

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Insurance Contracts Amendment Bill
2010**

No. , 2010

(Treasury)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Insurance Contracts Amendment Act*
6 2010.

7 **2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day this Act receives the Royal Assent.	
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 3	The day this Act receives the Royal Assent.	
5. Schedule 4	The day after the end of the period of 18 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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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Scope and application**

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

3 *Insurance Contracts Act 1984*

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

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

7 **2 Subsection 11(1)**

8 Insert:

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

14 **3 Section 13**

15 Before “A contract”, insert “(1)”.

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

17 Add:

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

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

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

25 **5 After section 14**

26 Insert:

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

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

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

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

19 (3) In this section:

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

22 **6 Application**

- 23 (1) The amendments made by this Part apply to:
24 (a) a contract of insurance that is originally entered into after the
25 commencement of this item; and
26 (b) a contract of general insurance that was originally entered
27 into before the commencement of this item and is renewed
28 after that commencement.
- 29 (2) If 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:

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

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

2 ***Insurance Contracts Act 1984***

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

4 Add:

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

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

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

12 **8 Application**

13 The amendment made by this Part applies to:

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

16 (b) a contract of general insurance that was originally entered
17 into before the commencement of this item and is renewed
18 after that commencement.
19

1 **Part 3—Bundled contracts generally**

2 ***Insurance Contracts Act 1984***

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

4 Insert:

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

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

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

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

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

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

27 (1C) If:

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

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

1 **Schedule 2—Electronic communication**
2

3 ***Insurance Contracts Act 1984***

4 **1 Subsection 62(1)**

5 Omit “or 77”.

6 **2 Section 70**

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

8 **3 Subsection 71(1)**

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

11 **4 Paragraph 71(2)(b)**

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

14 **5 Subsection 71(2)**

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

17 **6 Subsection 71(3)**

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

20 **7 Section 72**

21 Repeal the section, substitute:

22 **72 Content and other requirements for notices etc. to be given in**
23 **writing**

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

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

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

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

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

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

8 (b) to a natural person:

9 (i) personally; or

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

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

15 **8 Section 77**

16 Repeal the section.

17 **9 Application**

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

1 **Schedule 3—Powers of ASIC**
2

3 ***Insurance Contracts Act 1984***

4 **1 At the end of Part IA**

5 Add:

6 **11F ASIC's power to intervene in proceedings**

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

9 (a) this Act; or

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

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

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

14 (b) ASIC has all the rights, duties and liabilities of such a party
15 (subject to this Act or Part 3 of the *Medical Indemnity*
16 *(Prudential Supervision and Product Standards) Act 2003*, as
17 the case requires).

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

21 (a) by a staff member of ASIC; or

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

24 (c) by a solicitor or by counsel.

25 **2 Application**

26 The amendment made by this Schedule applies to a proceeding
27 commenced after the commencement of this item.
28

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

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

4 *Insurance Contracts Act 1984*

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

6 Repeal the paragraph, substitute:

- 7 (b) a reasonable person in the circumstances could be expected
8 to know to be a matter so relevant, having regard to factors
9 including, but not limited to, the nature and extent of the
10 insurance cover to be provided under the relevant contract of
11 insurance.

12 **2 Application**

- 13 (1) The amendment made by this Part applies to:
14 (a) a contract of insurance that is originally entered into after the
15 commencement of this item; and
16 (b) a contract of general insurance that was originally entered
17 into before the commencement of this item and is renewed
18 after that commencement.
- 19 (2) If a contract of life insurance that was originally entered into before the
20 commencement of this item is varied after that commencement to:
21 (a) increase a sum insured under the contract; or
22 (b) increase the number of life insureds under the contract; or
23 (c) provide one or more additional kinds of insurance cover;
24 then:
25 (d) the contract is treated, to the extent of the variation, as if it
26 had been originally entered into after the commencement of
27 this item; and
28 (e) the amendment made by this Part applies to the contract to
29 the extent of the variation.
30

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

2 ***Insurance Contracts Act 1984***

3 **3 Section 21A**

4 Repeal the section, substitute:

5 **21A Duty of disclosure before original entering into of eligible**
6 **contract of insurance**

7 *Scope*

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

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

14 *Position of the insurer*

15 (2) Before the contract is originally entered into, the insurer may
16 request the insured to answer one or more specific questions that
17 are relevant to the decision of the insurer whether to accept the risk
18 and, if so, on what terms.

19 (3) If the insurer does not make a request in accordance with
20 subsection (2), the insurer is taken to have waived compliance with
21 the duty of disclosure in relation to the contract.

22 (4) If the insurer:
23 (a) makes a request in accordance with subsection (2); and
24 (b) requests the insured to disclose to the insurer any other
25 matter that would be covered by the duty of disclosure in
26 relation to the contract;
27 then the insurer is taken to have waived compliance with the duty
28 of disclosure in relation to that other matter.

29 *Position of the insured*

30 (5) If:

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

10 *Definition*

- 11 (6) In this section and in section 21B:

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

15 **21B Duty of disclosure before renewal of eligible contract of**
16 **insurance**

17 *Scope*

- 18 (1) This section applies in relation to the renewal of an eligible
19 contract of insurance.

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

21 *Position of the insurer*

- 22 (2) Before the contract is renewed, the insurer may do either or both of
23 the following things:

- 24 (a) request the insured to answer one or more specific questions
25 that are relevant to the decision of the insurer whether to
26 accept the risk and, if so, on what terms;
27 (b) give the insured a copy of any matter previously disclosed by
28 the insured in relation to the contract and request the insured:
29 (i) to disclose to the insurer any change to that matter; or
30 (ii) to inform the insurer that there is no change to that
31 matter.

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

Schedule 4 Disclosure and misrepresentations
Part 2 Eligible contracts of insurance

- 1 (3) If the insurer does not:
2 (a) make a request in accordance with paragraph (2)(a); or
3 (b) give the insured a copy of any matter previously disclosed by
4 the insured and make a request in accordance with
5 paragraph (2)(b);
6 then the insurer is taken to have waived compliance with the duty
7 of disclosure in relation to the renewed contract.

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

- 9 (4) If the insurer:
10 (a) makes a request in accordance with paragraph (2)(a); and
11 (b) also requests (other than in accordance with paragraph (2)(b))
12 the insured to disclose to the insurer any other matter that
13 would be covered by the duty of disclosure in relation to the
14 renewed contract;
15 then the insurer is taken to have waived compliance with the duty
16 of disclosure in relation to that other matter.

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

- 18 (5) If the insurer:
19 (a) gives the insured a copy of any matter previously disclosed
20 by the insured and makes a request in accordance with
21 paragraph (2)(b); and
22 (b) also requests (other than in accordance with paragraph (2)(a))
23 the insured to disclose to the insurer any other matter that
24 would be covered by the duty of disclosure in relation to the
25 renewed contract;
26 then the insurer is taken to have waived compliance with the duty
27 of disclosure in relation to that other matter.

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

29 *Position of the insured*

- 30 (6) If:
31 (a) the insurer makes a request in accordance with
32 paragraph (2)(a), but does not give the insured a copy of any
33 matter previously disclosed by the insured or make a request
34 in accordance with paragraph (2)(b); and

1 (b) before the contract is renewed, the insured discloses, in
2 answer to each specific question included in the request, each
3 matter that:
4 (i) is known to the insured; and
5 (ii) a reasonable person in the circumstances could be
6 expected to have disclosed in answer to that question;
7 then the insured is taken to have complied with the duty of
8 disclosure in relation to the renewed contract.

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

10 (7) If:

11 (a) the insurer gives the insured a copy of any matter previously
12 disclosed by the insured and makes a request in accordance
13 with paragraph (2)(b), but does not make a request in
14 accordance with paragraph (2)(a); and
15 (b) before the contract is renewed, the insured:
16 (i) discloses any change to the matter; or
17 (ii) if there is no change to the matter—informs the insurer
18 that there is no change to the matter;
19 then the insured is taken to have complied with the duty of
20 disclosure in relation to the renewed contract.

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

22 (8) If:

23 (a) the insurer:
24 (i) makes a request in accordance with paragraph (2)(a);
25 and
26 (ii) gives the insured a copy of any matter previously
27 disclosed by the insured and makes a request in
28 accordance with paragraph (2)(b); and
29 (b) before the contract is renewed, the insured:
30 (i) discloses each matter referred to in paragraph (6)(b);
31 and
32 (ii) does either of the things referred to in paragraph (7)(b);
33 then the insured is taken to have complied with the duty of
34 disclosure in relation to the renewed contract.

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

36 (9) If:

Schedule 4 Disclosure and misrepresentations
Part 2 Eligible contracts of insurance

- 1 (a) the insurer gives the insured a copy of any matter previously
2 disclosed by the insured and makes a request in accordance
3 with paragraph (2)(b); and
4 (b) before the contract is renewed, the insured does not disclose
5 any change to the matter;
6 then the insured is taken to have informed the insurer that there is
7 no change to the matter.

- 8 (10) If:
9 (a) the insurer gives the insured a copy of any matter previously
10 disclosed by the insured and makes a request in accordance
11 with paragraph (2)(b); and
12 (b) before the contract is renewed, the insured informs the
13 insurer under subsection (7) or (8), or is taken to have
14 informed the insurer under subsection (9), that there is no
15 change to the matter;
16 then neither subsection 21(3) nor section 27 applies in relation to
17 any failure by the insured to disclose any change to the matter.

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

- 20 (11) If the insured failed to comply with the duty of disclosure in
21 relation to the contract as originally entered into or any renewal of
22 that contract, then, despite any other provision of this section:
23 (a) the insurer is not taken to have waived compliance with the
24 duty of disclosure in relation to the earlier failure; and
25 (b) the insured is not taken to have complied with the duty of
26 disclosure in relation to the earlier failure.

27 *Definitions*

- 28 (12) In this section:
29 **change**, to a matter previously disclosed by an insured in relation
30 to an eligible contract of insurance, means a change to the matter
31 that:
32 (a) is known to the insured; and
33 (b) a reasonable person in the circumstances could be expected
34 to disclose in relation to that matter.

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

3 **4 Application**

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

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

11 **5 Saving of regulations**

12 (1) Regulations that were in force under subsection 21A(9) of the *Insurance*
13 *Contracts Act 1984* immediately before the commencement of this item
14 continue to have effect after that commencement as if they had been
15 made under subsection 21A(6) of the *Insurance Contracts Act 1984* as
16 substituted by item 3.

17 (2) Subitem (1) does not prevent the amendment or repeal of regulations
18 covered by that subitem.
19

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

2 ***Insurance Contracts Act 1984***

3 **6 Subsection 11(1)**

4 Insert:

5 *life insured* includes a proposed life insured.

6 **7 Paragraph 11(10)(b)**

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

8 if:

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

17 **8 Section 22**

18 Repeal the section, substitute:

19 **22 Insurer to inform of duty of disclosure**

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

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

9 Application

35 The amendments made by this Part apply to:

Schedule 4 Disclosure and misrepresentations
Part 3 Insurers' duty to inform of duty of disclosure

- 1 (a) a contract of insurance that is originally entered into after the
2 commencement of this item; and
3 (b) a contract of insurance that was originally entered into before
4 the commencement of this item and is renewed, extended,
5 varied or reinstated after that commencement.
6

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

2 ***Insurance Contracts Act 1984***

3 **10 After section 31**

4 Insert:

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

- 6 (1) This section applies in relation to a contract of life insurance under
7 which a person (other than the insured) would become a life
8 insured.
- 9 (2) If, during the negotiations for the contract but before it was entered
10 into, the person (the *life insured*) failed to disclose to the insurer a
11 matter that was known to the life insured, being a matter that:
12 (a) the life insured knew to be a matter relevant to the decision
13 of the insurer whether to accept the risk and, if so, on what
14 terms; or
15 (b) a reasonable person in the circumstances could have been
16 expected to know to be a matter so relevant, having regard to
17 factors including, but not limited to, the nature and extent of
18 the insurance cover to be provided under the relevant contract
19 of insurance;
20 this Act has effect as if the failure to disclose the matter had been a
21 failure by the insured to comply with the duty of disclosure in
22 relation to the matter.
- 23 (3) Subsection (2) does not apply in relation to a failure by the life
24 insured to disclose a matter:
25 (a) that diminishes the risk; or
26 (b) that is of common knowledge; or
27 (c) that the insurer knows or in the ordinary course of the
28 insurer's business as an insurer ought to know; or
29 (d) as to which compliance with the duty of disclosure is waived
30 by the insurer.

31 **11 Application**

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

Schedule 4 Disclosure and misrepresentations

Part 4 Non-disclosures by life insureds

- 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 amendment made by this Part applies to the contract to
11 the extent of the variation.
12

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

3 **Part 1—Unbundling of contracts**

4 *Insurance Contracts Act 1984*

5 **1 Before section 28**

6 Insert:

7 **27A Contracts of life insurance that provide 2 or more kinds of**
8 **insurance cover or insurance cover for 2 or more life**
9 **insureds**

10 (1) If a contract of life insurance provides 2 or more kinds of insurance
11 cover, this Division applies, in relation to each of those kinds of
12 insurance cover, as if the contract provided only that kind of
13 insurance cover.

14 (2) If a contract of life insurance provides a kind of insurance cover in
15 relation to 2 or more life insureds, subsection (1) applies to the
16 contract, in relation to each life insured, as if the insurance cover
17 provided by the contract in relation to that life insured constituted a
18 separate kind of insurance cover.

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

20 (a) a kind of insurance cover in relation to a life insured that is
21 underwritten on particular terms; and

22 (b) insurance cover of that kind in relation to that life insured
23 that:

24 (i) is not underwritten; or

25 (ii) is underwritten on different terms;

26 then the insurance cover referred to in paragraph (a) and the
27 insurance cover referred to in paragraph (b) are each to be regarded
28 as a separate kind of insurance cover for the purposes of
29 subsection (1).

30 Note: Because of this section, the remedies that may be available to an
31 insurer under this Division in relation to a contract of life insurance
32 will depend on the kind of insurance cover provided by the contract.

1 **2 Application**

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

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

3 *Insurance Contracts Act 1984*

4 **3 Subsection 28(1)**

5 Omit “where the person who became the insured under a contract of
6 general insurance”, substitute “in relation to a contract of general
7 insurance if the person who became the insured under the contract”.

8 Note 1: The heading to section 28 is replaced by the heading “*Contracts of general insurance*
9 *and certain contracts of life insurance*”.

10 Note 2: The following heading to subsection 28(1) is inserted “*Contracts of general insurance*”.

11 **4 After subsection 28(1)**

12 Insert:

13 *Contracts of life insurance (other than contracts with a surrender*
14 *value or that provide cover on death)*

15 (1A) This section applies in relation to a contract of life insurance (other
16 than a contract of life insurance as defined in subsection 29(1A)) if
17 the person who became the insured under the contract upon the
18 contract being entered into:

- 19 (a) failed to comply with the duty of disclosure; or
20 (b) made a misrepresentation to the insurer before the contract
21 was entered into;

22 but does not apply if:

- 23 (c) the insurer would have entered into the contract, for the same
24 premium and on the same terms and conditions, even if the
25 insured had not failed to comply with the duty of disclosure
26 or had not made the misrepresentation before the contract
27 was entered into; or
28 (d) the failure or misrepresentation was in respect of the date of
29 birth of one or more of the life insureds.

30 Note: The following heading to subsection 28(2) is inserted “*Remedies*”.

31 **5 Before subsection 29(1)**

32 Insert:

1 (1A) In this section:

2 ***contract of life insurance*** means:

- 3 (a) a contract of life insurance with a surrender value; or
4 (b) a contract of life insurance that provides insurance cover in
5 respect of the death of a life insured.

6 Note: If a contract of life insurance provides insurance cover in respect
7 of the death of a life insured, and the contract also provides one
8 or more other kinds of insurance cover, this section applies to the
9 contract only to the extent that it provides insurance cover on
10 death. Section 28 applies to the contract to the extent that it
11 provides the other kind or kinds of insurance cover. This is
12 because of the effect of section 27A.

13 Note: The heading to section 29 is replaced by the heading “**Contracts of life insurance with**
14 **a surrender value or that provide cover on death**”.

15 **6 Subsection 29(1)**

16 Omit “where the person who became the insured under a contract of life
17 insurance”, substitute “in relation to a contract of life insurance if the
18 person who became the insured under the contract”.

19 **7 Subsection 29(1)**

20 Omit “apply where”, substitute “apply if”.

21 **8 Subsection 29(3)**

22 Omit “a contract”, insert “the contract”.

23 **9 Application**

24 (1) The amendment made by item 3 applies to a contract of general
25 insurance whether originally entered into before or after the
26 commencement of this item.

27 (2) The amendments made by items 4 to 8 apply to a contract of life
28 insurance that is originally entered into after the commencement of this
29 item.

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

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

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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 amendments made by items 4 to 8 apply to the contract to the extent of the variation.

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

2 ***Insurance Contracts Act 1984***

3 **10 After subsection 30(3)**

4 Insert:

5 (3A) If:

- 6 (a) the expiration date of a contract of life insurance is calculated
7 by reference to the date of birth of a person who is a life
8 insured under the contract; and
9 (b) the person’s date of birth was not correctly stated to the
10 insurer at the time when the contract was entered into;
11 the insurer may (instead of doing any of the things referred to in
12 subsection (2)) vary the contract by changing its expiration date to
13 the date that would have been the expiration date if the contract
14 had been based on the correct date of birth.

15 **11 Subsection 30(4)**

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

17 **12 Application**

- 18 (1) The amendments made by this Part apply to a contract of life insurance
19 that is originally entered into after the commencement of this item.
- 20 (2) If a contract of life insurance that was originally entered into before the
21 commencement of this item is varied after that commencement to:
22 (a) increase a sum insured under the contract; or
23 (b) increase the number of life insureds under the contract; or
24 (c) provide one or more additional kinds of insurance cover;
25 then:
26 (d) the contract is treated, to the extent of the variation, as if it
27 had been originally entered into after the commencement of
28 this item; and
29 (e) the amendments made by this Part apply to the contract to the
30 extent of the variation.
31

1 **Part 4—Cancellation of contracts**

2 ***Insurance Contracts Act 1984***

3 **13 After section 59**

4 Insert:

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

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

- 8 (a) a person who is or was at any time the insured failed to
9 comply with the duty of the utmost good faith; or
10 (b) the person who was the insured at the time when the contract
11 was entered into failed to comply with the duty of disclosure;
12 or
13 (c) the person who was the insured at the time when the contract
14 was entered into made a misrepresentation to the insurer
15 during the negotiations for the contract but before it was
16 entered into; or
17 (d) a person who is or was at any time the insured failed to
18 comply with a provision of the contract (other than by failing
19 to pay a premium in respect of the contract); or

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

- 23 (e) the insured has made a fraudulent claim:
24 (i) under the contract (the ***first contract***); or
25 (ii) under another contract of insurance (whether with the
26 insurer concerned or with another insurer) that provides
27 insurance cover during any part of the period during
28 which the first contract provides insurance cover.

29 **14 Section 63**

30 Repeal the section, substitute:

31 **63 Cancellations of contracts of insurance void**

- 32 (1) Except as provided by this Act, an insurer may not cancel a
33 contract of general insurance.

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

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

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

7 **15 Application**

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

12 (2) Subsections 63(1) and (3) of the *Insurance Contracts Act 1984* (as
13 substituted by item 14) apply to a contract of general insurance whether
14 originally entered into before or after the commencement of this item.
15

1 **Schedule 6—Third parties**

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

4 *Insurance Contracts Act 1984*

5 **1 Section 41**

6 Repeal the section, substitute:

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

9 (1) This section applies in relation to a contract of liability insurance if
10 it would constitute a breach of the contract if, without the consent
11 of the insurer, the insured or any third party beneficiary were:

12 (a) to settle or compromise a claim against the insured or third
13 party beneficiary; or

14 (b) to make an admission or payment in respect of such a claim.

15 (2) If the insured or any third party beneficiary (the *claimant*) under
16 the contract has made a claim under the contract, the claimant may
17 at any time, by notice in writing given to the insurer, require the
18 insurer to inform the claimant in writing:

19 (a) whether the insurer admits that the contract applies to the
20 claim; and

21 (b) if the insurer so admits, whether the insurer proposes to
22 conduct, on behalf of the claimant, the negotiations and any
23 legal proceedings in respect of the claim made against the
24 claimant.

25 (3) If the insurer does not, within a reasonable time after being given a
26 notice under subsection (2), inform the claimant:

27 (a) that the insurer admits that the contract of liability insurance
28 applies to the claim; and

29 (b) that the insurer proposes to conduct, on behalf of the
30 claimant, the negotiations and any legal proceedings in
31 respect of the claim made against the claimant;

32 then:

Schedule 6 Third parties

Part 1 Requests by third party beneficiaries to insurers for information

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

5 **2 Application**

6 The amendment made by this Part applies to:

- 7 (a) a contract of liability insurance that is originally entered into
8 after the commencement of this item; and
9 (b) a contract of liability insurance that was originally entered
10 into before the commencement of this item and is renewed
11 after that commencement.
12

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

3 *Insurance Contracts Act 1984*

4 **3 Subsection 48(1)**

5 Repeal the subsection, substitute:

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

10 Note: The heading to section 48 is replaced by the heading "**Contracts of general**
11 **insurance—entitlements of third party beneficiaries**".

12 **4 Subsection 48(2)**

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

15 **5 Paragraph 48(2)(a)**

16 Repeal the paragraph, substitute:

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

21 **6 At the end of subsection 48(3)**

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

25 **7 Subsection 48AA(1)**

26 Repeal the subsection, substitute:

- 27 (1) This section applies in relation to a contract of life insurance if:
28 (a) the contract is entered into in connection with an RSA; and
29 (b) the owner of the policy is an RSA provider.

Schedule 6 Third parties

Part 2 Insurers' defences in actions by third party beneficiaries

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

4 Note: The heading to section 48AA is altered by omitting "another person" and substituting
5 "third party beneficiary".

6 **8 Subsection 48AA(2)**

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

9 **9 Paragraph 48AA(2)(a)**

10 Repeal the paragraph, substitute:

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

15 **10 Subsection 48AA(3)**

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

17 **11 At the end of subsection 48AA(3)**

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

21 **12 Application**

22 (1) The amendments made by items 3 to 6 apply to:

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

28 (2) The amendments made by items 7 to 11 apply to a contract of life
29 insurance that is originally entered into after the commencement of this
30 item.

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

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

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

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

3 *Insurance Contracts Act 1984*

4 **13 Subsections 48A(1) and (2)**

5 Repeal the subsections, substitute:

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

- 10 (a) the third party beneficiary has a right to recover from the
11 insurer any money that becomes payable under the contract
12 even though the third party beneficiary is not a party to the
13 contract;
- 14 (b) if the third party beneficiary is not the life insured, any
15 money paid to the third party beneficiary under the contract
16 does not form part of the estate of the life insured.

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

- 18 (a) has, in relation to the third party beneficiary's claim, the
19 same obligations to the insurer as the third party beneficiary
20 would have if the third party beneficiary were the insured;
21 and
- 22 (b) may discharge the insured's obligations in relation to the
23 payment of any money to the third party beneficiary under
24 the contract.

25 Note: The heading to section 48A is altered by omitting "**another person**" and substituting
26 "**third party beneficiary**".

27 **14 Application**

- 28 (1) The amendment made by this Part applies to a contract of life insurance
29 that is originally entered into after the commencement of this item.
- 30 (2) If a contract of life insurance that was originally entered into before the
31 commencement of this item is varied after that commencement to:
- 32 (a) increase a sum insured under the contract; or
33 (b) increase the number of life insureds under the contract; or
34 (c) provide one or more additional kinds of insurance cover;

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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.

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

3 *Insurance Contracts Act 1984*

4 **15 Subsection 51(1)**

5 Repeal the subsection, substitute:

6 (1) If:

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

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

16 Note: The heading to section 51 is replaced by the heading "**Claims against insurer in**
17 **respect of liability of insured or third party beneficiary**".

18 **16 Paragraph 51(2)(b)**

19 Repeal the paragraph, substitute:

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

23 **17 Subsection 51(3)**

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

27 **18 Application**

28 The amendments made by this Part apply to:

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

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

3 *Insurance Contracts Act 1984*

4 **19 Paragraph 55A(1)(b)**

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

7 **20 Paragraph 55A(1)(c)**

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

9 **21 Paragraph 55A(1)(d)**

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

12 **22 Paragraph 55A(2)(b)**

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

15 **23 Subsection 55A(2)**

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

17 **24 Subsection 55A(3)**

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

20 **25 Application**

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

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

3 *Insurance Contracts Act 1984*

4 **26 Subsection 4(2)**

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

7 **27 Subsection 11(1)**

8 Insert:

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

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

16 **28 Subsection 11(1) (paragraph (b) of the definition of**
17 ***proposal form*)**

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

19 **29 At the end of paragraph 11(4)(a)**

20 Add “and”.

21 **30 Paragraph 11(4)(b)**

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

23 **31 Paragraph 11(4)(c)**

24 Repeal the paragraph.

25 **32 Paragraph 23(a)**

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

27 **33 Paragraph 26(3)(a)**

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

1 **34 Section 32**

2 Repeal the section, substitute:

3 **32 Non-disclosure or misrepresentation by life insured covered**
4 **under group life contract**

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

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

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

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

24 **35 Section 32A**

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

26 **36 Application**

27 (1) The amendments made by items 26, 29, 30, 31 and 35 apply to a
28 contract of life insurance whether originally entered into before or after
29 the commencement of this item.

30 (2) The amendments made by items 27, 28 and 32 to 34 apply to a contract
31 of life insurance that is originally entered into after the commencement
32 of this item.

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

Schedule 6 Third parties

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

- 1 (a) increase a sum insured under the contract; or
2 (b) increase the number of life insureds under the contract; or
3 (c) provide one or more additional kinds of insurance cover;
4 then:
5 (d) the contract is treated, to the extent of the variation, as if it
6 had been originally entered into after the commencement of
7 this item; and
8 (e) the amendments made by items 27, 28 and 32 to 34 apply to
9 the contract to the extent of the variation.
10

Schedule 7—Subrogation

Insurance Contracts Act 1984

1 Before section 65

Insert:

64 Application to third party beneficiaries

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

2 Section 67

Repeal the section, substitute:

67 Rights with respect to money recovered under subrogation etc.

Scope

(1) This section applies if:

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

Amount recovered by insurer

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

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

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

9 *Amount recovered by insured*

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

26 *Amount recovered by insurer and insured jointly*

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

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

11 *Amount awarded by way of interest*

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

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

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