



Insurance Contracts Amendment Act 2013

No. 75, 2013

**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/>)

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Insurance Contracts Amendment Act 2013

No. 75, 2013

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

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Insurance Contracts Amendment Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2013
2. Schedule 1	The day this Act receives the Royal Assent.	28 June 2013
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	28 December 2013
4. Schedule 3	The day this Act receives the Royal Assent.	28 June 2013
5. Schedule 4, Part 1	The day after the end of the period of 30 months beginning on the day this Act receives the Royal Assent.	28 December 2015
6. Schedule 4, Part 2, Division 1	The day this Act receives the Royal Assent.	28 June 2013
7. Schedule 4, Part 2, Division 2	The day after the end of the period of 30 months beginning on the day this Act receives the Royal Assent.	28 December 2015
8. Schedule 4, Parts 3 and 4	The day after the end of the period of 30 months beginning on the day this Act receives the Royal Assent.	28 December 2015
9. Schedule 5, Part 1	The day this Act receives the Royal Assent.	28 June 2013
10. Schedule 5, Part 2	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	28 June 2014

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 5, Parts 3 and 4	The day this Act receives the Royal Assent.	28 June 2013
12. Schedule 6, Parts 1 to 4	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	28 June 2014
13. Schedule 6, Part 5	The day this Act receives the Royal Assent.	28 June 2013
14. Schedule 6, Part 6	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	28 June 2014
15. Schedule 7	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	28 December 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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—Scope and application

Part 1—Duty of utmost good faith

Insurance Contracts Act 1984

1 Subsection 11(1) (definition of *duty of the utmost good faith*)

Omit “section 13”, substitute “subsection 13(1)”.

2 Subsection 11(1)

Insert:

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

3 Section 13

Before “A contract”, insert “(1)”.

4 At the end of section 13

Add:

- (2) A failure by a party to a contract of insurance to comply with the provision implied in the contract by subsection (1) is a breach of the requirements of this Act.
- (3) A reference in this section to a party to a contract of insurance includes a reference to a third party beneficiary under the contract.
- (4) This section applies in relation to a third party beneficiary under a contract of insurance only after the contract is entered into.

5 After section 14

Insert:

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

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

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

- (3) In this section:

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

6 Application

- (1) The amendments made by this Part apply to:
 - (a) a contract of insurance that is originally entered into after the commencement of this item; and
 - (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.
- (2) If:
 - (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and

Schedule 1 Scope and application

Part 1 Duty of utmost good faith

- (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
- (d) the amendments made by this Part apply to the contract to the extent of the variation.

Part 2—Bundled workers' compensation contracts

Insurance Contracts Act 1984

7 At the end of subsection 9(1)

Add:

; or (f) entered into or proposed to be entered into:

- (i) for the purposes of a law (including a law of a State or a Territory) that relates to workers' compensation; and
- (ii) to provide insurance cover in respect of an employer's liability under a rule of the common law that requires payment of damages to a person for employment-related personal injury.

8 Application

The amendment made by this Part applies to:

- (a) a contract of insurance that is originally entered into after the commencement of this item; and
- (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.

Part 3—Bundled contracts generally

Insurance Contracts Act 1984

9 After subsection 9(1)

Insert:

(1A) If a contract of insurance, or a proposed contract of insurance, includes:

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

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

(1B) Despite subsection (1A), if a contract of insurance, or a proposed contract of insurance, includes:

- (a) provisions (the ***first group of provisions***) for the purposes of a law referred to in subparagraph (1)(f)(i); and
- (b) provisions (the ***second group of provisions***) that provide insurance cover of the kind referred to in subparagraph (1)(f)(ii);

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

(1C) If:

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

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

10 Application

- (1) The amendment made by this Part applies to:
- (a) a contract of insurance that is originally entered into after the commencement of this item; and
 - (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.
- (2) If:
- (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;
- then:
- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
 - (d) the amendment made by this Part applies to the contract to the extent of the variation.

Schedule 2—Electronic communication

Insurance Contracts Act 1984

1 Subsection 62(1)

Omit “or 77”.

2 Section 70

Omit “a notice, a statement”, substitute “a notice or other document”.

3 Subsection 71(1)

Omit “a notice, a statement, any other document or any information”, substitute “a notice or other document or information”.

4 Paragraph 71(2)(b)

Omit “a notice, a statement, any other document or any information”, substitute “a notice or other document or information”.

5 Subsection 71(2)

Omit “notice, statement, other document”, substitute “notice, other document”.

6 Subsection 71(3)

Omit “a notice, a statement, any other document or any information”, substitute “a notice or other document or information”.

7 Section 72

Repeal the section, substitute:

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

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

- (a) the content and legibility of the notice, other document or information; and

- (b) the material that may accompany the notice, other document or information.

72A Method for giving written notices or documents

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

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

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

8 Section 77

Repeal the section.

9 Application

The amendments made by this Schedule apply in relation to a notice or other document or information given to a person under this Act after the commencement of this item.

Schedule 3—Powers of ASIC

Insurance Contracts Act 1984

1 At the end of Part IA

Add:

11F ASIC's power to intervene in proceedings

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

2 Application

The amendment made by this Schedule applies to a proceeding commenced after the commencement of this item.

Schedule 4—Disclosure and misrepresentations

Part 1—Insureds' duty of disclosure

Insurance Contracts Act 1984

1 Paragraph 21(1)(b)

Repeal the paragraph, substitute:

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

2 Application

- (1) The amendment made by this Part applies to:
 - (a) a contract of insurance that is originally entered into after the commencement of this item; and
 - (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.
- (2) If:
 - (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

Schedule 4 Disclosure and misrepresentations

Part 1 Insureds' duty of disclosure

- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
- (d) the amendment made by this Part applies to the contract to the extent of the variation.

Part 2—Eligible contracts of insurance

Division 1—Amendments commencing on Royal Assent

Insurance Contracts Act 1984

3 At the end of subsection 21A(1)

Add:

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

4 After section 21A

Insert:

21B Eligible contracts of insurance—disclosure before contract renewed

Scope

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

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

Position of the insurer

- (3) Before the contract is renewed, the insurer may do either or both of the following things:
 - (a) request the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms;
 - (b) give the insured a copy of any matter previously disclosed by the insured in relation to the contract and request the insured:

Schedule 4 Disclosure and misrepresentations
Part 2 Eligible contracts of insurance

- (i) to disclose to the insurer any change to that matter; or
- (ii) to inform the insurer that there is no change to that matter.

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

- (4) If the insurer does not:
- (a) make a request in accordance with paragraph (3)(a); or
 - (b) give the insured a copy of any matter previously disclosed by the insured and make a request in accordance with paragraph (3)(b);

then the insurer is taken to have waived compliance with the duty of disclosure in relation to the renewed contract.

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

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

then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

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

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

then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

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

Position of the insured

- (7) If:
-

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

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

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

(8) If:

- (a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b), but does not make a request in accordance with paragraph (3)(a); and
- (b) before the contract is renewed, the insured:
 - (i) discloses any change to the matter; or
 - (ii) if there is no change to the matter—informs the insurer that there is no change to the matter;

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

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

(9) If:

- (a) the insurer:
 - (i) makes a request in accordance with paragraph (3)(a); and
 - (ii) gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and
- (b) before the contract is renewed, the insured:
 - (i) discloses each matter referred to in paragraph (7)(b); and
 - (ii) does either of the things referred to in paragraph (8)(b);

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

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

(10) If:

- (a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and
- (b) before the contract is renewed, the insured does not disclose any change to the matter;

then the insured is taken to have informed the insurer that there is no change to the matter.

(11) If:

- (a) the insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and
- (b) before the contract is renewed, the insured informs the insurer under subsection (8) or (9), or is taken to have informed the insurer under subsection (10), that there is no change to the matter;

then neither subsection 21(3) nor section 27 applies in relation to any failure by the insured to disclose any change to the matter.

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

(12) If the insured failed to comply with the duty of disclosure in relation to the contract as originally entered into or any renewal of that contract, then, despite any other provision of this section:

- (a) the insurer is not taken to have waived compliance with the duty of disclosure in relation to the earlier failure; and
- (b) the insured is not taken to have complied with the duty of disclosure in relation to the earlier failure.

Definitions

(13) In this section:

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

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

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

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

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

5 At the end of subsection 22(1)

Add:

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

Division 2—Amendments commencing 30 months after Royal Assent

Insurance Contracts Act 1984

6 Section 21A

Repeal the section, substitute:

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

Scope

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

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

Position of the insurer

- (2) Before the contract is originally entered into, the insurer may request the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.
- (3) If the insurer does not make a request in accordance with subsection (2), the insurer is taken to have waived compliance with the duty of disclosure in relation to the contract.
- (4) If the insurer:
 - (a) makes a request in accordance with subsection (2); and
 - (b) requests the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the contract;then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter.

Position of the insured

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

Definition

- (6) In this section:
eligible contract of insurance means a contract of insurance that is specified in the regulations for the purposes of this section.

7 Application

Section 21A of the *Insurance Contracts Act 1984*, as substituted by item 6, applies to an eligible contract of insurance that is originally entered into after the commencement of that item.

8 Saving of regulations

- (1) Regulations that were in force for the purposes of subsection 21A(9) of the *Insurance Contracts Act 1984* immediately before the commencement of this item continue to have effect after that commencement as if they had been made for the purposes of subsection 21A(6) of the *Insurance Contracts Act 1984*, as substituted by item 6.
- (2) Subitem (1) does not prevent the amendment or repeal of regulations covered by that subitem.

Part 3—Insurers' duty to inform of duty of disclosure

Insurance Contracts Act 1984

9 Subsection 11(1)

Insert:

life insured includes a proposed life insured.

10 Paragraph 11(10)(b)

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

11 After subsection 11(10)

Insert:

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

(a) the variation:

- (i) is involved in a renewal, extension or reinstatement of the contract; or
- (ii) will provide a kind of insurance cover that was not provided by the contract immediately before the variation; or
- (iii) in the case of a contract of life insurance—will increase a sum insured under the contract in respect of one or more of the life insureds; and

(b) the variation is not an automatic variation but is required to be expressly agreed between the insurer and the insured before the contract is varied.

12 Section 22

Repeal the section, substitute:

22 Insurer to inform of duty of disclosure

(1) The insurer must, before a contract of insurance is entered into, clearly inform the insured in writing:

(a) of the general nature and effect of the duty of disclosure; and

- (b) if section 21A or 21B applies to the contract—of the general nature and effect of that section; and
 - (c) if the contract is a contract of life insurance—of the effect of section 31A; and
 - (d) that the duty of disclosure applies until the proposed contract is entered into.
 - (2) If the proposed contract is a contract of life insurance, the insurer must also, before the contract is entered into, clearly inform, in writing, any person (other than the insured) who, under the contract, would become a life insured of the matters referred to in subsection (1).
 - (3) If:
 - (a) an insurer complies with subsection (1) in relation to a proposed contract of insurance; and
 - (b) the insurer accepts an offer by the insured to enter into the proposed contract, or makes a counter-offer to enter into another contract of insurance with the insured; and
 - (c) the insurer's acceptance or counter-offer is made more than 2 months after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the proposed contract;then the insurer must give to the insured, with the acceptance or counter-offer, a reminder notice stating that the duty of disclosure applies until the proposed or other contract is entered into.
 - (4) If the regulations prescribe a form of writing to be used:
 - (a) for informing a person of the matters referred to in subsection (1); or
 - (b) for the reminder notice referred to in subsection (3);the writing to be used may be in accordance with the prescribed form.
 - (5) An insurer who has not complied with subsection (1) and (if applicable) subsection (2) may not exercise a right in respect of a failure to comply with the duty of disclosure, unless the failure was fraudulent.
 - (6) If:
 - (a) an insurer is required to comply with subsection (3) in relation to a contract of insurance; and
-

- (b) the insurer does not do so;
then the insurer may not exercise a right in respect of a failure to comply with the duty of disclosure in relation to a new matter relating to the contract, unless the failure was fraudulent.
- (7) For the purposes of subsection (6), a *new matter* relating to a contract of insurance is a matter of which the insured first becomes aware after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the contract.

13 Application

The amendments made by this Part apply to:

- (a) a contract of insurance that is originally entered into after the commencement of this item; and
- (b) a contract of insurance that was originally entered into before the commencement of this item and is renewed, extended, varied or reinstated after that commencement.

Part 4—Non-disclosures by life insureds

Insurance Contracts Act 1984

14 After section 31

Insert:

31A Non-disclosure by life insured

- (1) This section applies in relation to a contract of life insurance under which a person (other than the insured) would become a life insured.
- (2) If, during the negotiations for the contract but before it was entered into, the person (the *life insured*) failed to disclose to the insurer a matter that was known to the life insured, being a matter that:
 - (a) the life insured knew to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
 - (b) a reasonable person in the circumstances could have been expected to know to be a matter so relevant, having regard to factors including, but not limited to:
 - (i) the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and
 - (ii) the class of persons who would ordinarily be expected to apply for insurance cover of that kind;

this Act has effect as if the failure to disclose the matter had been a failure by the insured to comply with the duty of disclosure in relation to the matter.
- (3) Subsection (2) does not apply in relation to a failure by the life insured to disclose a matter:
 - (a) that diminishes the risk; or
 - (b) that is of common knowledge; or
 - (c) that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or
 - (d) as to which compliance with the duty of disclosure is waived by the insurer.

15 Application

- (1) The amendment made by this Part applies to a contract of life insurance that is originally entered into after the commencement of this item.
- (2) If:
 - (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;then:
 - (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
 - (d) the amendment made by this Part applies to the contract to the extent of the variation.

Schedule 5—Remedies of insurers: life insurance contracts

Part 1—Unbundling of contracts

Insurance Contracts Act 1984

1 Before section 28

Insert:

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

(1) If:

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

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

(2) If:

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

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

(3) If a contract of life insurance provides insurance cover in relation to 2 or more life insureds, this Division applies as if the insurance

cover provided in relation to each life insured were provided by a separate contract of life insurance.

- (4) If a contract of life insurance provides:
- (a) insurance cover in relation to a life insured that is underwritten on particular terms; and
 - (b) insurance cover in relation to that life insured that:
 - (i) is not underwritten; or
 - (ii) is underwritten on different terms;

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

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

2 At the end of subsection 29(1)

Add:

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

3 Application

- (1) The amendments made by this Part apply to a contract of life insurance whether originally entered into before or after the commencement of this item.
- (2) The amendments made by this Part do not affect any proceedings in progress at the commencement of this item in relation to a contract of life insurance or any appeal in relation to any such proceedings.

Part 2—Remedies for non-disclosure and misrepresentation

Insurance Contracts Act 1984

4 Before subsection 29(1)

Insert:

Scope

5 Before subsection 29(2)

Insert:

Insurer may avoid contract

6 Subsection 29(3)

Repeal the subsection, substitute:

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

7 Before subsection 29(4)

Insert:

Insurer may vary contract

8 Subsection 29(4)

Omit “before the expiration of 3 years after the contract was entered into”.

9 At the end of subsection 29(4)

Add:

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

10 Subsection 29(6)

Repeal the subsection, substitute:

- (6) If the insurer has not avoided the contract or has not varied the contract under subsection (4), the insurer may, by notice in writing given to the insured, vary the contract in such a way as to place the insurer in the position (subject to subsection (7)) in which the insurer would have been if the duty of disclosure had been complied with or the misrepresentation had not been made.

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

- (7) The position of the insurer under a contract (the **relevant contract**) that is varied under subsection (6) must not be inconsistent with the position in which other reasonable and prudent insurers would have been if:
- (a) they had entered into similar contracts of life insurance to the relevant contract; and
 - (b) there had been no failure to comply with the duty of disclosure, and no misrepresentation, by the insureds under the similar contracts before they were entered into.
- (8) For the purposes of subsection (7), a contract of life insurance (the **similar contract**) is similar to another contract of life insurance (the **relevant contract**) if:
- (a) the similar contract provides insurance cover that is the same as, or similar to, the kind of insurance cover provided by the relevant contract; and
 - (b) the similar contract was entered into at, or close to, the time the relevant contract was entered into.

Date of effect of variation of contract

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

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

- (10) If the contract is a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured:

- (a) the insurer may vary the contract under subsection (4) before the expiration of 3 years after the contract was entered into, but not after that period; and
- (b) subsections (6), (7) and (8) do not apply in relation to the contract.

11 Application

- (1) The amendments made by this Part apply to a contract of life insurance that is originally entered into after the commencement of this item.
- (2) If:
 - (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;then:
 - (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
 - (d) the amendments made by this Part apply to the contract to the extent of the variation.

Part 3—Remedy for misstatement of date of birth

Insurance Contracts Act 1984

12 After subsection 30(3)

Insert:

(3A) If:

- (a) the expiration date of a contract of life insurance is calculated by reference to the date of birth of a person who is a life insured under the contract; and
- (b) the person's date of birth was not correctly stated to the insurer at the time when the contract was entered into;

then the insurer may (instead of doing any of the things referred to in subsection (2)) vary the contract by changing its expiration date to the date that would have been the expiration date if the contract had been based on the correct date of birth.

13 Subsection 30(4)

After "subsection (2)", insert "or (3A)".

14 Application

(1) The amendments made by this Part apply to a contract of life insurance that is originally entered into after the commencement of this item.

(2) If:

- (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
- (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
- (d) the amendments made by this Part apply to the contract to the extent of the variation.

Part 4—Cancellation of contracts

Insurance Contracts Act 1984

15 After section 59

Insert:

59A Cancellation of contracts of life insurance

- (1) An insurer under a contract of life insurance (the *first contract*) may cancel the contract if the insured has made a fraudulent claim:
 - (a) under the first contract; or
 - (b) under another contract of insurance with the insurer that provides insurance cover during any part of the period during which the first contract provides insurance cover.
- (2) If an insurer has cancelled a contract of life insurance under subsection (1) because of a fraudulent claim by the insured under that contract, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:
 - (a) disregard the cancellation of the contract; and
 - (b) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and
 - (c) order the insurer to reinstate the contract.
- (3) If an insurer has cancelled a contract of life insurance (the *cancelled contract*) under subsection (1) because of a fraudulent claim by the insured under another contract of insurance with the insurer, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:
 - (a) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and
 - (b) order the insurer to reinstate the cancelled contract.
- (4) If an insurer has cancelled a contract of life insurance under subsection (1), then, in any proceedings in relation to the cancellation, the court may, if it would be harsh and unfair not to

do so, order the insurer to reinstate the contract. This subsection does not limit, and is not limited by, subsection (2) or (3).

- (5) In exercising the power conferred by subsection (2), (3) or (4), the court:
- (a) must have regard to the need to deter fraudulent conduct in relation to insurance; and
 - (b) may also have regard to any other relevant matter.

16 Section 63

Repeal the section, substitute:

63 Cancellations of contracts of insurance void

- (1) Except as provided by this Act, an insurer must not cancel a contract of general insurance.
- (2) Except as provided by this Act or section 210 of the *Life Insurance Act 1995*, an insurer must not cancel a contract of life insurance.
- Note: Section 210 of the *Life Insurance Act 1995* deals with cancellation of a contract of life insurance because of non-payment of a premium.
- (3) Any purported cancellation of a contract of insurance in contravention of subsection (1) or (2) is of no effect.

17 Application

- (1) Section 59A of the *Insurance Contracts Act 1984* (as inserted by item 15) and subsections 63(2) and (3) of that Act (as substituted by item 16) apply to a contract of life insurance that is originally entered into after the commencement of this item.
- (2) Subsections 63(1) and (3) of the *Insurance Contracts Act 1984* (as substituted by item 16) apply to a contract of general insurance whether originally entered into before or after the commencement of this item.

Schedule 6—Third parties

Part 1—Requests by third party beneficiaries to insurers for information

Insurance Contracts Act 1984

1 Section 41

Repeal the section, substitute:

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

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

- (c) the insurer may not refuse payment of the claim; and
 - (d) the amount payable in respect of the claim is not reduced;
- by reason only that the claimant breached the contract as mentioned in subsection (1).

2 Application

The amendment made by this Part applies to:

- (a) a contract of liability insurance that is originally entered into after the commencement of this item; and
- (b) a contract of liability insurance that was originally entered into before the commencement of this item and is renewed after that commencement.

Part 2—Insurers' defences in actions by third party beneficiaries

Insurance Contracts Act 1984

3 Section 48 (heading)

Repeal the heading, substitute:

48 Contracts of general insurance—entitlements of third party beneficiaries

4 Subsection 48(1)

Repeal the subsection, substitute:

- (1) A third party beneficiary under a contract of general insurance has a right to recover from the insurer, in accordance with the contract, the amount of any loss suffered by the third party beneficiary even though the third party beneficiary is not a party to the contract.

5 Subsection 48(2)

Omit “a person who has such a right”, substitute “the third party beneficiary”.

6 Paragraph 48(2)(a)

Repeal the paragraph, substitute:

- (a) has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and

7 At the end of subsection 48(3)

Add “, including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into)”.

8 Section 48AA (heading)

Repeal the heading, substitute:

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

9 Subsection 48AA(1)

Repeal the subsection, substitute:

- (1) This section applies in relation to a contract of life insurance if:
 - (a) the contract is entered into in connection with an RSA; and
 - (b) the owner of the policy is an RSA provider.
- (1A) A third party beneficiary under the contract has a right to recover a benefit from the insurer in accordance with the contract even though the third party beneficiary is not a party to the contract.

10 Subsection 48AA(2)

Omit "a person who has such a right", substitute "the third party beneficiary".

11 Paragraph 48AA(2)(a)

Repeal the paragraph, substitute:

- (a) has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and

12 Subsection 48AA(3)

Omit "he or she", substitute "the insurer".

13 At the end of subsection 48AA(3)

Add ", including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into)".

14 Application

- (1) The amendments made by items 3 to 7 apply to:
 - (a) a contract of general insurance that is originally entered into after the commencement of this item; and

Schedule 6 Third parties

Part 2 Insurers' defences in actions by third party beneficiaries

- (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.
 - (2) The amendments made by items 8 to 13 apply to a contract of life insurance that is originally entered into after the commencement of this item.
 - (3) If:
 - (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;
- then:
- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
 - (d) the amendments made by items 8 to 13 apply to the contract to the extent of the variation.

Part 3—Rights and obligations of third party beneficiaries under life insurance contracts

Insurance Contracts Act 1984

15 Section 48A (heading)

Repeal the heading, substitute:

48A Life policy for the benefit of third party beneficiary

16 Subsections 48A(1) and (2)

Repeal the subsections, substitute:

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

- (b) may discharge the insured's obligations in relation to the payment of any money to the third party beneficiary under the contract.

17 Application

- (1) The amendments made by this Part apply to a contract of life insurance that is originally entered into after the commencement of this item.

- (2) If:

- (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
- (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;

then:

- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
- (d) the amendments made by this Part apply to the contract to the extent of the variation.

Part 4—Rights of third parties to recover against insurers

Insurance Contracts Act 1984

18 Section 51 (heading)

Repeal the heading, substitute:

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

19 Subsection 51(1)

Repeal the subsection, substitute:

(1) If:

- (a) the insured or any third party beneficiary under a contract of liability insurance is liable in damages to another person; and
- (b) the contract provides insurance cover in respect of the liability; and
- (c) the insured or third party beneficiary has died or cannot, after reasonable inquiry, be found;

then the other person may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the liability of the insured or third party beneficiary.

20 Paragraph 51(2)(b)

Repeal the paragraph, substitute:

- (b) the liability of the insured or third party beneficiary, or the legal personal representative of the insured or third party beneficiary, to the other person.

21 Subsection 51(3)

Omit "third party has in respect of the insured's liability", substitute "other person has in respect of the liability of the insured or third party beneficiary".

22 Application

The amendments made by this Part apply to:

Schedule 6 Third parties

Part 4 Rights of third parties to recover against insurers

- (a) a contract of liability insurance that is originally entered into after the commencement of this item; and
- (b) a contract of liability insurance that was originally entered into before the commencement of this item and is renewed after that commencement.

Part 5—Representative actions by ASIC on behalf of third party beneficiaries

Insurance Contracts Act 1984

23 Paragraph 55A(1)(b)

After “the insured”, insert “or any third party beneficiary under the contract”.

24 Paragraph 55A(1)(c)

After “the insured”, insert “or third party beneficiary”.

25 Paragraph 55A(1)(d)

After “the insured” (wherever occurring), insert “or third party beneficiary”.

26 Paragraph 55A(2)(b)

After “those insureds”, insert “or any third party beneficiaries under the contract”.

27 Subsection 55A(2)

After “all of those insureds”, insert “or third party beneficiaries”.

28 Subsection 55A(3)

Omit “the insured or of each of the insureds”, insert “the insured or third party beneficiary, or of each of the insureds or third party beneficiaries,”.

29 Application

The amendments made by this Part apply to a contract of insurance whether originally entered into before or after the commencement of this item.

Part 6—Non-disclosure or misrepresentation by members of group life insurance schemes

Insurance Contracts Act 1984

30 Subsection 4(2)

Omit “blanket superannuation contract”, substitute “superannuation contract (other than an individual superannuation contract)”.

31 Subsection 11(1)

Insert:

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

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

32 Subsection 11(1) (paragraph (b) of the definition of *proposal form*)

Omit “or retirement”, substitute “, retirement or other group life”.

33 At the end of paragraph 11(4)(a)

Add “and”.

34 Paragraph 11(4)(b)

Omit “only; and”, substitute “only.”.

35 Paragraph 11(4)(c)

Repeal the paragraph.

36 Paragraph 23(a)

Omit “or retirement”, substitute “, retirement or other group life”.

37 Paragraph 26(3)(a)

Omit “or retirement”, substitute “, retirement or other group life”.

38 Section 32

Repeal the section, substitute:

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

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

39 Section 32A

Omit “made, to the insurer”, substitute “made to the insurer”.

40 Application

- (1) The amendments made by items 30, 33, 34, 35 and 39 apply to a contract of life insurance whether originally entered into before or after the commencement of this item.

Schedule 6 Third parties

Part 6 Non-disclosure or misrepresentation by members of group life insurance schemes

- (2) The amendments made by items 31, 32 and 36 to 38 apply to a contract of life insurance that is originally entered into after the commencement of this item.
- (3) If:
- (a) a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
 - (i) increase a sum insured under the contract in respect of one or more of the life insureds; or
 - (ii) provide one or more additional kinds of insurance cover; and
 - (b) the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied;
- then:
- (c) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
 - (d) the amendments made by items 31, 32 and 36 to 38 apply to the contract to the extent of the variation.

Schedule 7—Subrogation

Insurance Contracts Act 1984

1 Before section 65

Insert:

64 Application to third party beneficiaries

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

2 Section 67

Repeal the section, substitute:

67 Rights with respect to money recovered under subrogation etc.

Scope

- (1) This section applies if:
 - (a) an insurer is liable under a contract of general insurance in respect of a loss; and
 - (b) the insurer has a right of subrogation in respect of the loss; and
 - (c) an amount is recovered (whether by the insurer or the insured) from another person in respect of the loss.

Amount recovered by insurer

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

under this paragraph to so much of the excess as does not exceed the insured's overall loss; and

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

Amount recovered by insured

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

Amount recovered by insurer and insured jointly

- (4) Subsections (5), (6) and (7) apply if the amount is recovered by the insurer and the insured jointly.
- (5) If the amount recovered is less than the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount, the insurer and the insured are each entitled to a portion of the amount recovered, calculated on a pro rata basis in proportion to the paragraph (2)(a) amount and the paragraph (3)(a) amount.
- (6) If the amount recovered is equal to the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount:

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

Amount awarded by way of interest

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

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

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

Definitions

(10) In this section:

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

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

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

3 Application

The amendments made by this Schedule apply to:

- (a) a contract of general insurance that is originally entered into after the commencement of this item; and
- (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.

[*Minister's second reading speech made in—
House of Representatives on 14 March 2013
Senate on 20 March 2013*]

(47/13)
