

# EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (20 November 2012)
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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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# EXPOSURE-DRAFT

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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	The day after the end of the period of 30 months beginning on the day this Act receives the Royal Assent.	
6. Schedule 5, Part 1	The day this Act receives the Royal Assent.	
7. 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.	
8. Schedule 5, Parts 3 and 4	The day this Act receives the Royal Assent.	
9. 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.	
10. Schedule 6, Part 5	The day this Act receives the Royal Assent.	
11. 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.	
12. Schedule 7	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	

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# EXPOSURE-DRAFT

Schedule 1 Scope and application

Part 1 Duty of utmost good faith

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1

## Schedule 1—Scope and application

2

3

### Part 1—Duty of utmost good faith

4

#### *Insurance Contracts Act 1984*

5

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

6

7

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

8

#### **2 Subsection 11(1)**

9

Insert:

10

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

11

12

13

14

15

#### **3 Section 13**

16

Before “A contract”, insert “(1)”.

17

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

18

Add:

19

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

20

21

22

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

23

24

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

25

26

#### **5 After section 14**

27

Insert:

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# EXPOSURE-DRAFT

Scope and application **Schedule 1**  
Duty of utmost good faith **Part 1**

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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 a contract of life insurance that was originally entered into before the  
30 commencement of this item is varied after that commencement to:

- 31 (a) increase a sum insured under the contract; or  
32 (b) increase the number of life insureds under the contract; or  
33 (c) provide one or more additional kinds of insurance cover;

34 then:

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## Schedule 1 Scope and application

### Part 1 Duty of utmost good faith

---

- 1 (d) 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 (e) the amendments made by this Part apply to the contract to the  
5 extent of the variation.  
6
-

# EXPOSURE-DRAFT

Scope and application **Schedule 1**  
Bundled workers' compensation contracts **Part 2**

---

1

2

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

3

### *Insurance Contracts Act 1984*

4

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

5

Add:

6

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

7

(i) for the purposes of a law (including a law of a State or a Territory) that relates to workers' compensation; and

8

9

(ii) to provide insurance cover in respect of an employer's liability under a rule of the common law that requires payment of damages to a person for employment-related personal injury.

10

11

12

13

#### **8 Application**

14

The amendment made by this Part applies to:

15

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

16

17

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

18

19

20

# EXPOSURE-DRAFT

Schedule 1 Scope and application

Part 3 Bundled contracts generally

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1

2

## Part 3—Bundled contracts generally

3

### *Insurance Contracts Act 1984*

4

#### 9 After subsection 9(1)

5

Insert:

6

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

7

8

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

10

11

12

13

14

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

15

16

17

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

18

19

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

20

21

22

23

24

(a) provisions (the *first group of provisions*) for the purposes of a law referred to in subparagraph (1)(f)(i); and

(b) provisions (the *second group of provisions*) that provide insurance cover of the kind referred to in subparagraph (1)(f)(ii);

25

26

27

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

28

(1C) If:

29

30

31

32

33

34

(a) a provision of a contract of insurance, or a proposed contract of insurance, affects the operation of a group or groups of provisions included in the contract or proposed contract; and

(b) because of subsection (1A) or (1B), subsection (1) applies as if that group or those groups of provisions were a separate contract or proposed contract;

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Scope and application **Schedule 1**  
Bundled contracts generally **Part 3**

---

1 then the first-mentioned provision is, for the purposes of  
2 subsection (1), to be regarded as a provision included in that  
3 separate contract or 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 a contract of life insurance that was originally entered into before the  
12 commencement of this item is varied after that commencement to:
- 13 (a) increase a sum insured under the contract; or
  - 14 (b) increase the number of life insureds under the contract; or
  - 15 (c) provide one or more additional kinds of insurance cover;
- 16 then:
- 17 (d) the contract is treated, to the extent of the variation, as if it  
18 had been originally entered into after the commencement of  
19 this item; and
  - 20 (e) the amendment made by this Part applies to the contract to  
21 the extent of the variation.  
22

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## Schedule 2 Electronic communication

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1

2

3

## Schedule 2—Electronic communication

4

### *Insurance Contracts Act 1984*

5

#### **1 Subsection 62(1)**

6

Omit “or 77”.

7

#### **2 Section 70**

8

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

9

#### **3 Subsection 71(1)**

10

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

11

12

#### **4 Paragraph 71(2)(b)**

13

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

14

15

#### **5 Subsection 71(2)**

16

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

17

18

#### **6 Subsection 71(3)**

19

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

20

21

#### **7 Section 72**

22

Repeal the section, substitute:

23

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

24

25

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:

26

27

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# EXPOSURE-DRAFT

Electronic communication **Schedule 2**

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- 1 (a) the content and legibility of the notice, other document or  
2 information; and  
3 (b) the material that may accompany the notice, other document  
4 or information.

## 5 **72A Method for giving written notices or documents**

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

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

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

## 17 **8 Section 77**

18 Repeal the section.

## 19 **9 Application**

20 The amendments made by this Schedule apply in relation to a notice or  
21 other document or information given to a person under this Act after the  
22 commencement of this item.  
23

# EXPOSURE-DRAFT

## Schedule 3 Powers of ASIC

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1

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## Schedule 3—Powers of ASIC

4

### *Insurance Contracts Act 1984*

5

#### **1 At the end of Part IA**

6

Add:

7

#### **11F ASIC's power to intervene in proceedings**

8

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

9

10

(a) this Act; or

11

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

12

13

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

14

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

15

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

16

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

17

*(Prudential Supervision and Product Standards) Act 2003*, as

18

the case requires).

19

(3) Without limiting subsection (2), ASIC may appear and be represented in a proceeding in which it intervenes under subsection (1):

20

21

(a) by a staff member of ASIC; or

22

23

(b) by a natural person or body to whom ASIC has delegated its functions and powers under this Act; or

24

25

(c) by a solicitor or by counsel.

26

#### **2 Application**

27

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

28

29

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# EXPOSURE-DRAFT

Disclosure and misrepresentations **Schedule 4**  
Insureds' duty of disclosure **Part 1**

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## Schedule 4—Disclosure and misrepresentations

### Part 1—Insureds' duty of disclosure

#### *Insurance Contracts Act 1984*

##### **1 Paragraph 21(1)(b)**

Repeal the paragraph, substitute:

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

##### **2 Application**

- (1) The amendment made by this Part applies to:
  - (a) a contract of insurance that is originally entered into after the commencement of this item; and
  - (b) a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement.
- (2) If a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to:
  - (a) increase a sum insured under the contract; or
  - (b) increase the number of life insureds under the contract; or
  - (c) provide one or more additional kinds of insurance cover;then:
  - (d) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and
  - (e) the amendment made by this Part applies to the contract to the extent of the variation.

# EXPOSURE-DRAFT

Schedule 4 Disclosure and misrepresentations

Part 2 Eligible contracts of insurance

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1

2

## Part 2—Eligible contracts of insurance

3

### *Insurance Contracts Act 1984*

4

#### **3 Section 21A**

5

Repeal the section, substitute:

6

#### **21A Duty of disclosure before original entering into of eligible contract of insurance**

7

8

##### *Scope*

9

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

10

11

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

12

13

14

15

##### *Position of the insurer*

16

- (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.

17

18

19

20

- (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.

21

22

23

- (4) If the insurer:

24

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

25

(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;

26

27

28

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

29

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# EXPOSURE-DRAFT

Disclosure and misrepresentations **Schedule 4**  
Eligible contracts of insurance **Part 2**

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1                    *Position of the insured*

2                    (5) If:

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

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

7                    (i) is known to the insured; and

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

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

12                   *Definition*

13                   (6) In this section and in section 21B:

14                   ***eligible contract of insurance*** means a contract of insurance that is  
15                   specified in the regulations to be an eligible contract of insurance  
16                   for the purposes of those sections.

17                   **21B Duty of disclosure before renewal of eligible contract of**  
18                   **insurance**

19                   *Scope*

20                   (1) This section applies in relation to the renewal of an eligible  
21                   contract of insurance.

22                   Note:        ***Eligible contract of insurance*** is defined in subsection 21A(6).

23                   *Position of the insurer*

24                   (2) 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:

31                   (i) to disclose to the insurer any change to that matter; or

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## Schedule 4 Disclosure and misrepresentations

### Part 2 Eligible contracts of insurance

---

1 (ii) to inform the insurer that there is no change to that  
2 matter.

3 Note: *Change*, to a matter previously disclosed by an insured in  
4 relation to an eligible contract of insurance, is defined in  
5 subsection (12).

6 (3) If the insurer does not:

7 (a) make a request in accordance with paragraph (2)(a); or

8 (b) give the insured a copy of any matter previously disclosed by  
9 the insured and make a request in accordance with  
10 paragraph (2)(b);

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

13 Note: This subsection is affected by subsection (11).

14 (4) If the insurer:

15 (a) makes a request in accordance with paragraph (2)(a); and

16 (b) also requests (other than in accordance with paragraph (2)(b))  
17 the insured to disclose to the insurer any other matter that  
18 would be covered by the duty of disclosure in relation to the  
19 renewed contract;

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

22 Note: This subsection is affected by subsection (11).

23 (5) If the insurer:

24 (a) gives the insured a copy of any matter previously disclosed  
25 by the insured and makes a request in accordance with  
26 paragraph (2)(b); and

27 (b) also requests (other than in accordance with paragraph (2)(a))  
28 the insured to disclose to the insurer any other matter that  
29 would be covered by the duty of disclosure in relation to the  
30 renewed contract;

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

33 Note: This subsection is affected by subsection (11).

34 *Position of the insured*

35 (6) If:

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Disclosure and misrepresentations **Schedule 4**  
Eligible contracts of insurance **Part 2**

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- 1 (a) the insurer makes a request in accordance with  
2 paragraph (2)(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 (2)(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 (11).

14 (7) 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 (2)(b), but does not make a request in  
18 accordance with paragraph (2)(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 (11).

26 (8) If:

- 27 (a) the insurer:  
28 (i) makes a request in accordance with paragraph (2)(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 (2)(b); and  
33 (b) before the contract is renewed, the insured:  
34 (i) discloses each matter referred to in paragraph (6)(b);  
35 and  
36 (ii) does either of the things referred to in paragraph (7)(b);

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## Schedule 4 Disclosure and misrepresentations

### Part 2 Eligible contracts of insurance

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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 (11).

4 (9) 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 (2)(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 (10) 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 (2)(b); and

16 (b) before the contract is renewed, the insured informs the  
17 insurer under subsection (7) or (8), or is taken to have  
18 informed the insurer under subsection (9), 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 (11) 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 (12) 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:

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# EXPOSURE-DRAFT

Disclosure and misrepresentations **Schedule 4**  
Eligible contracts of insurance **Part 2**

---

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

## 6 **4 Application**

- 7 (1) Section 21A of the *Insurance Contracts Act 1984*, as substituted by  
8 item 3, applies to an eligible contract of insurance that is originally  
9 entered into after the commencement of that item.
- 10 (2) Section 21B of the *Insurance Contracts Act 1984*, as inserted by item 3,  
11 applies to an eligible contract of insurance that is renewed after the  
12 commencement of that item (regardless of when the contract was  
13 originally entered into).

## 14 **5 Saving of regulations**

- 15 (1) Regulations that were in force under subsection 21A(9) of the *Insurance*  
16 *Contracts Act 1984* immediately before the commencement of this item  
17 continue to have effect after that commencement as if they had been  
18 made under subsection 21A(6) of the *Insurance Contracts Act 1984*, as  
19 substituted by item 3.
- 20 (2) Subitem (1) does not prevent the amendment or repeal of regulations  
21 covered by that subitem.  
22

# EXPOSURE-DRAFT

Schedule 4 Disclosure and misrepresentations

Part 3 Insurers' duty to inform of duty of disclosure

---

1

## 2 **Part 3—Insurers' duty to inform of duty of disclosure**

### 3 *Insurance Contracts Act 1984*

#### 4 **6 Subsection 11(1)**

5 Insert:

6 *life insured* includes a proposed life insured.

#### 7 **7 Paragraph 11(10)(b)**

8 Omit all the words after “except”, substitute:

9 if:

- 10 (i) the variation is involved in a renewal, extension or  
11 reinstatement of the contract; or
- 12 (ii) the varied contract will provide a kind of insurance  
13 cover that was not provided by the contract immediately  
14 before the variation; or
- 15 (iii) in the case of a contract of life insurance—the variation  
16 will increase a sum insured under the contract in respect  
17 of the insured; and

#### 18 **8 Section 22**

19 Repeal the section, substitute:

#### 20 **22 Insurer to inform of duty of disclosure**

- 21 (1) The insurer must, before a contract of insurance is entered into,  
22 clearly inform the insured in writing:
- 23 (a) of the general nature and effect of the duty of disclosure; and  
24 (b) if section 21A or 21B applies to the contract—of the general  
25 nature and effect of that section; and  
26 (c) if the contract is a contract of life insurance—of the effect of  
27 section 31A; and  
28 (d) that the duty of disclosure applies until the proposed contract  
29 is entered into.
- 30 (2) If the proposed contract is a contract of life insurance, the insurer  
31 must also, before the contract is entered into, clearly inform any
-



# EXPOSURE-DRAFT

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

# EXPOSURE-DRAFT

**Schedule 4** Disclosure and misrepresentations

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

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1  
2  
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## **9 Application**

The amendments made by this Part apply to:

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

# EXPOSURE-DRAFT

Disclosure and misrepresentations **Schedule 4**  
Non-disclosures by life insureds **Part 4**

---

1

2

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

3

### ***Insurance Contracts Act 1984***

4

#### **10 After section 31**

5

Insert:

6

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

7

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

8

9

10

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

11

12

13

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

14

15

16

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

17

18

19

(i) the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and

20

21

(ii) the class of persons who would ordinarily be expected to apply for insurance cover of that kind;

22

23

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

24

25

26

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

27

28

(a) that diminishes the risk; or

29

(b) that is of common knowledge; or

30

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

31

32

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

33

# EXPOSURE-DRAFT

Schedule 4 Disclosure and misrepresentations

Part 4 Non-disclosures by life insureds

---

1     **11 Application**

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 a contract of life insurance that was originally entered into before the  
5             commencement of this item is varied after that commencement to:

6             (a) increase a sum insured under the contract; or

7             (b) increase the number of life insureds under the contract; or

8             (c) provide one or more additional kinds of insurance cover;

9             then:

10            (d) the contract is treated, to the extent of the variation, as if it  
11                had been originally entered into after the commencement of  
12                this item; and

13            (e) the amendment made by this Part applies to the contract to  
14                the extent of the variation.  
15

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# EXPOSURE-DRAFT

Remedies of insurers: life insurance contracts **Schedule 5**  
Unbundling of contracts **Part 1**

---

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

4 **Part 1—Unbundling of contracts**

5 *Insurance Contracts Act 1984*

6 **1 Before section 28**

7 Insert:

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

10 (1) If:

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

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

18 (2) If a contract of life insurance provides insurance cover in relation  
19 to 2 or more life insureds, this Division applies as if the insurance  
20 cover provided in relation to each life insured were provided by a  
21 separate contract of life insurance.

22 (3) If a contract of life insurance provides:

- 23 (a) insurance cover in relation to a life insured that is  
24 underwritten on particular terms; and  
25 (b) insurance cover in relation to that life insured that:  
26 (i) is not underwritten; or  
27 (ii) is underwritten on different terms;

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

31 Note: The effect of this section in relation to a contract of life insurance to  
32 which subsection (1), (2) or (3) applies is that different remedies may

# EXPOSURE-DRAFT

**Schedule 5** Remedies of insurers: life insurance contracts

**Part 1** Unbundling of contracts

---

1 be available to the insurer in respect of each separate contract of life  
2 insurance that is notionally taken to exist by virtue of the relevant  
3 subsection.

## 4 **2 Application**

5 The amendment made by this Part applies to a contract of life insurance  
6 whether originally entered into before or after the commencement of  
7 this item.  
8

---

# EXPOSURE-DRAFT

Remedies of insurers: life insurance contracts **Schedule 5**  
Remedies for non-disclosure and misrepresentation **Part 2**

---

1

2

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

3

### *Insurance Contracts Act 1984*

4

#### **3 Before subsection 29(1)**

5

6 Insert:

6

7 *Scope*

7

#### **4 At the end of subsection 29(1)**

8

9 Add:

9

10 Note: If subsection 27A(1), (2) or (3) applies to the contract of life  
11 insurance, different remedies may be available to the insurer in respect  
12 of each separate contract of life insurance that is notionally taken to  
13 exist by virtue of the relevant subsection.

10  
11  
12  
13

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

14

15 Insert:

15

16 *Insurer may avoid the contract*

16

#### **6 Subsection 29(3)**

17

18 After “a contract of life insurance”, insert “(being a contract of the same  
19 kind as the contract in relation to which the failure or misrepresentation  
20 referred to in subsection (1) relates)”.

18  
19  
20

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

21

22 Insert:

22

23 *Insurer may vary the contract*

23

#### **8 Subsection 29(4)**

24

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

25  
26

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

27

28 Add:

28

# EXPOSURE-DRAFT

## Schedule 5 Remedies of insurers: life insurance contracts

### Part 2 Remedies for non-disclosure and misrepresentation

---

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

#### 4 **10 Subsection 29(6)**

5 Repeal the subsection, substitute:

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

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

15 (7) In varying a contract (the *relevant contract*) under subsection (6),  
16 the insurer must have regard to the position in which other  
17 reasonable and prudent insurers that had entered into similar  
18 contracts of life insurance would have been, at the time the relevant  
19 contract was entered into, if there had been no failure to comply  
20 with the duty of disclosure, and no misrepresentation, of the kind  
21 referred to in subsection (1) by the insureds under the similar  
22 contracts before those contracts were entered into.

23 (8) For the purposes of subsection (7), a contract of life insurance (the  
24 *similar contract*) that was entered into by another insurer is similar  
25 to the relevant contract if:

26 (a) the similar contract provides insurance cover that is the same  
27 as, or similar to, the kind of insurance cover provided by the  
28 relevant contract; and

29 (b) the similar contract had been entered into at, or close to, the  
30 time the relevant contract was entered into.

31 *Date of effect of variation of contract*

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

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# EXPOSURE-DRAFT

Remedies of insurers: life insurance contracts **Schedule 5**  
Remedies for non-disclosure and misrepresentation **Part 2**

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

- 3                    (10) If the contract is a contract with a surrender value, or a contract  
4                    that provides insurance cover in respect of the death of a life  
5                    insured:  
6                        (a) the insurer may vary the contract under subsection (4) before  
7                                  the expiration of 3 years after the contract was entered into,  
8                                  but not after that period; and  
9                        (b) subsections (6), (7) and (8) do not apply in relation to the  
10                                  contract.

## 11 Application

- 12            (1)     The amendments made by this Part apply to a contract of life insurance  
13            that is originally entered into after the commencement of this item.
- 14            (2)     If a contract of life insurance that was originally entered into before the  
15            commencement of this item is varied after that commencement to:  
16                (a) increase a sum insured under the contract; or  
17                (b) increase the number of life insureds under the contract; or  
18                (c) provide one or more additional kinds of insurance cover;  
19            then:  
20                (d) the contract is treated, to the extent of the variation, as if it  
21                          had been originally entered into after the commencement of  
22                          this item; and  
23                (e) the amendments made by this Part apply to the contract to the  
24                          extent of the variation.  
25

# EXPOSURE-DRAFT

Schedule 5 Remedies of insurers: life insurance contracts

Part 3 Remedy for misstatement of date of birth

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1

2

## Part 3—Remedy for misstatement of date of birth

3

### *Insurance Contracts Act 1984*

4

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

5

Insert:

6

(3A) If:

7

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

8

9

10

11

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

12

13

14

15

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

16

#### **13 Subsection 30(4)**

17

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

18

#### **14 Application**

19

20

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

21

22

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

23

24

25

(a) increase a sum insured under the contract; or

(b) increase the number of life insureds under the contract; or

(c) provide one or more additional kinds of insurance cover;

26

then:

27

28

29

(d) the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and

30

31

32

(e) the amendments made by this Part apply to the contract to the extent of the variation.

---

# EXPOSURE-DRAFT

Remedies of insurers: life insurance contracts **Schedule 5**  
Cancellation of contracts **Part 4**

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1

2

## **Part 4—Cancellation of contracts**

3

### ***Insurance Contracts Act 1984***

4

#### **15 After section 59**

5

Insert:

6

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

7

An insurer under a contract of life insurance may cancel the contract if:

8

9

(a) a person who is or was at any time the insured failed to comply with the duty of the utmost good faith; or

10

11

(b) the person who was the insured at the time when the contract was entered into failed to comply with the duty of disclosure; or

12

13

14

(c) the person who was the insured at the time when the contract was entered into made a misrepresentation to the insurer during the negotiations for the contract but before it was entered into; or

15

16

17

18

(d) a person who is or was at any time the insured failed to comply with a provision of the contract (other than by failing to pay a premium in respect of the contract); or

19

20

21

Note: A contract of life insurance may be forfeited under section 210 of the *Life Insurance Act 1995* because of non-payment of a premium.

22

23

24

(e) the insured has made a fraudulent claim:

25

(i) under the contract (the ***first contract***); or

26

(ii) under another contract of insurance (whether with the insurer concerned or with another insurer) that provides insurance cover during any part of the period during which the first contract provides insurance cover.

27

28

29

30

#### **16 Section 63**

31

Repeal the section, substitute:

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# EXPOSURE-DRAFT

Schedule 5 Remedies of insurers: life insurance contracts

Part 4 Cancellation of contracts

---

1       **63 Cancellations of contracts of insurance void**

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

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

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

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

10       **17 Application**

11           (1)       Section 59A of the *Insurance Contracts Act 1984* (as inserted by  
12           item 15) and subsections 63(2) and (3) of that Act (as substituted by  
13           item 14) apply to a contract of life insurance that is originally entered  
14           into after the commencement of this item.

15           (2)       Subsections 63(1) and (3) of the *Insurance Contracts Act 1984* (as  
16           substituted by item 16) apply to a contract of general insurance whether  
17           originally entered into before or after the commencement of this item.  
18

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# EXPOSURE-DRAFT

Third parties **Schedule 6**  
Requests by third party beneficiaries to insurers for information **Part 1**

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## Schedule 6—Third parties

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

#### *Insurance Contracts Act 1984*

##### **1 Section 41**

Repeal the section, substitute:

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

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

# EXPOSURE-DRAFT

Schedule 6 Third parties

Part 1 Requests by third party beneficiaries to insurers for information

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- 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).

## 2 Application

- 5 The amendment made by this Part applies to:  
6 (a) a contract of liability insurance that is originally entered into  
7 after the commencement of this item; and  
8 (b) a contract of liability insurance that was originally entered  
9 into before the commencement of this item and is renewed  
10 after that commencement.  
11  
12
-

# EXPOSURE-DRAFT

Third parties **Schedule 6**  
Insurers' defences in actions by third party beneficiaries **Part 2**

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1

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

4 *Insurance Contracts Act 1984*

5 **3 Section 48 (heading)**

6 Repeal the heading, substitute:

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

9 **4 Subsection 48(1)**

10 Repeal the subsection, substitute:

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

15 **5 Subsection 48(2)**

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

18 **6 Paragraph 48(2)(a)**

19 Repeal the paragraph, substitute:

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

24 **7 At the end of subsection 48(3)**

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

28 **8 Section 48AA (heading)**

29 Repeal the heading, substitute:

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# EXPOSURE-DRAFT

Schedule 6 Third parties

Part 2 Insurers' defences in actions by third party beneficiaries

---

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

---



# EXPOSURE-DRAFT

Third parties **Schedule 6**  
Insurers' defences in actions by third party beneficiaries **Part 2**

---

- 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 a contract of life insurance that was originally entered into before the  
8 commencement of this item is varied after that commencement to:  
9 (a) increase a sum insured under the contract; or  
10 (b) increase the number of life insureds under the contract; or  
11 (c) provide one or more additional kinds of insurance cover;  
12 then:  
13 (d) the contract is treated, to the extent of the variation, as if it  
14 had been originally entered into after the commencement of  
15 this item; and  
16 (e) the amendments made by items 8 to 13 apply to the contract  
17 to the extent of the variation.  
18

# EXPOSURE-DRAFT

Schedule 6 Third parties

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

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1

2

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

3

4

### ***Insurance Contracts Act 1984***

5

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

6

Repeal the heading, substitute:

7

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

8

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

9

Repeal the subsections, substitute:

10

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

11

12

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20

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

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

21

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

22

23

24

25

26

27

28

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

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

29

#### **17 Application**

30

31

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

# EXPOSURE-DRAFT

Third parties **Schedule 6**

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

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- 1 (2) If a contract of life insurance that was originally entered into before the  
2 commencement of this item is varied after that commencement to:  
3 (a) increase a sum insured under the contract; or  
4 (b) increase the number of life insureds under the contract; or  
5 (c) provide one or more additional kinds of insurance cover;  
6 then:  
7 (d) the contract is treated, to the extent of the variation, as if it  
8 had been originally entered into after the commencement of  
9 this item; and  
10 (e) the amendments made by this Part apply to the contract to the  
11 extent of the variation.  
12

# EXPOSURE-DRAFT

Schedule 6 Third parties

Part 4 Rights of third parties to recover against insurers

---

1

2

## Part 4—Rights of third parties to recover against insurers

3

4

### *Insurance Contracts Act 1984*

5

#### **18 Section 51 (heading)**

6

Repeal the heading, substitute:

7

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

8

9

#### **19 Subsection 51(1)**

10

Repeal the subsection, substitute:

11

(1) If:

12

(a) the insured or any third party beneficiary under a contract of liability insurance is liable in damages to another person; and

13

14

(b) the contract provides insurance cover in respect of the liability; and

15

16

(c) the insured or third party beneficiary has died or cannot, after reasonable inquiry, be found;

17

18

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

19

20

21

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

22

Repeal the paragraph, substitute:

23

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

24

25

26

#### **21 Subsection 51(3)**

27

Omit "third party has in respect of the insured's liability", substitute

28

"other person has in respect of the liability of the insured or third party beneficiary".

29

30

#### **22 Application**

---

# EXPOSURE-DRAFT

Third parties **Schedule 6**  
Rights of third parties to recover against insurers **Part 4**

---

- 1           The amendments made by this Part apply to:
- 2                 (a) a contract of liability insurance that is originally entered into
- 3                         after the commencement of this item; and
- 4                 (b) a contract of liability insurance that was originally entered
- 5                         into before the commencement of this item and is renewed
- 6                         after that commencement.
- 7

# EXPOSURE-DRAFT

Schedule 6 Third parties

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

---

1

2

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

3

4

### ***Insurance Contracts Act 1984***

5

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

6

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

7

8

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

9

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

10

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

11

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

12

13

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

14

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

15

16

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

17

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

18

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

19

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

20

21

22

#### **29 Application**

23

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

24

25

26

---

# EXPOSURE-DRAFT

1

2

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

3

### ***Insurance Contracts Act 1984***

4

#### **30 Subsection 4(2)**

5

6

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

7

#### **31 Subsection 11(1)**

8

9

Insert:

10

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

11

12

(a) a superannuation or retirement scheme under which there can  
be more than one life insured; or

13

14

(b) another group life scheme (including a scheme that is not  
related to employment) under which there can be more than  
one life insured.

15

16

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

17

18

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

19

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

20

21

Add “and”.

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

22

23

Omit “only; and”, substitute “only.”.

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

24

25

Repeal the paragraph.

#### **36 Paragraph 23(a)**

26

27

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

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

28

# EXPOSURE-DRAFT

Schedule 6 Third parties

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

---

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

2 **38 Section 32**

3 Repeal the section, substitute:

4 **32 Non-disclosure or misrepresentation by life insured covered**  
5 **under group life contract**

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

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

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

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

25 **39 Section 32A**

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

27 **40 Application**

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

31 (2) The amendments made by items 31, 32 and 36 to 38 apply to a contract  
32 of life insurance that is originally entered into after the commencement  
33 of this item.

---



# EXPOSURE-DRAFT

Third parties **Schedule 6**

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

**6**

- 
- 1 (3) If a contract of life insurance that was originally entered into before the  
2 commencement of this item is varied after that commencement to:  
3 (a) increase a sum insured under the contract; or  
4 (b) increase the number of life insureds under the contract; or  
5 (c) provide one or more additional kinds of insurance cover;  
6 then:  
7 (d) the contract is treated, to the extent of the variation, as if it  
8 had been originally entered into after the commencement of  
9 this item; and  
10 (e) the amendments made by items 31, 32 and 36 to 38 apply to  
11 the contract to the extent of the variation.  
12

# EXPOSURE-DRAFT

## Schedule 7 Subrogation

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1

2

3

## Schedule 7—Subrogation

4

### *Insurance Contracts Act 1984*

5

#### **1 Before section 65**

6

Insert:

7

#### **64 Application to third party beneficiaries**

8

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

9

10

#### **2 Section 67**

11

Repeal the section, substitute:

12

#### **67 Rights with respect to money recovered under subrogation etc.**

13

##### *Scope*

14

(1) This section applies if:

15

(a) an insurer is liable under a contract of general insurance in respect of a loss; and

16

17

(b) the insurer has a right of subrogation in respect of the loss; and

18

19

(c) an amount is recovered (whether by the insurer or the insured) from another person in respect of the loss.

20

21

##### *Amount recovered by insurer*

22

(2) If the amount is recovered by the insurer in exercising the insurer's right of subrogation in respect of the loss:

23

24

(a) the insurer is entitled under this paragraph to so much of the amount as does not exceed the sum of:

25

26

(i) the amount paid by the insurer to the insured in respect of the loss; and

27

28

(ii) the amount paid by the insurer for administrative and legal costs incurred in connection with the recovery; and

29

---

# EXPOSURE-DRAFT

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

11 *Amount recovered by insured*

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

28 *Amount recovered by insurer and insured jointly*

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

# EXPOSURE-DRAFT

## Schedule 7 Subrogation

---

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

13 *Amount awarded by way of interest*

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

29 *Rights of insurer and insured are subject to contract and any*  
30 *agreement*

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