



# Insurance Contracts Act 1984

No. 80 of 1984

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# Insurance Contracts Act 1984

No. 80 of 1984

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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**

[Assented to 25 June 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

### Short title

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

### Commencement

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

### Repeals

3. (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to or in relation to which this Act applies, are repealed in so far as they are part of the law of the Commonwealth or of an external Territory to which this Act extends.

(2) Section 8 of the *Acts Interpretation Act 1901* extends to those Imperial Acts as so repealed as though they were Acts of the Parliament repealed by this Act.

#### **Previous contracts**

4. (1) Subject to sub-section (2), this Act does not apply to or in relation to a contract of insurance that was entered into before the date of commencement of this Act.

(2) The application of sections 32, 54 and 56 extends to and in relation to a 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.

#### **Crown to be bound**

5. (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.

#### **Extension to external Territories**

6. (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.

#### **Effect of Act on other laws**

7. 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 a 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.

#### **Application of Act**

8. (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 sub-section (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.

### **Exceptions to application of Act**

9. (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;
- (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*;
- (c) of insurance entered into, or proposed to be entered into, by a friendly society or by the Export Finance and Insurance Corporation;
- (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, 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.

### **Contracts of insurance**

10. (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.

**Interpretation**

**11. (1)** In this Act, unless the contrary intention appears—

“avoid”, in relation to a contract of insurance, means avoid from its inception;

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

“broker’s placing slip” means a document that—

(a) is evidence of a contract of insurance; and

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

“business day” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday;

“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 society registered under a State Act or a law of a Territory providing for the registration of friendly or benefit societies;

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

“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 but does not include a person who is a supplier within the meaning of section 73;

“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;

“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.

(3) For the purposes of this Act, a contract of life insurance is—

- (a) a contract that provides for payment of money on the death of a person (not being death by accident or sickness only) or on the happening of a contingency dependent on the termination or continuance of human life;
- (b) a continuous disability insurance contract; or
- (c) a contract that provides for payment of an annuity for a term dependent on the continuation of human life.

(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 is 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.

(5) For the purposes of this Act, a continuous disability insurance contract is a contract of insurance—

- (a) that is entered into by a company registered under section 15 of the *Life Insurance Act 1945* as an insurer;
- (b) that is, by its terms, to be of more than one year’s duration; and
- (c) under which a person is entitled to a benefit in the event of—
  - (i) the occurrence of death by accident or by some other cause specified in the contract; or
  - (ii) injury or disability caused by accident or sickness.



(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) A reference in this Act to the entering into of a contract of insurance includes a reference to—

- (a) the making of an agreement by the parties to a contract of insurance to renew, extend or vary that contract; or
- (b) the reinstating of a previous contract of insurance.

## **PART II—THE DUTY OF THE UTMOST GOOD FAITH**

### **This Part not to be read down**

12. 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.

### **The duty of the utmost good faith**

13. 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.

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

14. (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) Sub-section (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.

### **Certain other laws not to apply**

15. (1) A contract of insurance to which this Act applies is not capable of being made the subject of relief under—

- (a) any other Act;
- (b) a State Act; or

(c) an Act or Ordinance of a Territory,  
that provides for relief in respect of harsh, oppressive, unconscionable, unjust,  
unfair or inequitable contracts.

(2) Without limiting the generality of sub-section (1)—

- (a) that sub-section extends to relief from the consequences in law of making a misrepresentation; and
- (b) the nature of the relief to which that sub-section applies includes relief by way of variation, avoidance or termination of a contract.

### **PART III—INSURABLE INTERESTS**

#### ***Division 1—General Insurance***

##### **Insurable interest not required**

**16. (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.

(2) Sub-section (1) does not apply to a contract that provides for the payment of money on the death of a person by accident or sickness but not otherwise.

##### **Legal or equitable interest not required at time of loss**

**17.** 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—Life Insurance***

##### **Insurable interest required**

**18. (1)** Where the insured under—

- (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,

did not, at the time when the contract was entered into, have an insurable interest in the life of the life insured or of each life insured, the contract is void.

(2) Sub-section (1) does not apply to or in relation to a child's advancement policy as defined by section 114 of the *Life Insurance Act 1945*.

##### **Insurable interests**

**19. (1)** A person has an insurable interest in his own life and in the life of his spouse.

(2) A parent of a person who has not attained the age of 18 years, and a guardian of such a person, has an insurable interest in the life of that person.

(3) A person who is likely to suffer a pecuniary or economic loss as a result of the death of some other person has an insurable interest in the life of that other person.

(4) Without limiting the generality of sub-section (3)—

- (a) a body corporate has an insurable interest in the life of an officer or employee of the body corporate;
- (b) an employer has an insurable interest in the life of his employee and an employee has an insurable interest in the life of his employer; and
- (c) a person has an insurable interest in the life of a person on whom he depends, either wholly or partly, for maintenance and support.

(5) Where a person has an insurable interest in the life of some other person, the amount of that interest is unlimited.

### ***Division 3—Naming of Persons Benefited***

#### **Persons benefited need not be named**

20. 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***

#### **The insured's duty of disclosure**

21. (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 his 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.

### **Insurer to inform of duty of disclosure**

**22. (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.

(2) If the regulations prescribe a form of writing to be used for informing an insured of the matters referred to in sub-section (1), the writing to be used may be in accordance with the form so prescribed.

(3) An insurer who has not complied with sub-section (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***

### **Ambiguous questions**

**23. 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.

### **Warranties of existing facts to be representations**

**24.** 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.

### **Misrepresentation by life insured**

**25.** 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.

**Certain statements not misrepresentations**

26. (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 he held, being a belief that a reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation.

(2) A statement that was made by a person in connection with a proposed contract of insurance shall not be taken to be a misrepresentation unless the person who made the statement knew, or a reasonable person in the circumstances could be expected to have known, that the statement would have been relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.

(3) This section extends to the provision of insurance cover in respect of a person who is seeking to become a member of a superannuation or retirement scheme.

**Failure to answer questions**

27. A person shall not be taken to have made a misrepresentation by reason only that he 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***

**General insurance**

28. (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 sub-section (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 him in a position in which he would have been if the failure had not occurred or the misrepresentation had not been made.

**Life insurance**

29. (1) This section applies where the person who became the insured under a contract of life insurance upon the contract being entered into—

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

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

but does not apply where—

(c) the insurer would have entered into the contract even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or

(d) the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds.

(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 sub-section (2) or (3) or otherwise, he 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 sub-section (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 sub-section (4) has effect from the time when the contract was entered into.

### **Misstatements of age**

30. (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 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 sub-section (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 sub-section (2) has effect from the time when the contract was entered into.

#### **Court may disregard avoidance in certain circumstances**

**31. (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 sub-section (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 sub-section (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 sub-section (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.

#### **Non-disclosure or misrepresentation by member of scheme**

32. 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.

#### **No other remedies**

33. 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***

#### **Interpretation**

34. 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.



**Notification of certain provisions**

**35. (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 sub-section, 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) Sub-section (1) does not have effect where the insurer proves that, before the contract was entered into, he clearly informed the insured in writing 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 sub-section (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 sub-section (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 sub-section (1) to that contract.

**Interpretation of regulations**

36. 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.

**Notification of unusual terms**

37. 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 loss occurred—

- (a) the insurer gave to the insured a copy of the policy document or of the provision; or

- (b) the insurer clearly informed the insured in writing of the effect of the provision.

***Division 2—General Provisions relating to Insurance Contracts***

**Interim contracts of insurance**

**38. (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 sub-section 68 (1) do not apply in relation to interim contracts of insurance.

**Instalment contracts of general insurance**

**39.** 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.

**Certain contracts of liability insurance**

**40. (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 sub-section (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: \$5,000.

(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.

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

**41. (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 him; or
- (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 him in writing—

- (a) whether the insurer admits liability in respect of the claim; and
- (b) if the insurer admits liability, whether he 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 he admits liability in respect of the claim and 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 sub-section (1).

**Maximum cover for premium**

**42.** 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.

**Arbitration provisions**

**43. (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) Sub-section (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.

**Average provisions**

**44. (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.

(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 sub-section, an average provision included in the contract would have the effect of reducing the liability of the insurer in respect of loss of or damage to the property to an amount that is less than the

amount ascertained in accordance with the formula  $\frac{AS}{P}$ , where—

- A** is the number of dollars equal to the amount of the loss or damage;
- S** is the amount of the sum insured under the contract in respect of the property; and
- P** is 80% of the number of dollars equal to the value of the property,

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

(4) A reference in this section to the value of property is a reference to the value of that property at the time when the relevant contract was entered into.

**“Other insurance” provisions**

45. (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) Sub-section (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.

**Pre-existing defect or imperfection**

46. (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 his liability under the contract by reference to the condition, at a time before the contract was entered into, of the thing.

**Pre-existing sickness or disability**

47. (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 his 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.

**Entitlement of named persons to claim**

48. (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 his loss from the

insurer in accordance with the contract notwithstanding that he 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 claim, the same obligations to the insurer as he 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 he would have in an action by the insured.

(4) Where a contract of life insurance effected by a person upon his own life is expressed to be for the benefit of a person specified or referred to in the contract, whether by name or otherwise, that second-mentioned person has a right to recover the moneys payable under the contract from the insurer in accordance with the contract notwithstanding that the second-mentioned person is not a party to the contract, and the moneys payable under the contract do not form part of the estate of the person whose life is insured and are not subject to his debts.

(5) Section 94 of the *Life Insurance Act 1945* does not apply in relation to a policy within the meaning of that Act that is entered into after the commencement of this Act.

**Where sum insured exceeds value of insured's interest**

49. (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 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 his liability to the insured in respect of the loss; and

(b) within 3 months after the day on which the loss occurred, a person who is not the insured but has an interest in the property gives to the insurer a notice in writing informing the insurer of his 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 sub-section (3) shall be divided between them in proportion to the values of their interests in the property.

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

### **Sale of insured property**

**50. (1) Where—**

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

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

- (d) the time when the sale or assignment is completed;
- (e) the time when the purchaser enters into possession of the building;
- (f) the time when insurance cover under a contract of insurance effected by the purchaser in respect of the building commences;
- (g) the time when the sale or assignment is terminated.

(2) A reference in this section to a building includes a reference to a part of a building and also includes a reference to a structure.

### **Right of third party to recover against insurer**

**51. (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 sub-section (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 his legal personal representative to the third party.

(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.

#### **“Contracting out” prohibited**

52. (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 sub-section, 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) Sub-section (1) does not apply to or in relation to a provision the inclusion of which in the contract is expressly authorized by this Act.

#### **Variation of contracts of insurance**

53. 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***

#### **Insurer may not refuse to pay claims in certain circumstances**

54. (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 sub-section (2) applies, the insurer may not refuse to pay the claim by reason only of that act but his 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 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.

#### **No other remedies**

55. 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.

## **PART VI—CLAIMS**

### **Fraudulent claims**

56. (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 sub-section (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.

### **Interest on claims**

57. (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 sub-section (2) is the rate that is the prescribed rate in respect of that day.

## **PART VII—EXPIRATION, RENEWAL AND CANCELLATION**

### **Insurer to notify of expiration of contracts of general insurance**

**58. (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 a notice in writing informing him 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 sub-section (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 some other insurer insurance cover to replace that provided by the original contract,

whichever is the earlier.

- (4) Where a contract of insurance is in force by virtue of sub-section (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 ascertained in accordance with the formula  $\frac{A \ B}{C}$ , where—
- A** is the number of days in the period that commenced on the day on which the contract came into force and ended on the day on which the claim was made;
- B** is the amount 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; and
- C** is the number of days in the period of the original contract.

#### **Cancellation procedure**

**59. (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 o'clock in the afternoon of the third business day, or in the case of a contract of life insurance, the twentieth business day, after the day on which the notice was given to the insured;
  - (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.

(3) This section does not apply to a contract of life insurance to which section 100 of the *Life Insurance Act 1945* applies.

#### **Cancellation of contracts of general insurance**

**60. (1)** Where, in relation to a contract of general insurance—

- (a) a person who is or was at any time the insured failed to comply with the duty of the utmost good faith;
- (b) the person who was the insured at the time when the contract was entered into failed to comply with the duty of disclosure;

- (c) the person who was the insured at the time when the contract was entered into made a misrepresentation to the insurer during the negotiations for the contract but before it was entered into;
- (d) a person who is or was at any time the insured failed to comply with a provision of the contract, including a provision with respect to payment of the premium; or
- (e) the insured has made a fraudulent claim under the contract or under some other contract of insurance (whether with the insurer concerned or with some other insurer) that provides insurance cover during any part of the period during which the first-mentioned contract provides insurance cover,

the insurer may cancel the contract.

**(2) Where—**

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

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

(3) A reference in sub-section (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.

**Insurers in liquidation**

**61. (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) Sub-section (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.

**Cancellation of instalment contracts of general insurance**

**62. (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.

- (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.

**Cancellations void**

**63.** 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.

**“Free-look” period: life insurance**

**64. (1)** An insured under a contract of life insurance other than a blanket superannuation contract has a right, exercisable at any time before the expiration of 14 days after he receives the policy document, to cancel the contract.

(2) Where an insured so cancels a contract, the insurer is liable to repay an amount equal to the sum of all the amounts that have been paid to him under the contract.

(3) A reference in this section to a policy document does not include a reference to a special policy issued as mentioned in sub-section 119 (1) of the *Life Insurance Act 1945*.

(4) If the policy document in relation to a contract of life insurance is sent to the insured by post, that policy document shall be deemed, for the purposes of sub-section (1), to have been received by the insured 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 his own, he did not receive it.

**PART VIII—SUBROGATION**

**Subrogation to rights against family, &c.**

- 65. (1)** Subject to sub-section (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 his employment by the insured; or
- (b) was serious or wilful misconduct.

(3) Where the third party is not insured in respect of his 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 his 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 him 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 he so assign them.

Penalty: \$5,000.

(6) An assignment made in compliance with such a condition or in pursuance of such an invitation or suggestion is void.

(7) In sub-section (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.

### **Subrogation to rights against employees**

66. 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 his 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.

### **Rights with respect to moneys recovered under subrogation**

67. (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 sub-section (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.
- (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.

**Contracts affecting rights of subrogation**

- 68. (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 he 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**

**Giving of information to insureds**

- 69. (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 or before a loss occurred; 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 or the loss occurred, as the case may be.
- (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 or before a loss occurred; 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 or the loss occurred, as the case may be.

(3) Where information as mentioned in sub-section (1) or (2) is given in writing after the contract was entered into or the loss occurred, as the case may be, but at a time later than 14 days after the day on which the contract was entered into or the loss occurred, as the case may be—

- (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 or the loss occurred, as the case may be 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 or the loss occurred, as the case may be.

#### **Notices to be given to life insureds in certain cases**

70. 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.

#### **Agency**

71. (1) A provision of this Act 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.

#### **Legibility of writing**

72. 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 him 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.



**Insurance arranged in connection with supply of goods and services**

**73. (1)** Where a person (in this section called the “supplier”) proposes to arrange, on behalf of the insured or the insurer, a contract of insurance in connection with the supply of goods or services by the supplier to the insured, the supplier shall, before the contract is entered into, clearly inform the insured in writing—

- (a) of the amount or rate of the premium that would be payable under the contract;
- (b) of the amount of any remuneration and the nature of any other benefit received or to be received by the supplier, in relation to arranging the contract, from any person; and
- (c) that the insurance may be arranged with an insurer of the insured’s choice.

Penalty—

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

**(2)** The reference in sub-section (1) to the supply of services includes a reference to the provision of credit.

**Policy documents to be supplied on request**

**74. (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: \$5,000.

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

**Reasons for cancellation, &c., to be given**

**75. (1)** Where an insurer—

- (a) does not accept an offer to enter into a contract of insurance;
- (b) cancels a contract of insurance;
- (c) indicates to the insured that he 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 he would otherwise offer,

he shall, if the insured so requests in writing given to the insurer, give to the 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 insurance cover on less advantageous terms, as the case may be.

Penalty: \$5,000.

(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 sub-section (1) in relation to the request.

(3) In relation to a contract of life insurance where the insured is not the life insured, sub-section (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.

(4) In relation to a contract of life insurance where the insured is not the life insured, a statement given under sub-section (1) shall not include any reference to the state of health of the life insured.

(5) Where an insurer—

- (a) does not accept an offer to enter into a contract of life insurance;
- (b) cancels such a contract;
- (c) indicates to the insured that 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: \$5,000.

(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 sub-section (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.

(8) A prosecution for an offence arising under this section shall not be instituted except with the consent of the Attorney-General.

**PART X—MISCELLANEOUS**

**Contribution between insurers**

**76. (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 sub-section (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 him fully in respect of the loss.

**(2)** Nothing in sub-section (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.

**Giving notices**

**77. (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 his 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 his own, he did not receive it.

**Regulations**

**78.** 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.