, a statement, any other document or any 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 Legibility of writing

A reference in this Act to the giving of a notice, a statement or information to a person, in writing, is a reference to giving the person a notice, statement or information in writing that complies with the requirements, if any, prescribed as to the legibility of the notice, statement or information, as the case requires.

## 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;

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(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;



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- (b) cancels such a contract;
- (c) indicates to the insured that he 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 he 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 his 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.

- (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.

### 76A Liability of directors and employees etc.

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

- (b) if there is no penalty provided for an individual—a penalty not exceeding one-fifth of the penalty applying to the company or corporation in respect of the contravention.
- (3) If:
  - (a) a company or corporation is the agent of an individual; and
  - (b) a director of the company, or an employee or agent of the corporation, intentionally or recklessly permits or authorises a contravention of this Act by the company or corporation in its capacity as agent of the individual;then, despite subsection (1), the offence committed by the company or corporation as agent is punishable by a penalty not exceeding 5 times the penalty applying to the individual.

## 77 Giving notices

- (1) A notice or other document that is by this Act required or permitted to be given may be given:
  - (a) to a body corporate—in any way in which documents may be served on the body corporate; and
  - (b) to a natural person:
    - (i) personally; or
    - (ii) by post to that person at the person's last-known address.
- (2) If a notice of cancellation of a contract of insurance is given to an insured by post, the notice shall be deemed to have been given at the time at which it would have been delivered in the ordinary course of post unless the insured proves that, through no fault of the insured, the insured did not receive it.

## 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.



**Table of Acts****Notes to the *Contracts Act 1984*****Note 1**

The *Insurance Contracts Act 1984* as shown in this compilation comprises Act No. 80, 1984 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 22 April 1998 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Insurance Contracts Act 1984</i>	80, 1984	25 June 1984	1 Jan 1986 ( <i>see Gazette</i> 1985, No. S487)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	—
<i>Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985</i>	187, 1985	16 Dec 1985	Part VIII (s. 60): 6 Jan 1986 ( <i>see Gazette</i> 1985, No. S551) (b)	S. 60(3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: 1 Jan 1986 ( <i>see Gazette</i> 1985, No. S487) (c)	S. 16
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: 1 Jan 1986 ( <i>see Gazette</i> 1985, No. S487) (d)	S. 9
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1986</i>	168, 1986	18 Dec 1986	S. 3: 1 Jan 1986 (e)	S. 5(1)
<i>Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991</i>	149, 1991	21 Oct 1991	1 Nov 1991	S. 50(2)
<i>Insurance Laws Amendment Act (No. 2) 1994</i>	49, 1994	7 Apr 1994	Ss. 1–3 and Schedule (items 1, 2, 4, 5, 7, 7–19): Royal Assent Remainder: 1 Oct 1994 ( <i>see Gazette</i> 1994, No. GN38)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Life Insurance (Consequential Amendments and Repeals) Act 1995</i>	5, 1995	23 Feb 1995	1 July 1995 (see s. 2 and <i>Gazette</i> 1995, No. GN24)	—
<i>Crimes and Other Legislation Amendment Act 1997</i>	20, 1997	7 Apr 1997	Schedule 2 (item 6): Royal Assent (f)	—
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
<i>Financial Laws Amendment Act 1997</i>	107, 1997	30 June 1997	Schedule 8: Royal Assent (g)	—
<i>Insurance Laws Amendment Act 1998</i>	35, 1998	22 Apr 1998	Schedule 1 (items 77–84): 30 Apr 1998 (see <i>Gazette</i> 1998, S188) (h)	Sch. 1 (items 82–84) [see Table A]
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 12: 1 July 1998 (see <i>Gazette</i> 1998, S316) (i)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (item 117): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (j)	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
<b>as amended by</b>				
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
<i>Export Finance and Insurance Corporation Amendment Act 2000</i>	11, 2000	15 Mar 2000	Schedule 1 (item 4): 1 July 1998 Schedule 2 (items 2–4): 1 July 2000 Remainder: Royal Assent	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001</i>	117, 2001	18 Sept 2001	S. 4 and Schedule 3 (items 5–14): 15 Dec 2001 (k)	S. 4 [see Table A]
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 246–249): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (l)	—
<i>Insurance and Aviation Liability Legislation Amendment Act 2002</i>	96, 2002	10 Nov 2002	Schedule 1 (items 1–4): 23 July 1998 (see s. 2(1)) Remainder: Royal Assent	S. 4 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003</i>	36, 2003	2 May 2003	1 July 2003	—

## Act Notes

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- (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.

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.
  - (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(1), (2)(e) and (16) of which provide as follows:
    - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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**Act Notes**

- (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.

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 9 .....	am. Nos. 65 and 187, 1985; No. 76, 1986; No. 149, 1991; No. 107, 1997; No. 11, 2000; No. 96, 2002
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
S. 11AA .....	ad. No. 117, 2001
<b>Part IA</b>	
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(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(4) .....	ad. No. 117, 2001
Note to s. 11D(5) .....	ad. No. 117, 2001
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
Ss. 11G, 11H .....	ad. No. 49, 1994 rep. No. 54, 1998
<b>Part II</b>	
S. 15 .....	rs. No. 65, 1985; No. 49, 1994
<b>Part III</b>	
<b>Division 1</b>	
S. 16 .....	am. No. 5, 1995
<b>Division 2</b>	
Div. 2 of Part III .....	rs. No. 5, 1995

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 18 .....	rs. No. 5, 1995
S. 19 .....	rep. No. 5, 1995
<b>Part IV</b>	
<b>Division 1</b>	
S. 21 .....	am. No. 107, 1997
S. 21A .....	ad. No. 35, 1998
S. 22 .....	am. No. 35, 1998
<b>Division 2</b>	
S. 26 .....	am. Nos. 62 and 107, 1997
S. 27 .....	am. No. 107, 1997
<b>Division 3</b>	
Ss. 28, 29.....	am. No. 107, 1997
S. 32A .....	ad. No. 62, 1997
<b>Part V</b>	
<b>Division 1</b>	
S. 35 .....	am. Nos. 65 and 193, 1985; No. 107, 1997
S. 37 .....	am. No. 65, 1985; No. 168, 1986
<b>Division 2</b>	
S. 40 .....	am. No. 49, 1994
S. 41 .....	am. No. 65, 1985; No. 107, 1997
S. 44 .....	am. No. 107, 1997
Ss. 46, 47.....	am. No. 107, 1997
S. 48 .....	am. No. 5, 1995; No. 107, 1997
S. 48AA.....	ad. No. 62, 1997
S. 48A .....	ad. No. 5, 1995
S. 49 .....	am. No. 168, 1986; No. 107, 1997
S. 51 .....	am. No. 107, 1997
<b>Division 3</b>	
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
<b>Part VI</b>	
S. 57 .....	am. No. 107, 1997; No. 35, 1998
<b>Part VII</b>	
S. 58 .....	am. No. 168, 1986; No. 107, 1997
S. 59 .....	am. No. 5, 1995; No. 107, 1997
Heading to s. 64.....	am. No. 49, 1994
S. 64 .....	am. No. 49, 1994; No. 5, 1995; Nos. 62 and 107, 1997 rep. No. 123, 2001
S. 64A .....	ad. No. 49, 1994 rep. No. 123, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 64B .....	ad. No. 5, 1995 rep. No. 123, 2001
<b>Part VIII</b>	
S. 65 .....	am. No. 49, 1994; No. 107, 1997
S. 66 .....	am. No. 107, 1997; No. 54, 1998
S. 68 .....	am. No. 107, 1997
<b>Part IX</b>	
S. 69 .....	am. No. 65, 1985; No. 168, 1986; No. 35, 1998
S. 71 .....	am. No. 168, 1986
S. 71A .....	ad. No. 49, 1994 rep. No. 123, 2001
S. 72 .....	am. No. 107, 1997
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
Note to s. 75(3) .....	ad. No. 117, 2001
Note to s. 75(7) .....	ad. No. 117, 2001
<b>Part X</b>	
S. 76 .....	am. No. 107, 1997
S. 76A .....	ad. No. 49, 1994
S. 77 .....	am. No. 107, 1997

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Insurance Laws Amendment Act 1998* (No. 35, 1998)

**Schedule 1**

**82 Application—section 9A of the *Insurance Contracts Act 1984***

Section 9A of the *Insurance Contracts Act 1984* applies to a contract of marine insurance entered into after the commencement of this item.

**83 Application—section 21A of the *Insurance Contracts Act 1984***

Section 21A of the *Insurance Contracts Act 1984* applies to an eligible contract of insurance entered into after the commencement of this item.

**84 Application—section 22 of the *Insurance Contracts Act 1984***

The amendment of section 22 of the *Insurance Contracts Act 1984* made by this Schedule applies to an eligible contract of insurance entered into after the commencement of this item.

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*Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001* (No. 117, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

## **Table A**

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*Insurance and Aviation Liability Legislation Amendment Act 2002*  
(No. 96, 2002)

### **4 Application**

The amendment made by item 6 of Schedule 1 applies to a provision included in a contract of insurance after the commencement of the item, including a provision included by varying a contract entered into before the commencement of the item.