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HOUSE OF REPRESENTATIVES

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Insurance Contracts Amendment Bill 2013

No. , 2013

(Treasury)

A Bill for an Act to amend the *Insurance Contracts Act 1984*, and for related purposes

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1 **A Bill for an Act to amend the *Insurance Contracts***
2 ***Act 1984, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Insurance Contracts Amendment Act*
6 2013.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

| 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. | |
| 2. Schedule 1 | The day this Act receives the Royal Assent. | |
| 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. | |
| 4. Schedule 3 | The day this Act receives the Royal Assent. | |
| 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. | |
| 6. Schedule 4, Part 2, Division 1 | The day this Act receives the Royal Assent. | |
| 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. | |
| 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. | |
| 9. Schedule 5, Part 1 | The day this Act receives the Royal Assent. | |
| 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. | |
| 11. Schedule 5, Parts 3 and 4 | The day this Act receives the Royal Assent. | |
| 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. | |
| 13. Schedule 6, Part 5 | The day this Act receives the Royal Assent. | |

Commencement information

| Column 1 | Column 2 | Column 3 |
|------------------------|---|---------------------|
| Provision(s) | Commencement | Date/Details |
| 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. | |
| 15. Schedule 7 | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent. | |

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

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

7 **3 Schedule(s)**

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

1 **Schedule 1—Scope and application**

2 **Part 1—Duty of utmost good faith**

3 *Insurance Contracts Act 1984*

4 **1 Subsection 11(1) (definition of *duty of the utmost good***
5 ***faith*)**

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

7 **2 Subsection 11(1)**

8 Insert:

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

14 **3 Section 13**

15 Before “A contract”, insert “(1)”.

16 **4 At the end of section 13**

17 Add:

18 (2) A failure by a party to a contract of insurance to comply with the
19 provision implied in the contract by subsection (1) is a breach of
20 the requirements of this Act.

21 (3) A reference in this section to a party to a contract of insurance
22 includes a reference to a third party beneficiary under the contract.

23 (4) This section applies in relation to a third party beneficiary under a
24 contract of insurance only after the contract is entered into.

25 **5 After section 14**

26 Insert:

1 **14A Powers of ASIC—insurer’s failure to comply with the duty of**
2 **the utmost good faith in relation to handling or settlement**
3 **of claims**

4 (1) This section applies if an insurer under a contract of insurance has
5 failed to comply with the duty of the utmost good faith in the
6 handling or settlement of a claim or potential claim under the
7 contract.

8 (2) Despite any provision of Chapter 7 of the *Corporations Act 2001*
9 or any regulation made under that Chapter, ASIC may exercise its
10 powers under Subdivision C of Division 4 of Part 7.6 of that Act or
11 Subdivision A of Division 8 of that Part in relation to the insurer as
12 if the insurer’s failure to comply with the duty of the utmost good
13 faith were a failure by the insurer to comply with a financial
14 services law.

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

19 (3) In this section:

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

22 **6 Application**

23 (1) The amendments made by this Part apply to:

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

29 (2) If:

- 30 (a) a contract of life insurance that was originally entered into
31 before the commencement of this item is varied after that
32 commencement to:
33 (i) increase a sum insured under the contract in respect of
34 one or more of the life insureds; or
35 (ii) provide one or more additional kinds of insurance
36 cover; and

Schedule 1 Scope and application

Part 1 Duty of utmost good faith

- 1 (b) the variation was not an automatic variation but was required
2 to be expressly agreed between the insurer and the insured
3 before the contract was varied;
4 then:
5 (c) the contract is treated, to the extent of the variation, as if it
6 had been originally entered into after the commencement of
7 this item; and
8 (d) the amendments made by this Part apply to the contract to the
9 extent of the variation.

1 **Part 2—Bundled workers' compensation contracts**

2 *Insurance Contracts Act 1984*

3 **7 At the end of subsection 9(1)**

4 Add:

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

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

12 **8 Application**

13 The amendment made by this Part applies to:

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

1 **Part 3—Bundled contracts generally**

2 ***Insurance Contracts Act 1984***

3 **9 After subsection 9(1)**

4 Insert:

5 (1A) If a contract of insurance, or a proposed contract of insurance,
6 includes:

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

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

17 (1B) Despite subsection (1A), if a contract of insurance, or a proposed
18 contract of insurance, includes:

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

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

27 (1C) If:

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

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

4 **10 Application**

5 (1) The amendment made by this Part applies to:

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

11 (2) If:

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

22 then:

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

1
2

Schedule 2—Electronic communication

3

Insurance Contracts Act 1984

4

1 Subsection 62(1)

5

Omit “or 77”.

6

2 Section 70

7

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

8

3 Subsection 71(1)

9

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

10

11

4 Paragraph 71(2)(b)

12

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

13

14

5 Subsection 71(2)

15

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

16

17

6 Subsection 71(3)

18

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

19

20

7 Section 72

21

Repeal the section, substitute:

22

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

23

24

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:

25

26

27

28

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

29

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

3 **72A Method for giving written notices or documents**

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

6 (a) to a body corporate in any way in which documents may be
7 served on the body corporate; or

8 (b) to a natural person:

9 (i) personally; or

10 (ii) by post to that person at the person's last-known
11 address.

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

15 **8 Section 77**

16 Repeal the section.

17 **9 Application**

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

1
2

Schedule 3—Powers of ASIC

3

Insurance Contracts Act 1984

4

1 At the end of Part IA

5

Add:

6

11F ASIC's power to intervene in proceedings

7

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

8

9

(a) this Act; or

10

(b) Part 3 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

11

12

(2) If ASIC intervenes in a proceeding under subsection (1):

13

(a) ASIC is taken to be a party to the proceeding; and

14

(b) ASIC has all the rights, duties and liabilities of such a party

15

(subject to this Act or Part 3 of the *Medical Indemnity*

16

(Prudential Supervision and Product Standards) Act 2003, as

17

the case requires).

18

(3) Without limiting subsection (2), ASIC may appear and be

19

represented in a proceeding in which it intervenes under

20

subsection (1):

21

(a) by a staff member of ASIC; or

22

(b) by a natural person or body to whom ASIC has delegated its

23

functions and powers under this Act; or

24

(c) by a solicitor or by counsel.

25

2 Application

26

The amendment made by this Schedule applies to a proceeding

27

commenced after the commencement of this item.

1 **Schedule 4—Disclosure and**
2 **misrepresentations**

3 **Part 1—Insureds' duty of disclosure**

4 *Insurance Contracts Act 1984*

5 **1 Paragraph 21(1)(b)**

6 Repeal the paragraph, substitute:

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

14 **2 Application**

- 15 (1) The amendment made by this Part applies to:
16 (a) a contract of insurance that is originally entered into after the
17 commencement of this item; and
18 (b) a contract of general insurance that was originally entered
19 into before the commencement of this item and is renewed
20 after that commencement.
- 21 (2) If:
22 (a) a contract of life insurance that was originally entered into
23 before the commencement of this item is varied after that
24 commencement to:
25 (i) increase a sum insured under the contract in respect of
26 one or more of the life insureds; or
27 (ii) provide one or more additional kinds of insurance
28 cover; and
29 (b) the variation was not an automatic variation but was required
30 to be expressly agreed between the insurer and the insured
31 before the contract was varied;
32 then:

Schedule 4 Disclosure and misrepresentations

Part 1 Insureds' duty of disclosure

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

1 **Part 2—Eligible contracts of insurance**

2 **Division 1—Amendments commencing on Royal Assent**

3 *Insurance Contracts Act 1984*

4 **3 At the end of subsection 21A(1)**

5 Add:

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

8 **4 After section 21A**

9 Insert:

10 **21B Eligible contracts of insurance—disclosure before contract**
11 **renewed**

12 *Scope*

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

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

23 *Position of the insurer*

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

Schedule 4 Disclosure and misrepresentations
Part 2 Eligible contracts of insurance

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

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

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

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

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

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

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

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

35 *Position of the insured*

- 36 (7) If:
-

- 1 (a) the insurer makes a request in accordance with
2 paragraph (3)(a), but does not give the insured a copy of any
3 matter previously disclosed by the insured or make a request
4 in accordance with paragraph (3)(b); and
5 (b) before the contract is renewed, the insured discloses, in
6 answer to each specific question included in the request, each
7 matter that:
8 (i) is known to the insured; and
9 (ii) a reasonable person in the circumstances could be
10 expected to have disclosed in answer to that question;
11 then the insured is taken to have complied with the duty of
12 disclosure in relation to the renewed contract.

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

14 (8) If:

- 15 (a) the insurer gives the insured a copy of any matter previously
16 disclosed by the insured and makes a request in accordance
17 with paragraph (3)(b), but does not make a request in
18 accordance with paragraph (3)(a); and
19 (b) before the contract is renewed, the insured:
20 (i) discloses any change to the matter; or
21 (ii) if there is no change to the matter—informs the insurer
22 that there is no change to the matter;
23 then the insured is taken to have complied with the duty of
24 disclosure in relation to the renewed contract.

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

26 (9) If:

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

Schedule 4 Disclosure and misrepresentations
Part 2 Eligible contracts of insurance

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

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

4 (10) If:

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

8 (b) before the contract is renewed, the insured does not disclose
9 any change to the matter;

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

12 (11) If:

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

16 (b) before the contract is renewed, the insured informs the
17 insurer under subsection (8) or (9), or is taken to have
18 informed the insurer under subsection (10), that there is no
19 change to the matter;

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

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

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

27 (a) the insurer is not taken to have waived compliance with the
28 duty of disclosure in relation to the earlier failure; and

29 (b) the insured is not taken to have complied with the duty of
30 disclosure in relation to the earlier failure.

31 *Definitions*

32 (13) In this section:

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

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

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

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

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

10 **5 At the end of subsection 22(1)**

11 Add:

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

16 **Division 2—Amendments commencing 30 months after** 17 **Royal Assent**

18 *Insurance Contracts Act 1984*

19 **6 Section 21A**

20 Repeal the section, substitute:

21 **21A Eligible contracts of insurance—disclosure before contract** 22 **originally entered into**

23 *Scope*

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

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

1

Position of the insurer

2

(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

4

5

6

(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.

7

8

9

(4) If the insurer:

10

(a) makes a request in accordance with subsection (2); and

11

(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;

12

13

14

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

15

16

Position of the insured

17

(5) If:

18

(a) the insurer makes a request in accordance with subsection (2); and

19

20

(b) in answer to each specific question included in the request, the insured discloses each matter that:

21

22

(i) is known to the insured; and

23

(ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;

24

25

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

26

27

Definition

28

(6) In this section:

29

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

30

1 **7 Application**

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

5 **8 Saving of regulations**

6 (1) Regulations that were in force for the purposes of subsection 21A(9) of
7 the *Insurance Contracts Act 1984* immediately before the
8 commencement of this item continue to have effect after that
9 commencement as if they had been made for the purposes of
10 subsection 21A(6) of the *Insurance Contracts Act 1984*, as substituted
11 by item 6.

12 (2) Subitem (1) does not prevent the amendment or repeal of regulations
13 covered by that subitem.

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

2 *Insurance Contracts Act 1984*

3 **9 Subsection 11(1)**

4 Insert:

5 *life insured* includes a proposed life insured.

6 **10 Paragraph 11(10)(b)**

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

10 **11 After subsection 11(10)**

11 Insert:

12 (10A) This subsection applies to a variation of a contract of insurance if:

13 (a) the variation:

14 (i) is involved in a renewal, extension or reinstatement of
15 the contract; or

16 (ii) will provide a kind of insurance cover that was not
17 provided by the contract immediately before the
18 variation; or

19 (iii) in the case of a contract of life insurance—will increase
20 a sum insured under the contract in respect of one or
21 more of the life insureds; and

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

25 **12 Section 22**

26 Repeal the section, substitute:

27 **22 Insurer to inform of duty of disclosure**

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

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

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

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

9 **13 Application**

10 The amendments made by this Part apply to:

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

1 **Part 4—Non-disclosures by life insureds**

2 *Insurance Contracts Act 1984*

3 **14 After section 31**

4 Insert:

5 **31A Non-disclosure by life insured**

6 (1) This section applies in relation to a contract of life insurance under
7 which a person (other than the insured) would become a life
8 insured.

9 (2) If, during the negotiations for the contract but before it was entered
10 into, the person (the *life insured*) failed to disclose to the insurer a
11 matter that was known to the life insured, being a matter that:

12 (a) the life insured knew to be a matter relevant to the decision
13 of the insurer whether to accept the risk and, if so, on what
14 terms; or

15 (b) a reasonable person in the circumstances could have been
16 expected to know to be a matter so relevant, having regard to
17 factors including, but not limited to:

- 18 (i) the nature and extent of the insurance cover to be
19 provided under the relevant contract of insurance; and
20 (ii) the class of persons who would ordinarily be expected
21 to apply for insurance cover of that kind;

22 this Act has effect as if the failure to disclose the matter had been a
23 failure by the insured to comply with the duty of disclosure in
24 relation to the matter.

25 (3) Subsection (2) does not apply in relation to a failure by the life
26 insured to disclose a matter:

27 (a) that diminishes the risk; or

28 (b) that is of common knowledge; or

29 (c) that the insurer knows or in the ordinary course of the
30 insurer's business as an insurer ought to know; or

31 (d) as to which compliance with the duty of disclosure is waived
32 by the insurer.

15 Application

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

1 **Schedule 5—Remedies of insurers: life**
2 **insurance contracts**

3 **Part 1—Unbundling of contracts**

4 *Insurance Contracts Act 1984*

5 **1 Before section 28**

6 Insert:

7 **27A Certain contracts of life insurance may be treated as if they**
8 **comprised 2 or more separate contracts of life insurance**

9 (1) If:

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

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

17 (2) If:

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

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

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

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

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

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

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

16 **2 At the end of subsection 29(1)**

17 Add:

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

22 **3 Application**

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

1 **Part 2—Remedies for non-disclosure and**
2 **misrepresentation**

3 ***Insurance Contracts Act 1984***

4 **4 Before subsection 29(1)**

5 Insert:

6 *Scope*

7 **5 Before subsection 29(2)**

8 Insert:

9 *Insurer may avoid contract*

10 **6 Subsection 29(3)**

11 Repeal the subsection, substitute:

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

15 **7 Before subsection 29(4)**

16 Insert:

17 *Insurer may vary contract*

18 **8 Subsection 29(4)**

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

21 **9 At the end of subsection 29(4)**

22 Add:

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

26 **10 Subsection 29(6)**

27 Repeal the subsection, substitute:

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

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

- 10 (7) The position of the insurer under a contract (the *relevant contract*)
11 that is varied under subsection (6) must not be inconsistent with the
12 position in which other reasonable and prudent insurers would
13 have been if:

- 14 (a) they had entered into similar contracts of life insurance to the
15 relevant contract; and
16 (b) there had been no failure to comply with the duty of
17 disclosure, and no misrepresentation, by the insureds under
18 the similar contracts before they were entered into.

- 19 (8) For the purposes of subsection (7), a contract of life insurance (the
20 *similar contract*) is similar to another contract of life insurance
21 (the *relevant contract*) if:

- 22 (a) the similar contract provides insurance cover that is the same
23 as, or similar to, the kind of insurance cover provided by the
24 relevant contract; and
25 (b) the similar contract was entered into at, or close to, the time
26 the relevant contract was entered into.

27 *Date of effect of variation of contract*

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

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

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

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

6 **11 Application**

- 7 (1) The amendments made by this Part apply to a contract of life insurance
8 that is originally entered into after the commencement of this item.
- 9 (2) If:
- 10 (a) a contract of life insurance that was originally entered into
11 before the commencement of this item is varied after that
12 commencement to:
- 13 (i) increase a sum insured under the contract in respect of
14 one or more of the life insureds; or
15 (ii) provide one or more additional kinds of insurance
16 cover; and
17 (b) the variation was not an automatic variation but was required
18 to be expressly agreed between the insurer and the insured
19 before the contract was varied;
- 20 then:
- 21 (c) the contract is treated, to the extent of the variation, as if it
22 had been originally entered into after the commencement of
23 this item; and
24 (d) the amendments made by this Part apply to the contract to the
25 extent of the variation.

1 **Part 3—Remedy for misstatement of date of birth**

2 *Insurance Contracts Act 1984*

3 **12 After subsection 30(3)**

4 Insert:

5 (3A) If:

6 (a) the expiration date of a contract of life insurance is calculated
7 by reference to the date of birth of a person who is a life
8 insured under the contract; and

9 (b) the person's date of birth was not correctly stated to the
10 insurer at the time when the contract was entered into;

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

15 **13 Subsection 30(4)**

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

17 **14 Application**

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

20 (2) If:

21 (a) a contract of life insurance that was originally entered into
22 before the commencement of this item is varied after that
23 commencement to:

24 (i) increase a sum insured under the contract in respect of
25 one or more of the life insureds; or

26 (ii) provide one or more additional kinds of insurance
27 cover; and

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

31 then:

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

1 **Part 4—Cancellation of contracts**

2 ***Insurance Contracts Act 1984***

3 **15 After section 59**

4 Insert:

5 **59A Cancellation of contracts of life insurance**

- 6 (1) An insurer under a contract of life insurance (the *first contract*)
7 may cancel the contract if the insured has made a fraudulent claim:
8 (a) under the first contract; or
9 (b) under another contract of insurance with the insurer that
10 provides insurance cover during any part of the period during
11 which the first contract provides insurance cover.
- 12 (2) If an insurer has cancelled a contract of life insurance under
13 subsection (1) because of a fraudulent claim by the insured under
14 that contract, then, in any proceedings in relation to the claim, the
15 court may, if it would be harsh and unfair not to do so:
16 (a) disregard the cancellation of the contract; and
17 (b) order the insurer to pay, in relation to the claim, such amount
18 (if any) as the court considers just and equitable in the
19 circumstances; and
20 (c) order the insurer to reinstate the contract.
- 21 (3) If an insurer has cancelled a contract of life insurance (the
22 *cancelled contract*) under subsection (1) because of a fraudulent
23 claim by the insured under another contract of insurance with the
24 insurer, then, in any proceedings in relation to the claim, the court
25 may, if it would be harsh and unfair not to do so:
26 (a) order the insurer to pay, in relation to the claim, such amount
27 (if any) as the court considers just and equitable in the
28 circumstances; and
29 (b) order the insurer to reinstate the cancelled contract.
- 30 (4) If an insurer has cancelled a contract of life insurance under
31 subsection (1), then, in any proceedings in relation to the
32 cancellation, the court may, if it would be harsh and unfair not to

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

3 (5) In exercising the power conferred by subsection (2), (3) or (4), the
4 court:

5 (a) must have regard to the need to deter fraudulent conduct in
6 relation to insurance; and

7 (b) may also have regard to any other relevant matter.

8 **16 Section 63**

9 Repeal the section, substitute:

10 **63 Cancellations of contracts of insurance void**

11 (1) Except as provided by this Act, an insurer must not cancel a
12 contract of general insurance.

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

15 Note: Section 210 of the *Life Insurance Act 1995* deals with cancellation of
16 a contract of life insurance because of non-payment of a premium.

17 (3) Any purported cancellation of a contract of insurance in
18 contravention of subsection (1) or (2) is of no effect.

19 **17 Application**

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

24 (2) Subsections 63(1) and (3) of the *Insurance Contracts Act 1984* (as
25 substituted by item 16) apply to a contract of general insurance whether
26 originally entered into before or after the commencement of this item.

1 **Schedule 6—Third parties**

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

4 ***Insurance Contracts Act 1984***

5 **1 Section 41**

6 Repeal the section, substitute:

7 **41 Contracts of liability insurance—consent of insurer required for**
8 **settlement etc. of claim**

- 9 (1) This section applies in relation to a contract of liability insurance if
10 it would constitute a breach of the contract if, without the consent
11 of the insurer, the insured or any third party beneficiary were:
- 12 (a) to settle or compromise a claim against the insured or third
13 party beneficiary; or
14 (b) to make an admission or payment in respect of such a claim.
- 15 (2) If the insured or any third party beneficiary (the *claimant*) under
16 the contract has made a claim under the contract, the claimant may
17 at any time, by notice in writing given to the insurer, require the
18 insurer to inform the claimant in writing:
- 19 (a) whether the insurer admits that the contract applies to the
20 claim; and
21 (b) if the insurer so admits—whether the insurer proposes to
22 conduct, on behalf of the claimant, the negotiations and any
23 legal proceedings in respect of the claim made against the
24 claimant.
- 25 (3) If the insurer does not, within a reasonable time after being given a
26 notice under subsection (2), inform the claimant:
- 27 (a) that the insurer admits that the contract of liability insurance
28 applies to the claim; and
29 (b) that the insurer proposes to conduct, on behalf of the
30 claimant, the negotiations and any legal proceedings in
31 respect of the claim made against the claimant;
32 then:

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

5 **2 Application**

6 The amendment made by this Part applies to:

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

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

3 ***Insurance Contracts Act 1984***

4 **3 Section 48 (heading)**

5 Repeal the heading, substitute:

6 **48 Contracts of general insurance—entitlements of third party**
7 **beneficiaries**

8 **4 Subsection 48(1)**

9 Repeal the subsection, substitute:

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

14 **5 Subsection 48(2)**

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

17 **6 Paragraph 48(2)(a)**

18 Repeal the paragraph, substitute:

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

23 **7 At the end of subsection 48(3)**

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

27 **8 Section 48AA (heading)**

28 Repeal the heading, substitute:

1 **48AA Life policy in connection with RSA for the benefit of third**
2 **party beneficiary**

3 **9 Subsection 48AA(1)**

4 Repeal the subsection, substitute:

5 (1) This section applies in relation to a contract of life insurance if:

- 6 (a) the contract is entered into in connection with an RSA; and
7 (b) the owner of the policy is an RSA provider.

8 (1A) A third party beneficiary under the contract has a right to recover a
9 benefit from the insurer in accordance with the contract even
10 though the third party beneficiary is not a party to the contract.

11 **10 Subsection 48AA(2)**

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

14 **11 Paragraph 48AA(2)(a)**

15 Repeal the paragraph, substitute:

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

20 **12 Subsection 48AA(3)**

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

22 **13 At the end of subsection 48AA(3)**

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

26 **14 Application**

27 (1) The amendments made by items 3 to 7 apply to:

- 28 (a) a contract of general insurance that is originally entered into
29 after the commencement of this item; and

Schedule 6 Third parties

Part 2 Insurers' defences in actions by third party beneficiaries

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

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

3 *Insurance Contracts Act 1984*

4 **15 Section 48A (heading)**

5 Repeal the heading, substitute:

6 **48A Life policy for the benefit of third party beneficiary**

7 **16 Subsections 48A(1) and (2)**

8 Repeal the subsections, substitute:

9 (1) The following paragraphs have effect in relation to a contract of
10 life insurance to the extent that the contract is expressed to be for
11 the benefit of a third party beneficiary (who may be the life
12 insured):

13 (a) the third party beneficiary has a right to recover from the
14 insurer any money that becomes payable under the contract
15 even though the third party beneficiary is not a party to the
16 contract;

17 (b) if the third party beneficiary is not the life insured, any
18 money paid to the third party beneficiary under the contract
19 does not form part of the estate of the life insured.

20 (1A) Paragraph (1)(a) has effect in relation to a contract of life insurance
21 that is maintained for the purposes of a superannuation or
22 retirement scheme, subject to:

23 (a) the terms of the contract and the scheme; and

24 (b) any other law;

25 relating to the payment of money under the contract or the scheme.

26 (2) Subject to the contract, the third party beneficiary:

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

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

4 **17 Application**

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

7 (2) If:

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

18 then:

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

1 **Part 4—Rights of third parties to recover against**
2 **insurers**

3 ***Insurance Contracts Act 1984***

4 **18 Section 51 (heading)**

5 Repeal the heading, substitute:

6 **51 Claims against insurer in respect of liability of insured or third**
7 **party beneficiary**

8 **19 Subsection 51(1)**

9 Repeal the subsection, substitute:

10 (1) If:

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

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

20 **20 Paragraph 51(2)(b)**

21 Repeal the paragraph, substitute:

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

25 **21 Subsection 51(3)**

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

29 **22 Application**

30 The amendments made by this Part apply to:

Schedule 6 Third parties

Part 4 Rights of third parties to recover against insurers

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

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

3 *Insurance Contracts Act 1984*

4 **23 Paragraph 55A(1)(b)**

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

7 **24 Paragraph 55A(1)(c)**

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

9 **25 Paragraph 55A(1)(d)**

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

12 **26 Paragraph 55A(2)(b)**

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

15 **27 Subsection 55A(2)**

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

17 **28 Subsection 55A(3)**

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

21 **29 Application**

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

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

3 ***Insurance Contracts Act 1984***

4 **30 Subsection 4(2)**

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

7 **31 Subsection 11(1)**

8 Insert:

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

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

16 **32 Subsection 11(1) (paragraph (b) of the definition of**
17 ***proposal form*)**

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

19 **33 At the end of paragraph 11(4)(a)**

20 Add “and”.

21 **34 Paragraph 11(4)(b)**

22 Omit “only; and”, substitute “only.”.

23 **35 Paragraph 11(4)(c)**

24 Repeal the paragraph.

25 **36 Paragraph 23(a)**

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

1 **37 Paragraph 26(3)(a)**

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

3 **38 Section 32**

4 Repeal the section, substitute:

5 **32 Non-disclosure or misrepresentation by life insured covered**
6 **under group life contract**

7 (1) This Division extends to the case where there was a failure to
8 comply with the duty of disclosure, or a misrepresentation was
9 made to the insurer, in respect of a proposed life insured under a
10 group life contract, as if:

11 (a) the insurance cover provided by the group life contract in
12 respect of the life insured were provided by an individual
13 contract of life insurance between the insurer and the insured;
14 and

15 (b) the group life contract had been entered into at the time when
16 the proposed life insured became a life insured under the
17 group life contract.

18 (2) For the purposes of this Division, if the failure to comply with the
19 duty of disclosure, or the misrepresentation, occurred after the
20 proposed life insured became a member of the relevant
21 superannuation, retirement or other group life scheme but before
22 the insurance cover was provided by the group life contract in
23 respect of the life insured, then the failure or misrepresentation is
24 taken to have occurred before the proposed life insured became a
25 life insured under the group life contract.

26 **39 Section 32A**

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

28 **40 Application**

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

Schedule 6 Third parties

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

- 1 (2) The amendments made by items 31, 32 and 36 to 38 apply to a contract
2 of life insurance that is originally entered into after the commencement
3 of this item.
- 4 (3) If:
- 5 (a) a contract of life insurance that was originally entered into
6 before the commencement of this item is varied after that
7 commencement to:
- 8 (i) increase a sum insured under the contract in respect of
9 one or more of the life insureds; or
- 10 (ii) provide one or more additional kinds of insurance
11 cover; and
- 12 (b) the variation was not an automatic variation but was required
13 to be expressly agreed between the insurer and the insured
14 before the contract was varied;
- 15 then:
- 16 (c) the contract is treated, to the extent of the variation, as if it
17 had been originally entered into after the commencement of
18 this item; and
- 19 (d) the amendments made by items 31, 32 and 36 to 38 apply to
20 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

- 1 under this paragraph to so much of the excess as does not
2 exceed the insured's overall loss; and
3 (c) if the amount recovered exceeds the sum of:
4 (i) the amount to which the insurer is entitled under
5 paragraph (a); and
6 (ii) the amount (if any) to which the insured is entitled
7 under paragraph (b);
8 the insurer is entitled to the excess.

9 *Amount recovered by insured*

- 10 (3) If the amount is recovered by the insured:
11 (a) the insured is entitled under this paragraph to so much of the
12 amount as does not exceed the sum of:
13 (i) the insured's overall loss; and
14 (ii) the amount paid by the insured for administrative and
15 legal costs incurred in connection with the recovery; and
16 (b) if the amount recovered exceeds the amount to which the
17 insured is entitled under paragraph (a)—the insurer is entitled
18 to so much of the excess as does not exceed the amount paid
19 by the insurer to the insured in respect of the loss; and
20 (c) if the amount recovered exceeds the sum of:
21 (i) the amount to which the insured is entitled under
22 paragraph (a); and
23 (ii) the amount (if any) to which the insurer is entitled under
24 paragraph (b);
25 the insured is entitled to the excess.

26 *Amount recovered by insurer and insured jointly*

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

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

11 *Amount awarded by way of interest*

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

27 *Rights of insurer and insured are subject to contract and any*
28 *agreement*

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

1 *Definitions*

2 (10) In this section:

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

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

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

11 **3 Application**

12 The amendments made by this Schedule apply to:

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