

EXPOSURE-DRAFT

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (10 May 2013)

Insurance Contracts Amendment (Unfair Terms) 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*
6 (*Unfair Terms*) Act 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

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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. Schedules 1 and 2	The day after the end of the period of 12 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.

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9 repealed as set out in the applicable items in the Schedule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.

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Amendment of the Insurance Contracts Act 1984 **Schedule 1**

1 **Schedule 1—Amendment of the Insurance**
2 **Contracts Act 1984**
3

4 *Insurance Contracts Act 1984*

5 **1 Subsection 11(1)**

6 Insert:

7 *applied enforcement provisions of the ASIC Act* means the
8 provisions of the ASIC Act applied by subsection 15G(1) of this
9 Act.

10 **2 Subsection 11(1)**

11 Insert:

12 *applied investigation provisions of the ASIC Act* means the
13 provisions of the ASIC Act applied by subsection 15G(2) of this
14 Act.

15 **3 Subsection 11(1)**

16 Insert:

17 *ASIC Act* means the *Australian Securities and Investments*
18 *Commission Act 2001*.

19 **4 Subsection 11(1)**

20 Insert:

21 *consumer contract* has the meaning given by subsection 15A(4).

22 **5 Subsection 11(1)**

23 Insert:

24 *standard form consumer contract of general insurance* has the
25 meaning given by subsection 15A(3).

26 **6 Subsection 11(1)**

27 Insert:

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1 *transparent*, in relation to a term of a standard form consumer
2 contract of general insurance, has the meaning given by
3 subsection 15B(3).

4 **7 Subsection 11(1)**

5 Insert:

6 *unfair*, in relation to a term of a standard form consumer contract
7 of general insurance, has the meaning given by subsection 15B(1).

8 **8 Subsection 11(1)**

9 Insert:

10 *upfront price*, in relation to a standard form consumer contract of
11 general insurance, has the meaning given by subsection 15D(2).

12 **9 Subsection 11C(1)**

13 Omit “ASIC may”, substitute “Subject to subsection 11G(1), ASIC
14 may”.

15 **10 Subsection 11D(1)**

16 Omit “ASIC may”, substitute “Subject to subsection 11G(1), ASIC
17 may”.

18 **11 Subsection 11F(1)**

19 Omit “ASIC may”, substitute “Subject to subsection 11G(2), ASIC
20 may”.

21 **12 At the end of Part 1A**

22 Add:

23 **11G ASIC must not exercise powers under this Part in relation to** 24 **unfair terms in certain contracts of general insurance**

25 *Supervisory powers*

26 (1) ASIC must not exercise the power conferred by subsection 11C(1)
27 or 11D(1):

28 (a) to investigate whether an insurer has relied on, or purported
29 to rely on, a term of a standard form consumer contract of
30 general insurance that the Court has declared, under

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Amendment of the Insurance Contracts Act 1984 **Schedule 1**

1 section 12GND of the applied enforcement provisions of the
2 ASIC Act, to be an unfair term; or

3 (b) for any purpose connected with such an investigation.

4 Note 1: Division 2 of Part II of this Act deals with unfair terms in standard
5 form consumer contracts of general insurance.

6 Note 2: ASIC may use its powers in the applied investigation provisions of the
7 ASIC Act for a purpose referred to in this subsection (see
8 subsection 15G(2) of this Act).

9 *Power to intervene in proceedings*

10 (2) ASIC must not exercise the power conferred by subsection 11F(1)
11 to intervene in a proceeding relating to whether an insurer has
12 failed to comply with the duty of the utmost good faith under
13 section 15A.

14 Note: ASIC may use the power in section 12GO of the applied enforcement
15 provisions of the ASIC Act to intervene in a proceeding of a kind
16 referred to in this subsection.

17 **13 Before section 12**

18 Insert:

19 **Division 1—General**

20 **14 At the end of section 15**

21 Add:

22 *Exception—standard form consumer contracts of general*
23 *insurance*

24 (3) Despite subsections (1) and (2), certain standard form consumer
25 contracts of general insurance are capable of being made the
26 subject of relief under the applied enforcement provisions of the
27 ASIC Act.

28 Note 1: See Division 2 of this Part (which deals with unfair terms in standard
29 form consumer contracts of general insurance).

30 Note 2: The applied enforcement provisions of the ASIC Act are the
31 provisions of the ASIC Act applied by subsection 15G(1) of this Act.

32 **15 At the end of Part II**

33 Add:

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1 **Division 2—Unfair terms in certain contracts of general**
2 **insurance**

3 **15A Unfair terms in standard form consumer contracts of general**
4 **insurance**

5 (1) An insurer under a standard form consumer contract of general
6 insurance fails to comply with the duty of the utmost good faith in
7 relation to the contract if:

- 8 (a) a term of the contract has been declared to be an unfair term
9 under section 12GND of the applied enforcement provisions
10 of the ASIC Act; or
11 (b) the insurer relies on, or purports to rely on, such a term.

12 Note 1: The insurer may not rely on the unfair term (see subsection 14(1)).

13 Note 2: A failure to comply with the duty of the utmost good faith is a breach
14 of the requirements of this Act (see subsection 13(2)).

15 (2) The contract continues to bind the parties if it is capable of
16 operating without the unfair term being relied on.

17 *Definitions*

18 (3) A *standard form consumer contract of general insurance* is a
19 consumer contract that is:

- 20 (a) a standard form contract; and
21 (b) a contract of general insurance.

22 (4) A *consumer contract* is a contract at least one of the parties to
23 which is an individual whose acquisition of what is supplied under
24 the contract is wholly or predominantly an acquisition for personal,
25 domestic or household use or consumption.

26 **15B Meaning of *unfair***

27 (1) A term of a standard form consumer contract of general insurance
28 is *unfair* if:

- 29 (a) it would cause a significant imbalance in the parties' rights
30 and obligations arising under the contract; and
31 (b) it is not reasonably necessary in order to protect the
32 legitimate interests of the party who would be advantaged by
33 the term; and

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- 1 (c) it would cause detriment (whether financial or otherwise) to a
2 party if it were to be applied or relied on.
- 3 (2) In determining whether a term of a standard form consumer
4 contract of general insurance is unfair under subsection (1), a court
5 may take into account such matters as it thinks relevant, but must
6 take into account the following:
7 (a) the extent to which the term is transparent;
8 (b) the contract as a whole.
- 9 (3) A term of a standard form consumer contract of general insurance
10 is *transparent* if the term is:
11 (a) expressed in reasonably plain language; and
12 (b) legible; and
13 (c) presented clearly; and
14 (d) readily available to any party affected by the term.
- 15 (4) For the purposes of paragraph (1)(b), a term of a standard form
16 consumer contract of general insurance is presumed not to be
17 reasonably necessary in order to protect the legitimate interests of
18 the party who would be advantaged by the term, unless that party
19 proves otherwise.
- 20 (5) An insurer under a standard form consumer contract of general
21 insurance is taken to have proved that a term of the contract is
22 reasonably necessary in order to protect the legitimate interests of
23 the insurer, if the insurer proves that the term reflects the
24 underwriting risk accepted by the insurer.

25 **15C Examples of unfair terms**

- 26 (1) Without limiting section 15B, the following are examples of the
27 kinds of terms of a standard form consumer contract of general
28 insurance that may be unfair:
29 (a) a term that permits, or has the effect of permitting, one party
30 (but not another party) to avoid or limit performance of the
31 contract;
32 (b) a term that permits, or has the effect of permitting, one party
33 (but not another party) to terminate the contract;
34 (c) a term that penalises, or has the effect of penalising, one
35 party (but not another party) for a breach or termination of
36 the contract;

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- 1 (d) a term that permits, or has the effect of permitting, one party
2 (but not another party) to vary the terms of the contract;
- 3 (e) a term that permits, or has the effect of permitting, one party
4 (but not another party) to renew or not renew the contract;
- 5 (f) a term that permits, or has the effect of permitting, one party
6 to vary the upfront price payable under the contract without
7 the right of another party to terminate the contract;
- 8 (g) a term that permits, or has the effect of permitting, one party
9 unilaterally to vary financial services to be supplied under the
10 contract;
- 11 (h) a term that permits, or has the effect of permitting, one party
12 unilaterally to determine whether the contract has been
13 breached or to interpret its meaning;
- 14 (i) a term that limits, or has the effect of limiting, one party's
15 vicarious liability for its agents;
- 16 (j) a term that permits, or has the effect of permitting, one party
17 to assign the contract to the detriment of another party
18 without that other party's consent;
- 19 (k) a term that limits, or has the effect of limiting, one party's
20 right to sue another party;
- 21 (l) a term that limits, or has the effect of limiting, the evidence
22 one party can adduce in proceedings relating to the contract;
- 23 (m) a term that imposes, or has the effect of imposing, the
24 evidential burden on one party in proceedings relating to the
25 contract;
- 26 (n) a term of a kind, or a term that has an effect of a kind,
27 prescribed by the regulations.
- 28 (2) Before the Governor-General makes a regulation for the purposes
29 of paragraph (1)(n) prescribing a kind of term, or a kind of effect
30 that a term has, the Minister must take into consideration:
- 31 (a) the detriment that a term of that kind would cause to
32 consumers; and
- 33 (b) the impact on business generally of prescribing that kind of
34 term or effect; and
- 35 (c) the public interest.

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1 **15D Terms that define main subject-matter of standard form**
2 **consumer contracts of general insurance etc. are**
3 **unaffected**

4 (1) Section 15A does not apply to a term of a standard form consumer
5 contract of general insurance to the extent that, but only to the
6 extent that, the term:

- 7 (a) defines the main subject-matter of the contract; or
8 (b) sets the upfront price payable under the contract; or
9 (c) is a term required, or expressly permitted, by a law of the
10 Commonwealth or a State or Territory.

11 (2) The *upfront price* payable under a standard form consumer
12 contract of general insurance is the consideration that:

- 13 (a) is provided, or is to be provided, for the supply under the
14 contract; and
15 (b) is disclosed at or before the time the contract is entered into;
16 but does not include any other consideration that is contingent on
17 the occurrence or non-occurrence of a particular event.

18 **15E Standard form contracts**

19 (1) If a party to a proceeding alleges that a contract of general
20 insurance is a standard form contract, it is presumed to be a
21 standard form contract unless another party to the proceeding
22 proves otherwise.

23 (2) In determining whether a contract of general insurance is a
24 standard form contract, a court may take into account such matters
25 as it thinks relevant, but must take into account the following:

- 26 (a) whether one of the parties has all or most of the bargaining
27 power relating to the transaction;
28 (b) whether the contract was prepared by one party before any
29 discussion relating to the transaction occurred between the
30 parties;
31 (c) whether another party was, in effect, required either to accept
32 or reject the terms of the contract (other than the terms
33 referred to in subsection 15D(1)) in the form in which they
34 were presented;

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- 1 (d) whether another party was given an effective opportunity to
2 negotiate the terms of the contract that were not the terms
3 referred to in subsection 15D(1);
- 4 (e) whether the terms of the contract (other than the terms
5 referred to in subsection 15D(1)) take into account the
6 specific characteristics of another party or the particular
7 transaction;
- 8 (f) any other matter prescribed by the regulations.

9 **15F Contracts to which this Division does not apply**

10 This Division does not apply to a standard form consumer contract
11 of general insurance that is the constitution of a company, managed
12 investment scheme or other kind of body.

13 **15G Application of ASIC Act**

14 *Applied enforcement provisions*

- 15 (1) The following provisions of the ASIC Act apply, with the
16 modifications set out in Part 1 of Schedule 1 to this Act (and any
17 other modifications prescribed by the regulations), in relation to a
18 standard form consumer contract of general insurance:
- 19 (a) section 12AC (other than subsection (2));
- 20 (b) Subdivision G of Division 2 of Part 2 (other than
21 sections 12GB to 12GCA, 12GF, 12GI, 12GLA to 12GLD
22 and 12GNA);
- 23 (c) Subdivision H of Division 2 of Part 2;
- 24 (d) any provisions that define expressions used in the provisions
25 referred to in paragraphs (a) to (c).

26 *Applied investigation provisions*

- 27 (2) The following provisions of the ASIC Act apply, with the
28 modifications set out in Part 2 of Schedule 1 to this Act (and any
29 other modifications prescribed by the regulations), in relation to a
30 standard form consumer contract of general insurance:
- 31 (a) Division 1 of Part 3 (other than section 15);
- 32 (b) Division 2 of Part 3;
- 33 (c) Division 3 of Part 3 (other than sections 29, 30A, 39A and
34 39B);

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- 1 (d) Division 5 of Part 3;
- 2 (e) Division 7 of Part 3;
- 3 (f) Division 9 of Part 3;
- 4 (g) Division 10 of Part 3 (other than section 86);
- 5 (h) any provisions that define expressions used in the provisions
- 6 referred to in paragraphs (a) to (g).

7 **15H Court's powers under this Act not limited by applied ASIC Act** 8 **provisions**

- 9 (1) The applied enforcement provisions of the ASIC Act are not
- 10 intended to limit a court's powers under this Act in respect of a
- 11 standard form consumer contract of general insurance that includes
- 12 a term that has been declared to be an unfair term under
- 13 section 12GND of those provisions.

14 Note: See, for example, sections 28, 31 and 54 of this Act.

- 15 (2) However, in considering whether to exercise a power (including
- 16 the power to make orders) under this Act in respect of a standard
- 17 form consumer contract of general insurance that includes a term
- 18 of a kind referred to in subsection (1), the court must consider:

- 19 (a) the contract as a whole; and
- 20 (b) the extent to which the insurer has complied with the
- 21 requirements of this Act (other than section 15A) in relation
- 22 to the contract.

23 **16 At the end of section 55A**

24 Add:

25 *Exception—standard form consumer contracts of general*
26 *insurance*

- 27 (4) Despite subsections (1) and (2), ASIC must not bring, or take over
- 28 and continue, an action on behalf of one or more insureds or third
- 29 party beneficiaries under a standard form consumer contract of
- 30 general insurance, if the damage suffered, or the damage that is
- 31 likely to be suffered, is because the insurer under the contract has
- 32 failed to comply with the duty of the utmost good faith in relation
- 33 to the contract under section 15A (which relates to unfair terms).

34 Note: ASIC may use its powers under the applied enforcement provisions of
35 the ASIC Act in this case (see subsection 15G(1) of this Act).

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1 **17 At the end of the Act**

2 Add:

3 **Schedule 1—Modifications of applied ASIC**
4 **Act provisions**

5 Note: See section 15G.

6 **Part 1—Applied enforcement provisions**
7

8 **1 General modifications**

- 9 (1) A reference in the applied enforcement provisions of the ASIC Act
10 to a provision included in those provisions is to be read as a
11 reference to that provision as it applies under subsection 15G(1) of
12 this Act.
- 13 (2) Except as provided in subclause (3), a reference in the applied
14 enforcement provisions of the ASIC Act to Division 2 of Part 2 of
15 the ASIC Act is to be read as a reference to the applied
16 enforcement provisions of the ASIC Act.
- 17 (3) A reference in the applied enforcement provisions of the ASIC Act
18 to:
19 (a) a contravention of Division 2 of Part 2 of the ASIC Act; or
20 (b) a contravention of a provision of Division 2 of Part 2 of the
21 ASIC Act;
22 is to be read as a reference to relying on, or purporting to rely on, a
23 term of a standard form consumer contract of general insurance
24 that the Court has declared, under section 12GND of the applied
25 enforcement provisions of the ASIC Act, to be an unfair term.
- 26 (4) A reference in the applied enforcement provisions of the ASIC Act
27 to Part 3 of the ASIC Act is to be read as a reference to the applied
28 investigations provisions of the ASIC Act.

29 **2 Injunctions**

30 In addition to the modifications referred to in clause 1,
31 section 12GD of the ASIC Act applies as if subsection (9) were
32 omitted.

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Amendment of the Insurance Contracts Act 1984 **Schedule 1**

1 **3 Findings in proceedings to be evidence**

2 In addition to the modifications referred to in clause 1,
3 section 12GG of the ASIC Act applies as if:

- 4 (a) the reference to a proceeding against a person under
5 section 12GF of the ASIC Act were omitted; and
6 (b) the references to sections 12GBC, 12GLA and 12GLB of the
7 ASIC Act were omitted; and
8 (c) the reference to an offence against section 12GB of the ASIC
9 Act were omitted.

10 **4 Other orders**

11 In addition to the modifications referred to in clause 1,
12 section 12GM of the ASIC Act applies as if:

- 13 (a) subsection (1) were amended by omitting “or makes an order
14 under section 12GF, 12GLA or 12GLB”; and
15 (b) subsection (4) were amended by omitting “this Part” and
16 substituting “this Subdivision”; and
17 (c) subsections (6), (7A) and (10) were omitted; and
18 (d) the following subsection were inserted before subsection (8):

19 (7B) Despite subsection (7), the Court must not, under subsection (1) or
20 (2), make an order of the kind referred to in paragraph (7)(a), (b) or
21 (c) in relation to a standard form consumer contract of general
22 insurance.

23 **5 Power of Court to prohibit payment or transfer of money or other
24 property**

25 In addition to the modifications referred to in clause 1,
26 section 12GN of the ASIC Act applies as if:

- 27 (a) paragraphs (1)(a) and (c) were omitted; and
28 (b) paragraph (1)(e) were amended by omitting “(a),” and “, (c)”;
29 and
30 (c) paragraph (3)(b) were amended by omitting “this Part”, and
31 substituting “this Subdivision”; and
32 (d) subsection (9) were omitted.

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6 Orders to redress loss or damage suffered by non-party consumers etc.

In addition to the modifications referred to in clause 1, section 12GNB of the ASIC Act applies as if:

- (a) subparagraph (1)(a)(i) were omitted; and
- (b) subparagraph (1)(a)(ii) were amended by omitting “a consumer contract”, and substituting “a standard form consumer contract of general insurance”; and
- (c) paragraph (2)(a) were omitted; and
- (d) paragraph (5)(a) were omitted; and
- (e) subsections (6) and (10) were omitted.

7 Kinds of orders that may be made to redress loss or damage suffered by non-party consumers etc.

In addition to the modifications referred to in clause 1, section 12GNC of the ASIC Act applies as if:

- (a) the subsection number “(1)” were inserted before “Without limiting”; and
- (b) the following subsection were added at the end:
 - (2) Despite subsection (1), the Court must not, under subsection 12GNB(1), make an order of the kind referred to in paragraph (1)(a), (b) or (c) of this section in relation to a standard form consumer contract of general insurance.

8 Declarations

Section 12GND of the ASIC Act applies as if:

- (a) subsection (1) were amended by:
 - (i) omitting “a consumer contract”, and substituting “a standard form consumer contract of general insurance”; and
 - (ii) adding at the end “(within the meaning of subsection 15B(1) of the *Insurance Contracts Act 1984*)”; and
- (b) subsection (1A) were omitted.

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Amendment of the Insurance Contracts Act 1984 **Schedule 1**

1 **9 Disclosure of documents by ASIC**

2 In addition to the modifications referred to in clause 1,
3 section 12HB of the ASIC Act applies as if paragraph (1)(b) were
4 amended by omitting “section 12GLA or 12GLB or”.

5 **10 Jurisdiction of Court to make declarations and orders**

6 In addition to the modifications referred to in clause 1,
7 section 12HD of the ASIC Act applies as if subparagraph (1)(a)(i)
8 were omitted.

9 **Part 2—Applied investigation provisions**
10

11 **11 General modifications**

- 12 (1) A reference in the applied investigation provisions of the ASIC Act
13 to a provision included in those provisions is to be read as a
14 reference to that provision as it applies under subsection 15G(2) of
15 this Act.
- 16 (2) A reference in the applied investigation provisions of the ASIC Act
17 to Part 3 of the ASIC Act is to be read as a reference to the applied
18 investigation provisions of the ASIC Act.
- 19 (3) A reference in the applied investigation provisions of the ASIC Act
20 to Division 2 of Part 2 of the ASIC Act is to be read as a reference
21 to the applied enforcement provisions of the ASIC Act.

22 **12 General powers of investigation**

- 23 Section 13 of the ASIC Act applies as if:
24 (a) subsections (1), (2) and (3) were omitted; and
25 (b) subsection (6) were omitted and the following subsection
26 were substituted:
- 27 (6) If ASIC has reason to suspect that an insurer has relied on, or
28 purported to rely on, a term of a standard form consumer contract
29 of general insurance that the Court has declared, under
30 section 12GND of Division 2 of Part 2, to be an unfair term, ASIC
31 may make such investigation as it thinks appropriate.

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1 **13 Minister may direct investigations**

2 Section 14 of the ASIC Act applies as if subsection (2) were
3 omitted and the following subsection were substituted:

4 (2) This subsection applies to a suspected reliance, or purported
5 reliance, by an insurer on a term of a standard form consumer
6 contract of general insurance that the Court has declared, under
7 section 12GND of Division 2 of Part 2, to be an unfair term.

8 **14 Final report on investigation**

9 In addition to the modifications referred to in clause 11, section 17
10 of the ASIC Act applies as if subsection (1) were amended by
11 omitting “or 15”.

12 **15 When inspection and audit powers may be exercised**

13 In addition to the modifications referred to in clause 11, section 28
14 of the ASIC Act applies as if:

- 15 (a) “sections 29, 30A, 35, 36 and 39A” were omitted, and
16 “sections 35 and 36” were substituted; and
17 (b) paragraphs (a), (b) and (c) were omitted.

18 **16 Notice to produce books about affairs of body corporate**

19 In addition to the modifications referred to in clause 11, section 30
20 of the ASIC Act applies as if:

- 21 (a) the heading were amended by omitting “or registered
22 scheme”; and
23 (b) subsection (2) were omitted.

24 **17 Notice to produce books about financial products**

25 In addition to the modifications referred to in clause 11, section 31
26 of the ASIC Act applies as if:

- 27 (a) paragraphs (1)(a) and (b) were omitted; and
28 (b) paragraph (1)(e) were amended by omitting “(a), (b),”; and
29 (c) paragraphs (1)(g) and (j) were omitted.

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1 **18 Notice to produce documents in person's possession**

2 In addition to the modifications referred to in clause 11, section 33
3 of the ASIC Act applies as if subsection (2) were omitted.

4 **19 ASIC may authorise persons to require production of books,
5 giving of information etc.**

6 In addition to the modifications referred to in clause 11, section 34
7 of the ASIC Act applies as if subsection (3) were amended by
8 omitting "30A,".

9 **20 Powers where books produced or seized**

10 In addition to the modifications referred to in clause 11, section 37
11 of the ASIC Act applies as if paragraphs (5)(b) and (c) were
12 omitted and the following paragraphs were substituted:

- 13 (b) for the purpose referred to in paragraph 28(d); or
14 (c) for a decision to be made about whether or not a proceeding
15 to which the books concerned would be relevant should be
16 begun; or

17 **21 Non-compliance with requirements made under applied
18 investigations provisions**

19 In addition to the modifications referred to in clause 11, section 63
20 of the ASIC Act applies as if:

- 21 (a) paragraph (1)(c) were amended by omitting "30A,"; and
22 (b) subsection (2) were omitted; and
23 (c) subsection (3) were amended by omitting "or 29(2)" and "or
24 58(1), (2) or (4)"; and
25 (d) subsection (4) were amended by omitting "or 48(2)"; and
26 (e) subsection (5) were amended by omitting ", (1A), (2)".

27 **22 Self-incrimination**

28 In addition to the modifications referred to in clause 11, section 68
29 of the ASIC Act applies as if:

- 30 (a) subsection (1) were amended by omitting "of Division 3 of
31 Part 10, and of Division 2 of Part 11,"; and

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1 (b) paragraph (2)(a) were amended by omitting “Division 3 of
2 Part 10 or Division 2 of Part 11,”.

3 **23 Legal professional privilege**

4 In addition to the modifications referred to in clause 11, section 69
5 of the ASIC Act applies as if paragraph (1)(a) were amended by
6 omitting “Division 3 of Part 10, or Division 2 of Part 11,”.

7 **24 Powers of Court where non-compliance with applied 8 investigation provisions**

9 In addition to the modifications referred to in clause 11, section 70
10 of the ASIC Act applies as if subsection (1) were amended by
11 omitting “(other than Division 8)”.

12 **25 Copies of, or extracts from, certain books**

13 In addition to the modifications referred to in clause 11, section 80
14 of the ASIC Act applies as if paragraph (1)(aa) were omitted.

15 **26 Evidence of authority**

16 In addition to the modifications referred to in clause 11, section 85
17 of the ASIC Act applies as if “(other than Division 6)” were
18 omitted.

19 **27 Allowances and expenses**

20 In addition to the modifications referred to in clause 11, section 89
21 of the ASIC Act applies as if subsection (2) were omitted.

22 **18 Application of amendments**

23 (1) The amendments made by this Schedule apply to a standard form
24 consumer contract of general insurance that is originally entered into on
25 or after the commencement of this Schedule (the *commencement day*).

26 (2) However, if a standard form consumer contract of general insurance
27 that was originally entered into before the commencement day is
28 renewed on or after that day, the amendments made by this Schedule
29 apply to the contract as renewed, on and after the day (the *renewal day*)

EXPOSURE-DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 1**

1 on which the renewal takes effect, in relation to conduct that occurs on
2 or after the renewal day.

3 (3) Also, if:

4 (a) a term of a standard form consumer contract of general
5 insurance that was originally entered into before the
6 commencement day is varied on or after that day; and

7 (b) subitem (2) has not already applied in relation to the contract;

8 the amendments made by this Schedule apply in relation to the term as
9 varied, on and after the day (the *variation day*) on which the variation
10 takes effect, in relation to conduct that occurs on or after the variation
11 day.

EXPOSURE-DRAFT

Schedule 1 Amendment of the Insurance Contracts Act 1984

1
2

Schedule 2—Other amendments

3

Australian Securities and Investments Commission Act 2001

4

1 Subsection 12BA(1)

5

Insert:

6

standard form consumer contract of general insurance has the
7 meaning given by subsection 15A(3) of the *Insurance Contracts*
8 *Act 1984*.

9

2 Subsection 12BF(1)

10

After “consumer contract”, insert “(other than a standard form
11 consumer contract of general insurance)”.

12

3 At the end of subsection 12BF(1)

13

Add:

14

Note: See Division 2 of Part II of the *Insurance Contracts Act 1984* in
15 relation to unfair terms in standard form consumer contracts of general
16 insurance.