



Insurance Contracts Amendment Act 2012

No. 41, 2012

**An Act to amend the *Insurance Contracts Act 1984*,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Definition of flood		3
	<i>Insurance Contracts Act 1984</i>	3
Schedule 2—Key Facts Sheets		7
	<i>Insurance Contracts Act 1984</i>	7



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An Act to amend the *Insurance Contracts Act 1984*, and for related purposes

[Assented to 15 April 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Insurance Contracts Amendment Act 2012*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Definition of flood

Insurance Contracts Act 1984

1A Paragraph 11(10)(a)

After “37”, insert “, 37C”.

1B Paragraph 11(10)(c)

After “37”, insert “, 37C”.

1 After Division 1 of Part V

Insert:

Division 1A—Definition of flood

37A Application of this Division

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

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

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

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

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

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

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

- (1) This section applies in relation to a prescribed contract that includes provisions (*flood provisions*) that provide insurance cover in respect of loss or damage caused by, or resulting from, one or more flood events (whether or not the contract expressly provides insurance cover for flood as defined by the regulations).
- (2) The flood provisions of the prescribed contract are taken to provide insurance cover in respect of loss or damage caused by, or resulting from, flood as defined by the regulations.
- (3) The insurer under the prescribed contract may not refuse to pay a claim in respect of loss or damage caused by, or resulting from, the

happening of a flood event by reason only that, but for subsection (2), insurance cover in respect of loss or damage caused by, or resulting from, that event was not provided by the contract.

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

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

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

If:

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

2 Subsection 38(3)

After “37”, insert “, 37C”.

Schedule 2—Key Facts Sheets

Insurance Contracts Act 1984

1 Subsection 11(1)

Insert:

engage in conduct means:

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

2 Subsection 11(1)

Insert:

this Act includes the regulations.

3 Division 1 of Part IV (heading)

Repeal the heading, substitute:

Division 1—Insured’s duty of disclosure

4 Division 2 of Part IV (heading)

Repeal the heading, substitute:

Division 2—Misrepresentations by insured

5 Division 3 of Part IV (heading)

Repeal the heading, substitute:

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

6 At the end of Part IV

Add:

Division 4—Key Facts Sheets

33A Application of this Division

This Division applies in relation to:

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

33B What is a *Key Facts Sheet*?

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

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

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

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

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

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

Offence

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

Penalty: 150 penalty units.

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

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

*[Minister's second reading speech made in—
House of Representatives on 23 November 2011
Senate on 20 March 2012]*

(251/11)
