

Contracts of Insurance Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Contracts of Insurance Bill and recommends by majority that it be passed. We recommend all amendments unanimously except for the amendments to clause 18 as reflected in clause 14(2A) (“dishonestly” versus “fraudulently”), clause 70(2) (“reasonable time” for investigation), and Part 3, subpart 4A (genetic testing).

Introduction to the bill

This bill is an omnibus bill. It seeks to reform insurance law and to consolidate and modernise several pieces of legislation:

- the Life Insurance Act 1908
- Part 3 of the Law Reform Act 1936
- the Insurance Law Reform Act 1977
- the Insurance Law Reform Act 1985
- the Insurance Intermediaries Act 1994.

The bill also amends the Fair Trading Act 1986 and the Financial Markets Conduct Act 2013.

The bill’s stated purposes are to promote confident and informed participation in New Zealand’s insurance market (for insurers, policyholders, and other market participants) and to ensure that provisions in insurance contracts, and the practices of insurers in relation to those contracts, operate fairly.

Notably, the bill would:

- codify a policyholder’s duty to provide information to insurers

- set out remedies where a policyholder makes a misrepresentation or breaches the duty to provide information
- regulate certain terms of insurance contracts
- improve policyholders' ability to understand and compare different insurance contracts.

Intention to divide the bill

It is intended that the bill will be divided at the committee of the whole House stage into separate bills, as follows:

- Parts 1 to 6 and Schedules 1 to 3 will become the Contracts of Insurance Bill
- Part 7 and Schedules 4 to 6 will become the Contracts of Insurance (Repeals and Amendments) Bill.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have one issue to bring to the House's attention, which relates to our recommendation to insert new regulation-making powers (see the genetic discrimination section below). Ultimately, we are satisfied with the design of these provisions. However, this is a complex issue and we encourage the House to scrutinise these provisions further if necessary.

We have no other issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

New issue: genetic discrimination

About this issue

During our consideration of the bill, several submitters brought to our attention the issue of "genetic discrimination" in life and health insurance. "Genetic discrimination" in this context refers to insurers treating consumers differently based on their genetic testing results. This was not addressed in the bill as introduced. Existing law is mostly silent on this issue, and there is no government policy on genetic discrimination.

Tests for genetic markers can diagnose genetic disorders and indicate whether an individual is at higher risk of developing certain disorders. Therefore, genetic testing is a useful medical diagnostic tool for individuals to understand their health risks.

However, information from a genetic test could also be relevant to an insurer's assessment of an individual's insurance risk.

Concerns about “genetic discrimination” by life or health insurers could discourage individuals from taking a genetic test when recommended by a health professional. This could hinder the uptake of new healthcare practices in New Zealand.

The genetic testing issue raises several important questions, including:

- What privacy protections should be placed on someone’s genetic information?
- What level of legitimate interest does an insurer have in this information?
- Can an insurer require someone to undergo, or disclose the results of, genetic testing?
- Can an insurer treat someone differently (either positively or negatively) based on their genetic testing results?

We agree that this issue is important. Our view is that a cautionary approach to genetic testing is needed to avoid undue genetic discrimination. However, we also grappled with the question of how to address genetic testing in this bill. We considered the implications of different options, including a full legislative ban on “genetic discrimination”.

Ultimately, we recommend inserting new regulation-making powers, in Part 3, new subpart 4A (clauses 86A, 86B, and 86C), that would enable the Governor-General, on a recommendation of the Minister, to prohibit or regulate the conduct of insurers in relation to genetic testing. Before recommending any regulations, we expect the Minister to conduct a full policy development and consultation process.

We acknowledge that these regulation-making powers are unusually broad, and that primary legislation should typically do the heavy lifting to implement the policy intent. However, we have carefully considered the drafting and are satisfied that these clauses are appropriate in this case.

Definition of “genetic test”

Proposed clause 86B(5) would define “genetic test” for the purposes of the bill. Our proposed definition is based on equivalent Canadian legislation. We note that the bill’s definition does not exclude increasingly popular direct-to-consumer genetic testing.

Regulations may prohibit or regulate conduct concerning genetic testing

Clause 86B(1) would authorise regulations to be made to prohibit or regulate any conduct of insurers in connection with genetic testing. Clause 86B(2) provides a non-exhaustive list of conduct that could be regulated, including:

- whether, as a condition of entering into, varying, or continuing an insurance contract, or offering or continuing specific terms or conditions in a contract, an insurer could require a person (A), or a relative of A (or any other person) to:
 - undergo or consent to a genetic test
 - disclose the results of a genetic test
 - answer a question about whether they have undergone any genetic test

- whether an insurer could refuse to engage with A due to any of the above factors
- what may be taken into account by an insurer, including any of the above factors.

Procedural requirements

Clause 86C(1) would permit the Minister to recommend regulations under clause 86B only if the Minister:

- has consulted the Financial Markets Authority
- has consulted the persons or representatives of the persons that the Minister considers will be substantially affected by the regulations
- is satisfied that the regulations are necessary or desirable to avoid or mitigate any adverse effect of conduct on the health benefits or other benefits of genetic testing
- is satisfied that the regulations are not likely to unduly prevent insurers from considering information in relation to genetic tests that is highly significant to insurance underwriting
- has had regard to the purpose of the Act
- has had regard to the overseas law and practices that the Minister considers are relevant.

Clause 86C(2) would allow the Minister, for the purposes of 86C(1)(d), to have regard to genetic testing generally and/or one or more kinds of genetic tests. If the Minister decides to have regard to one or more kinds of genetic tests, clause 86C(3) would allow the Minister to consider:

- whether the information from the genetic test is a significant predictor of individual risk
- the extent to which insurers may obtain information from the genetic test from another source of information
- whether the regulations are likely to avoid significant disadvantages for all policyholders when viewed as a group
- how common the condition to which the genetic test relates is within the New Zealand population.

Part 1: Preliminary provisions

Definition of “specified intermediary”

Clause 5 of the bill, as introduced, defines a “specified intermediary” as “a person entitled to receive from the insurer commission or other valuable consideration in consideration for the person’s arranging the insurance contract between a person other than that person and the insurer; but does not include an employee of the insurer”.

Specified intermediaries would be subject to certain specific duties (see clauses 22 and 67).

Submitters were concerned that the bill's definition would only capture intermediaries who received commission or other consideration *directly* from an insurer. The Financial Services Legislation Amendment Act 2019 introduced licensing for providers of financial advice. We heard that many financial advisers restructured their businesses so that their financial advice provider receives commissions or consideration from insurers and then pays it to individual financial advisers.

We recommend broadening the definition of "specified intermediary" to include intermediaries who receive commission or consideration directly or indirectly from an insurer. This would ensure that these financial advisers are covered.

Excluding reinsurance arrangements

Clause 6 defines "contract of insurance". The definition is based on the definition in the Insurance (Prudential Supervision Act) 2010.

Several submitters proposed that the bill not apply to reinsurance contracts. Reinsurance contracts should generally be excluded from insurance contract law in New Zealand as they are generally arrangements between insurers and large overseas-based reinsurers.

We recommend amending clause 6 to explicitly exclude contracts of reinsurance.

Conflict of laws

Clause 7 states that the bill would apply to insurance contracts that are governed by New Zealand law or would be governed by New Zealand law but for a "choice of law" provision in the contract (see clause 7(1)(b)). A choice of law provision allows contracting parties to choose which jurisdiction's law governs their contractual agreement if, for example, one party is based in a different country.

We recommend amending clause 7 so that clause 7(1)(b) would not apply to non-consumer insurance contracts. This would ensure that commercial parties retain autonomy to choose which law governs their contracts.

Part 2: Disclosure duties

Part 2 of the bill would reform the law relating to a policyholder's obligation to disclose information to an insurer before entering into or varying an insurance contract. Different duties and remedies would apply depending on whether the insurance contract is a consumer contract or a non-consumer contract and the nature of the breach. Part 2 would also impose duties on insurers and intermediaries.

Part 2 contains eight subparts:

- Disclosure duty for consumer insurance contracts (clauses 13–21)
- Group insurance (clauses 22–25)
- Remedies for breach of disclosure duty for consumer insurance contracts (clauses 26–31)

- Disclosure duty for non-consumer insurance contracts (clauses 32–50)
- Remedies for breach of duty of fair presentation for non-consumer insurance contracts (clauses 51–55)
- Insurer’s duties to inform policyholder of certain matters (clauses 56–62)
- Effect on utmost good faith rule of law (clause 63)
- Miscellaneous provisions (clauses 64–69).

Presumption relating to consumer insurance contract

In the bill as introduced, clause 11 states that an insurance contract is presumed to be a consumer insurance contract unless otherwise established. We recommend deleting this clause. We consider it unnecessary and note that there is no comparable presumption in the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 that a person is a consumer.

For consistency, we also recommend removing section 446S of the Financial Markets Conduct Act 2013 (see our proposed clause 182A).

Disclosure duty for consumer insurance contracts

Policyholder must take reasonable care

Part 2, subpart 1 of the bill would impose a duty on policyholders in consumer insurance contracts. It is similar to the duty in the United Kingdom’s Consumer Insurance (Disclosure and Representations) Act 2012. In short:

- policyholders must take reasonable care not to misrepresent things to an insurer, before entering into or varying a consumer insurance contract (clause 14)
- the standard of care required is that of a reasonable policyholder entering into a consumer insurance contract (clause 16)
- however, the particular characteristics or circumstances of the actual consumer must be taken into account if the insurer was, or ought to have been, aware of these (clause 17)
- fraudulent misrepresentations must always be taken as showing a lack of reasonable care (clause 18).

We recommend combining clauses 16 and 17 to make clear that the reasonableness in clause 16 is subject to any matters in clause 17.

We also recommend amending clause 18 to replace the word “fraudulently” with the word “dishonestly”. This would better align the clause with the equivalent UK provision and avoid association with “fraudulent misrepresentation” in criminal law. We also propose moving the content of clause 18 into new clause 14(2A) to better reflect the importance of this provision.

Matters that may be taken into account

Clause 15 sets out what may be taken into account when determining whether a policyholder has taken reasonable care not to make a misrepresentation.

Clause 19 would require that a policyholder must not be taken to have made a misrepresentation merely because they failed to answer a question or gave an obviously incomplete or irrelevant answer to a question. Some submitters expressed concern that clause 19 would undermine or water down the reasonable care standard.

We recommend moving the content of clause 19 into clause 15 and adjusting the wording. Our proposed amendment reflects that the policy intent is to place the onus on the insurer to take additional steps if a non-answer is given, or an obviously incomplete or irrelevant answer.

Life or health insurance in relation to individual who is not party to contract

Clause 21, as introduced, clarified how these duties would apply to consumer insurance contracts for life insurance where a policyholder has a policy over the life of another person.

We understand that health insurers also allow the policyholder and the person covered to be different. We recommend amending clause 21 to include health insurance contracts.

Disclosure duty for non-consumer insurance contracts

Part 2, subpart 4 sets out a different duty for policyholders under non-consumer insurance contracts. Policyholders must make a fair presentation of the risk before the contract is entered into or varied. It sets out the provisions for what a policyholder knows or ought to know, as well as what an insurer is presumed to know.

What insurer knows

Clause 46(b) sets out that an insurer would know something if it is known to any individual who is, or who works for, a specified intermediary in relation to the contract. This could apply where, for example, a financial adviser or broker is acting as an intermediary between the policyholder and the insurer.

Submitters recommended removing clause 46(b). In their view, insurers should be deemed to know only what the policyholder or specified intermediary actually discloses to them. They suggested that clause 46(b) would interfere with the intermediary–policyholder relationship.

Although we do not recommend completely removing the clause, we propose amending clause 46(b) to make clear that it is intended to apply to individuals who are or who work for a specified intermediary in relation to that insurance contract. It would then not apply to other employees whose work is unrelated to that specific contract.

Insurer’s duties to inform policyholder of certain matters

Part 2, subpart 6 sets out the insurer’s duties to inform policyholders of certain matters.

All reasonable steps

As introduced, clauses 56, 58, 59, and 61 would require the insurer to take “all reasonable steps” to ensure that the policyholder is clearly informed of specified matters. Submitters suggested that the term “all reasonable steps” could create burdensome compliance costs. They suggested replacing “all reasonable steps” with “reasonable steps”.

The wording in the bill as introduced may not have created the burdensome duties that were suggested. However, we agree that “reasonable steps” is an appropriate standard in this context. We recommend amending this term throughout subpart 6, with similar changes in subpart 8 (see clauses 66 and 67).

Adding recklessness standard for breaches

We recommend amending clause 62(1) so that an insurer would have a remedy if the policyholder committed a reckless breach of duty. This would be consistent with the general approach to remedies in the rest of the bill.

Effect on utmost good faith rule of law

The bill recognises that insurance contracts have historically been based on a common law rule of the “utmost good faith”, which imposes duties on both the insurer and the policyholder.

Part 2, subpart 7 sets out how the duties in subparts 1 and 4 affect this utmost good faith rule. Most submitters supported an approach that ensures that the duty of utmost good faith can continue in common law.

Clause 63 clarifies that the bill, rather than the utmost good faith rule, would apply to the duties and remedies relating to policyholders disclosing information before an insurance contract is entered into or varied. We considered whether it would be appropriate to define “utmost good faith” in the bill. Ultimately, we concluded that it would be difficult and risky to the relationship between statute and common law.

In our view, the approach set out in clause 63 appropriately achieves the bill’s intent (that the disclosure duties and associated remedies replace the common law) without inadvertently impeding the continued development of the duty of good faith.

Miscellaneous provisions

Part 2, subpart 8 sets out miscellaneous provisions.

Intermediary’s duty to pass on information

Clauses 66 to 69 set out the duties for a specified intermediary.

Insurance brokers generally opposed these new duties. They argued that the duties and penalties expose brokers to excessive risk and may conflict with their duties to clients.

We recommend amendments to clauses 66 and 67 to provide that compliance with the bill's duties would not place the intermediary in breach of any contract (including their contract with the policyholder).

Clause 68 sets out when a court may order a specified intermediary to pay compensation. We recommend amending clause 68 to provide that the compensation the court could order for a breach of clause 66 or 67 would be subject to any position agreed between the insurer and the specified intermediary relating to compensation for a breach (such as a cap on liability).

Part 3: Contracts of insurance

Part 3 of the bill contains provisions relating to specific matters covered in insurance contracts. It comprises seven subparts (including our proposed subpart relating to genetic testing):

- Implied term about payment of claims (clause 70)
- Restrictions on terms (clauses 71–78)
- Insurable interest (clauses 79–80)
- Insurance relating to contracts for sale of land (clauses 81–86)
- Genetic testing (clauses 86A–86C)
- Third party claims against insurers (clauses 87–98)
- Miscellaneous (clause 99).

Implied term about payment of claims

Part 3, subpart 1 introduces an implied term to every insurance contract: if the policyholder makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time. “Reasonable time” includes a reasonable time to investigate and assess the claim (clause 70(2)). We recommend amending clause 70(2) so that a “reasonable time” includes a reasonable time to gather information needed to investigate and assess the claim.

Third party claims against insurers

Part 3, subpart 5 would replace Part 3 of the Law Reform Act 1936. It concerns situations where:

- a policyholder is required to pay damages, compensation, or costs to a third party; and
- the policyholder is entitled to indemnity under an insurance contract; and
- the policyholder is bankrupt, in liquidation or receivership, or subject to some other insolvency proceeding.

If these criteria apply, subpart 5 would give the third party claimant a right to recover the amount of the policyholder's liability from the insurer in court.

Cases with an overseas element

For this subpart, the definition of a “specified policyholder” in clause 87(2) includes a policyholder in liquidation under the Companies Act. We recommend amending this definition to exclude overseas companies that are being liquidated under the Companies Act. This would prevent Part 3, subpart 5 from applying to a circumstance where the third party claim would be better resolved in another country.

Defences generally

Clause 91 would allow an insurer to rely on certain defences to a third party claim. Clause 91(2) provides certain defences that an insurer would not be entitled to rely on.

We think clause 91(2) is overly broad and could prevent an insurer relying on a valid defence. We recommend amending clause 91(2) to specify the defences that an insurer would not be entitled to rely on, being:

- a defence based on the specified policyholder failing to comply with a condition to provide information or assistance to the insurer after the policyholder became a specified policyholder
- a defence based on the policyholder failing to pay a premium due after the policyholder became a specified policyholder
- a defence based on the specified policyholder failing to notify the insurer of a claim, or circumstances that may give rise to a claim, within a certain period, if the third party claimant notifies the insurer within that period instead.

Effect of payments made by insurer to specified policyholder

Clause 95(1)(a) provides that an insurer’s liability to a third party claimant under subpart 5 would not be reduced, discharged, or otherwise affected if the insurer and policyholder compromise or settle in respect of the insured liability. The intent of this clause is to prevent collusive arrangements between an insurer and policyholder, to the detriment of the third party claimant. Submitters argued that clause 95(1)(a), as introduced, would go further than this.

We recommend amending clause 95 so that clause 95(1)(a) would not apply to a compromise or settlement that the insurer entered into in good faith and on terms that would be reasonable in the circumstances for parties each acting independently.

Part 4: Intermediaries

Part 4 of the bill concerns intermediaries. An intermediary is a person who, for reward, arranges insurance contracts; an example is an insurance broker. Part 4 would carry over the Insurance Intermediaries Act, with some modifications. It comprises six subparts:

- Payments to insurance intermediaries (clauses 101–103)
- Duties of brokers in relation to premiums (clauses 104–107)

- Duties of brokers in relation to payments due to policyholder (clauses 108–109)
- Insurance broking client accounts (clauses 110–116)
- Distribution of insurance broking client account money on insolvency (clauses 117–120)
- Miscellaneous (clauses 121–122).

Duties of brokers in relation to premiums

Part 4, subpart 2 has the effect of requiring brokers to pass on to the insurer any premiums that they receive from a policyholder within a specified “relevant period” of time.

Duties of brokers in relation to premiums

As introduced, clause 104(4) states that a broker commits an offence if they contravene the clause 104(2) requirement to pass on insurance premiums. A broker would be liable on conviction to a fine not exceeding \$5,000 (for individuals) or \$10,000 (in any other case). This retains the existing offence under the Insurance Intermediaries Act.

We recommend deleting the criminal offence in clause 104(4) and instead providing for the insurer to recover any amount payable in court as a debt due. We believe it is more appropriate that the monies be recoverable as a debt due, rather than this being a criminal offence.

Duty does not prevent certain matters

Clause 105(a) states that clause 104 does not prevent an insurer and broker from making a contract or arrangement to vary the relevant period. Submitters asked whether clause 105(a) would allow existing agreements to remain. We heard that existing arrangements would be costly and inconvenient to renegotiate.

We agree that any existing agreements that vary the timeframe for payment should continue to apply, and that the bill should include an express “grandfathering provision” to allow this. We recommend inserting a provision into Schedule 1 to make clear that a contract or arrangement under clause 105(a) includes any contracts or arrangements that provide for variation of the relevant period made under the Insurance Intermediaries Act (see new clause 3A of Schedule 1).

Duties of brokers in relation to payments due to policyholder

Part 4, subpart 3 sets out the duties of brokers in relation to payments due to a policyholder.

Duties of broker in relation to payments due to policyholder

Clause 108 provides that if a broker receives money from or on behalf of an insurer for payment to or on behalf of a policyholder, the broker must pay the money to, or on behalf of, the policyholder within 7 days after the broker receives the money.

Submitters suggested that brokers and policyholders should be able to contract out of the 7-day period set out in clause 108. We also acknowledge that, for complex insurance arrangements, it may take longer than 7 days to forward payments to the policyholder.

We recommend amending clause 108 so that the broker is required to pay the money to non-consumer policyholders as soon as reasonably practicable (rather than within 7 days). Our proposed wording would allow some flexibility while still requiring the funds to be transferred promptly.

Schedule 2: Insurer’s remedies for qualifying misrepresentation or breach

Schedule 2 of the bill sets out an insurer’s remedies where a policyholder has made a “qualifying misrepresentation” (defined in clause 27(2)), or committed a “qualifying breach” of the duty of fair presentation (defined in clause 52(2)). We recommend the following changes in this Schedule:

- Clause 5(2)(a): clarify that the insurer may charge a higher premium for the remainder of the contract. If the insurer does this, they can no longer reduce proportionately the amount to be paid on a claim.
- Clause 5(2)(b): include an example of how the insurer may reduce proportionately the amount to be paid on a claim (see clause 5(3)).
- Clause 14: amend for consistency with the changes to clause 5.

Schedule 3: Information and disclosure for third party claimants

Schedule 3 enables third party claimants to request information from the policyholder and other people. It relates to Part 3, subpart 5 (Third party claims against insurers). We propose one amendment to this Schedule, in clause 6, which would allow the person providing the information, such as an insurer, to require third party claimants to pay a reasonable charge to meet the cost of providing the information. This is consistent with similar provisions in the Privacy Act 2020 and the Official Information Act 1982.

Part 7 and Schedules 4 to 6: Repeals and amendments to other Acts

Part 7 and Schedules 4 to 6 would become the Contracts of Insurance (Repeals and Amendments) Bill during the committee of the whole House stage.

Part 7 would repeal the following Acts:

- the Life Insurance Act 1908
- Part 3 of the Law Reform Act 1936
- the Insurance Law Reform Act 1977
- the Insurance Law Reform Act 1985
- the Insurance Intermediaries Act 1994.

Part 7 would amend the following Acts:

- the Marine Insurance Act 1908
- the Fair Trading Act 1986
- the Personal Property Securities Act 1999
- the Financial Markets Conduct Act 2013
- the Acts set out in Schedule 6, Part 1 of the bill.

Amendments to Fair Trading Act 1986

Some terms in insurance contracts cannot be declared “unfair” under the Fair Trading Act due to insurance-specific exceptions. The bill would remove insurance-specific exceptions from the provisions in the Fair Trading Act relating to unfair contract terms.

New section 46KA inserted (Other matters relating to insurance contracts)

Clause 176 would insert new section 46KA into the Fair Trading Act. New section 46KA(2) lists matters that would define the main subject matter of an insurance contract. Under section 46K, a court may not declare such a term to be an unfair contract term.

We recommend amending clause 176 to adjust the list of matters in new section 46KA(2) to include a term that relates to the amount of the premium payable under a life policy or health insurance contract. We consider this appropriate to achieve the intent of giving life and health insurers certainty that they can rely on contractual terms relating to the risks they accept, of which pricing is a central element. Our amendment would align the position of life and health insurers, which adjust premiums on annual policy anniversaries, with general insurers, whose contracts renew (and are repriced) on an annual basis.

Schedule 1AA amended

Clause 178 would amend clause 1(3) in Schedule 1AA of the Fair Trading Act. This clause relates to the date by which the regime applying to unfair contract terms would be extended to include small trade insurance contracts. Clause 178 would extend the date from 1 April 2025 to 1 April 2028.

We recommend amending clause 178 so that the specified date would be 3 years after the date of Royal assent of the Contracts of Insurance Act (or an earlier date specified by Order in Council), rather than 1 April 2028.

Additionally, we recommend amending clause 2 to provide that clause 178(1) would come into force on the day after the date of Royal assent.

Other matter regarding the Unit Titles Act

One submitter requested changes to the Unit Titles Act to allow bodies corporate to choose the level of insurance cover they take out, rather than being required to insure the building to the full insurable value. We sought advice and consider that the Contracts of Insurance Bill is not the appropriate bill to address the issue of

insurance for unit titles. We encourage the Government to actively engage with key stakeholders on this issue and to consider addressing it in other legislation.

New Zealand Labour Party differing view

Labour supports legislation that consolidates insurance law in New Zealand and requires insurance contract terms to be both clear and fair.

The key to good law in this area is that policyholders who make an honest mistake should not find themselves without cover as a result. It should also introduce penalties for insurers who failed to act in good faith, such as not completing a claim in a timely manner.

Labour started the work that led to the introduction of this bill. We know how important new law in this area is, and it could not come quickly enough. However, the Minister's changes made in the time between Labour's policy work on this and his introduction of the bill, and the select committee's amendments, walk back important protections for consumers and make it easier for insurers to deny cover.

Throughout the bill, there have been changes which reverse key consumer protections in favour of insurers. We do not support these, but could live with the package of changes overall. However, there are some changes we cannot accept. For example:

- Policyholders who make a mistake with their disclosures should not be denied cover. However, this would not be fair to insurers if the policyholder was acting fraudulently or obtaining insurance by deception, and the bill as introduced used that standard. As amended by the select committee, the bill does away with "fraud" and uses the less clear "dishonesty" standard.
- Insurers should complete claims in a timely manner. The time to complete a claim should not be delayed by a prolonged period of discovery or obtaining information before an assessment can be made. The Minister's changes remove clear requirements for timely decision making from insurers. As amended by the select committee, the bill further walks back requirements on insurance to settle claims quickly.

The issue of timely completion of claims is important to consumers, and they will be rightly disappointed that this bill resiles from the consumer protections proposed by the former Minister, Hon Dr Duncan Webb. This bill should provide for a clear duty on an insurer to accept or reject, assess and settle a claim within a reasonable time. The select committee's changes have made this less clear, despite the courts having already recognised similar duties.

Insurers should pay interest on payments that should have been made once the delay in payment becomes unreasonable. We believe it is generally unreasonable to withhold payment beyond 12 months after the date on which the claim is made.

We also record here our disagreement with the Minister's removal of the unfair contract consumer protection proposals in the bill as introduced.

For these reasons, Labour does not support the bill as amended and but urges the Minister to give consideration to amendments to be introduced at the committee of the whole House stage.

Green Party of Aotearoa New Zealand differing view

The Greens welcome legislation to modernise insurance legislation and address imbalances that disadvantage consumers.

However, we are disappointed with some of the changes made in the select committee's amendments, which either weaken consumer protections or do not go far enough.

While we welcome the select committee giving consideration towards the issue of insurers requiring genetic testing and the dangers this poses to consumers, we are fundamentally disappointed that the select committee has only introduced regulation-making powers and falls short of a complete prohibition. There is strong evidence in submissions supporting such a prohibition, and failing to implement this in favour of regulation making powers is an abdication of responsibility.

We agree that policyholders have a duty to take reasonable care not to make a misrepresentation when entering an insurance contract, and that an honest mistake should not be grounds to deny insurance cover. The bill previously stated that misrepresentation made fraudulently must be taken as a lack of reasonable care, however we disagree with the select committee's change to replace "fraudulently" with the weaker and vaguer term of "dishonestly".

The submission from the Insurance Council of New Zealand argues that fraud and dishonesty are distinct concepts, stating that "Dishonesty and fraud are related but distinct concepts. Dishonesty is a broad term that refers to actions that are not honest or lack integrity and can manifest in many ways, including lying, omitting important information, or otherwise misleading someone. Dishonesty does not necessarily involve a deliberate attempt to deceive for personal gain." The broad definition of "dishonesty" could arguably cover any kind of misrepresentation, which undermines the rest of the "reasonable care" responsibilities for policyholders.

For these reasons, the Greens do not support these amendments made by the select committee.

Appendix

Committee process

The Contracts of Insurance Bill was referred to the committee on 2 May 2024.

We called for submissions on the bill with a closing date of 3 June 2024. We received and considered submissions from 36 interested groups and individuals. We heard oral evidence from 19 submitters at hearings in Wellington and by videoconference.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment and the Ministry of Housing and Urban Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about regulation-making powers in the bill.

Committee membership

Stuart Smith (Chairperson)

Jamie Arbuckle

Hon Barbara Edmonds

Ryan Hamilton

Nancy Lu

Hon Dr Deborah Russell

Todd Stephenson

Chlöe Swarbrick

Rawiri Waititi

Catherine Wedd

Hon Dr Megan Woods

Hon Dr Duncan Webb and Arena Williams also participated in our consideration of this bill.

Related resources

The documents received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Andrew Bayly

Contracts of Insurance Bill

Government Bill

Contents

		Page
1	Title	9
2	Commencement	9
	Part 1	
	Preliminary provisions	
3	Purpose	9
4	Overview	10
5	Interpretation	11
6	Meaning of contract of insurance	13
7	Conflict of laws	13
8	Transitional, savings, and related provisions	14
9	Act binds the Crown	14
	Part 2	
	Disclosure duties	
10	Meaning of consumer insurance contract and non-consumer insurance contract	14
11	Presumption relating to consumer insurance contract	14
12	Effect of certificate	15
	Subpart 1—Disclosure duty for consumer insurance contracts	
13	When this subpart applies	15
14	Policyholder must take reasonable care	15
15	Matters that may be taken into account	15
16	Standard of reasonable policyholder	16
17	Particular characteristics or circumstances of policyholder	16
16	Standard of care required	17
18	Fraudulent misrepresentation is always lack of reasonable care	17

Contracts of Insurance Bill

19	Failure to answer or obviously incomplete or irrelevant answer	17
20	Representations to specified intermediaries	17
21	Insurance on life of another	17
21	<u>Life or health insurance in relation to individual who is not party to contract</u>	18
	Subpart 2—Group insurance	
22	When <u>this</u> subpart applies	18
23	Person who has benefit of contract also has duty	19
24	Breach by 1 member of group does not affect others	19
25	Policyholder's duties not limited	19
	Subpart 3—Remedies for breach of disclosure duty for consumer insurance contracts	
26	Subpart <u>This subpart applies to consumer insurance contracts</u>	19
27	When insurer has remedy	19
28	Classification of qualifying misrepresentations	20
29	When misrepresentation is deliberate or reckless	20
30	Burden of proof and presumptions	20
31	Life policy for 2 or more life insureds	20
	Subpart 4—Disclosure duty for non-consumer insurance contracts	
32	When <u>this</u> subpart applies	21
33	Policyholder has duty of fair presentation	21
34	What is fair presentation of risk	21
35	What must be disclosed	21
36	What is material	22
37	What is substantially correct	22
38	Representation may be withdrawn or corrected	22
39	Variations	22
	<i>Knowledge of policyholder</i>	
40	Knowledge of policyholder	22
41	What individual knows	23
42	What other policyholders know	23
43	When confidential information is not known	23
44	What policyholder ought to know	24
	<i>Knowledge of insurer</i>	
45	Knowledge of insurer	24
46	What insurer knows	24
47	What insurer ought to know	24
48	What insurer is presumed to know	25
	<i>Other provisions relating to knowledge</i>	
49	<u>Knowledge: wilful blindness when individual deliberately refrains from confirming or inquiring about suspected matters</u>	25

Contracts of Insurance Bill

50	Knowledge of fraud	25
	Subpart 5—Remedies for breach of duty of fair presentation for non-consumer insurance contracts	
51	Subpart <u>This subpart</u> applies to non-consumer insurance contracts	25
52	When insurer has remedy	25
53	Classification of qualifying breach	26
54	When breach is deliberate or reckless	26
55	Burden of proof	26
	Subpart 6—Insurer’s duties to inform policyholder of certain matters	
56	Insurer must inform policyholder of duty	26
57	Application to variations	26
58	Insurer must inform policyholder about access to third party information (before contract entered into)	27
59	Insurer must inform policyholder about access to third party information (before variation of contract)	27
60	Policyholder may be informed orally or in writing	28
61	Requirement treated as complied with if complied with in prescribed manner	28
62	Consequences of breach	28
	Subpart 7—Effect on utmost good faith rule of law	
63	Effect of Part on utmost good faith rule of law	29
	Subpart 8—Miscellaneous provisions	
64	Effect of warranties	29
65	Certain provisions of no effect	29
66	Duty for specified intermediary in relation to consumer insurance contract	30
67	Duty for specified intermediary in relation to non-consumer insurance contract	30
68	Court may order specified intermediary to pay compensation	31
69	Indemnity for specified intermediary is void	31
	Part 3	
	Contracts of insurance	
	Subpart 1—Implied term about payment of claims	
70	Implied term about payment of claims	31
	Subpart 2—Restrictions on terms	
	<i>Arbitration</i>	
71	Arbitration provisions not binding	32

Contracts of Insurance Bill

	<i>Manner of, or time for, making claims or commencing proceedings</i>	
72	Provisions prescribing specifying manner or time of claims or proceedings not binding	32
73	Claims-made policies	33
74	Insurer not liable to pay greater cost	33
	<i>Increased risk exclusions</i>	
75	Increased risk exclusions	34
	<i>Pro rata conditions of average</i>	
76	Prohibition on including pro rata condition of average in home and contents insurance	35
77	Disclosure of pro rata condition of average in other cases	35
78	Requirement treated as complied with if particular form is used	36
	Subpart 3—Insurable interest	
79	Insurable interest not required	36
80	Insurable interest in life of life insured not required	37
	Subpart 4—Insurance relating to contracts for sale of land	
81	Interpretation in this subpart	37
82	Purchaser of land entitled to benefits of insurance between sale and possession or settlement	37
83	Certain defences or answers invalid	38
84	Purchase price reduced by amount payable to vendor's mortgagee	38
85	Application of <u>this</u> subpart	38
86	Double insurance relating to contract for sale of land	38
	<u>Subpart 4A—Genetic testing</u>	
<u>86A</u>	<u>Insurer must comply with regulations about genetic testing</u>	<u>39</u>
<u>86B</u>	<u>Regulations may prohibit or regulate conduct concerning genetic testing</u>	<u>39</u>
<u>86C</u>	<u>Procedural requirements</u>	<u>40</u>
	Subpart 5—Third party claims against insurers	
87	Interpretation in this subpart	41
88	Claimant may recover from insurer	42
89	Claimant must have leave of court	43
90	Insurer stands in policyholder's place	43
91	Defences generally	43
92	Limitation defence does not apply in certain cases	44
93	Judgment against specified policyholder no bar to claim against insurer	44
94	Discharge of insurer's liability	44
95	Effect of payments made by insurer to specified policyholder	44
96	Claimant may not recover from reinsurer	45
97	Claimant may obtain information	45

Contracts of Insurance Bill

98	Cases with overseas element	45
	Subpart 6—Miscellaneous	
99	Application for shares in company not to be contained in proposal for insurance	45
	Part 4	
	Intermediaries	
100	Interpretation	46
	Subpart 1—Payments to insurance intermediaries	
101	Payment by policyholder to intermediary discharges policyholder's liability to insurer	47
102	Payment by insurer to intermediary does not discharge insurer's liability to policyholder	47
103	Prohibition on contracting out	47
	Subpart 2—Duties of brokers in relation to premiums	
104	Duties of broker in relation to premiums	47
105	Duty does not prevent certain matters	48
106	Broker may pay another insurance intermediary	49
107	Lloyd's brokers	49
	Subpart 3—Duties of brokers in relation to payments due to policyholder	
108	Duties of broker in relation to payments due to policyholder	49
109	Subpart <u>This subpart</u> does not prevent certain matters	49
	Subpart 4—Insurance broking client accounts	
110	Broker must establish and maintain insurance broking client account	50
111	Payments into insurance broking client account	50
112	Payments out of insurance broking client account	50
113	Investment of broking money	51
114	Realisation of investment	51
115	Broker may retain interest or other income on insurance broking client account	51
116	Broking money not capable of being attached, etc	51
	Subpart 5—Distribution of insurance broking client account money on insolvency	
117	When this subpart applies	52
118	Money treated as on trust	52
119	Payments from insurance broking client account	52
120	Investment of money	53
	Subpart 6—Miscellaneous	
121	Broker must comply with regulations	53

Contracts of Insurance Bill

122	Part not to apply to contracts of reinsurance	53
	Part 5	
	Contracts of life insurance	
	<i>Interest payable under life policies</i>	
123	Interest payable beginning on 31st day after date of notification of death	54
124	Interest payable in respect of assets-related money	54
125	Basis of calculating interest payable	54
	<i>Assignments of policies</i>	
126	Assignment of life policy by way of ordinary transfer	55
127	Registration of assignment	55
	<i>Other rights may be registered</i>	
128	How right is registered if right acquired by bankruptcy or under will, intestacy, or writ of execution	55
	<i>Other provisions relating to registration</i>	
129	Registration procedure	56
130	Defective instruments	56
131	Life insurer may require reasonable evidence of matters affecting validity	57
132	High Court may order registration	57
133	Time of registration	57
134	Life insurer must keep record of registrations	57
135	Notice of unregistered dealings does not affect life insurer or other persons	57
136	Provision for lost or destroyed instruments	58
137	Courts may enforce equities	58
138	Life insurer not affected by notice of trust	58
139	Life insurer may not charge fee	58
140	Offence for non-compliance with various requirements	59
	<i>Surrender values</i>	
141	Applying surrender value to keep life policy in force	59
142	Life policies kept in force by surrender value	59
	<i>Life insurance by minors</i>	
143	Insurance by minor under 10 years	59
144	Insurance by minor who has turned 10 years	59
145	Dealings by minor with life policy	60
146	Presumption for policies entered into and dispositions made	60
147	Insurance on life of minor who is under 16 years	61
148	Endowment insurance on life of minor	61

Contracts of Insurance Bill

Limits on payments on death of minor

149	Limit on total amount of payments if deceased minor under 10 years	62
150	Limit on persons to whom payments may be made if deceased minor under 16 years	62
151	Life insurer must give information about limits	62
152	Offences relating to breach of limits	63

Money payable for benefit of minor or incapable person

153	When sections 154 and 155 apply	63
154	Money may be paid to Public Trust	63
155	High Court may appoint trustee	63
156	Powers of Public Trust receiving money	63
157	Trustee may apply money for person's maintenance, education, protection, or advancement in life	64
158	Payment to trustee is valid discharge	64
159	Investment of insurance money	64

Life insurance for spouse, partner, or children

160	Person may insure their own life for spouse, partner, or children	65
161	Appointment of trustees and investment of money	65
162	Reversion or vesting of life policy assigned to spouse or partner	66
163	Life insurer may declare executor or other persons to be policyholder	66

Vesting life policy without requiring probate or letters of administration

164	Vesting life policy without requiring probate or letters of administration	67
-----	--	----

Part 6

Regulations and miscellaneous provisions

Regulations

165	General regulations	68
166	Regulations for purpose of Part 4	69

Miscellaneous

167	Marine Insurance Act 1908 to be subject to this Act	70
168	No contracting out	70

Part 7

Repeals and amendments to other Acts

Repeals

169	Repeals	70
-----	---------	----

Amendments to Marine Insurance Act 1908

170	Principal Act	70
-----	---------------	----

Contracts of Insurance Bill

171	Cross-heading above section 18 replaced	70
	<i>When contract is deemed to be concluded</i>	
172	Sections 18 to 20, 34 to 39, and 42 repealed	70
173	Section 40 amended (Warranty of seaworthiness of ship)	70
	<i>Amendments to Fair Trading Act 1986</i>	
174	Principal Act	71
175	Section 26D amended (Specified trade contracts: trading relationship, annual value threshold, and other definitions)	71
176	New section 46KA inserted (Other matters relating to insurance contracts)	71
	46KA Other matters relating to insurance contracts	71
177	Section 46L amended (When term in consumer contract or specified trade contract is unfair)	72
178	Schedule 1AA amended	72
	<i>Amendments to Financial Markets Conduct Act 2013</i>	
179	Principal Act	72
180	Section 6 amended (Interpretation)	72
181	Section 431Z amended (Application of conduct obligations)	73
182	Section 446P amended (Other definitions used in subpart)	73
182A	<u>Section 446S repealed (Presumption relating to consumer insurance contract)</u>	<u>73</u>
183B	<u>Section 446T amended (Effect of certificate from policyholder or client)</u>	<u>74</u>
183	New subpart 6B of Part 6 inserted	74
	Subpart 6B—Duties to assist policyholders to understand insurance contracts	
447	When this subpart applies	74
447A	Insurer must ensure contract is worded and presented in clear, concise, and effective manner	74
447B	Insurer must ensure contract complies with prescribed requirements relating to form and presentation	75
447C	Insurer must make information publicly available	75
184	Section 447 replaced (Application of regulations made under this subpart)	75
	447D Application of regulations made under this subpart	75
185	Section 449 amended (Part 6 services provisions)	75
186	Section 462 amended (When FMA may make stop orders)	76
187	Section 463 amended (Terms of stop order)	76
188	Section 546 amended (Regulations for purposes of Part 6 (market services))	76
189	Schedule 4 amended	76

	<i>Amendments to Personal Property Securities Act 1999</i>	
190	Principal Act	77
191	Section 16 amended (Interpretation)	77
192	Section 23 amended (When Act does not apply)	77
	<i>Amendments to other legislation</i>	
193	Amendments to other legislation	77
	Schedule 1	78
	Transitional, savings, and related provisions	
	Schedule 2	81
	Insurer's remedies for qualifying misrepresentation or breach	
	Schedule 3	88
	Information and disclosure for third party claimants	
	Schedule 4	92
	New Part 3 inserted into Schedule 1AA of Fair Trading Act 1986	
	Schedule 5	93
	New Part 9 inserted into Schedule 4 of Financial Markets Conduct Act 2013	
	Schedule 6	94
	Amendments to other legislation	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Contracts of Insurance Act **2024**.

2 Commencement

- (1) This Act comes into force on a date or dates set by Order in Council. 5
- (1A) However, **section 178(1)** comes into force on the day after Royal assent.
- (2) Any part of the Act that has not come into force by the third anniversary of Royal assent comes into force then.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to reform and modernise the law relating to contracts of insurance to— 15

- (a) promote the confident and informed participation of insurers, policyholders, and other participants in the New Zealand insurance market; and
- (b) ensure that the provisions included in contracts of insurance, and the practices of insurers in relation to those contracts, operate fairly. 5

4 Overview

In this Act,—

- (a) this Part deals with preliminary matters, including interpretation and the application of this Act to the Crown:
- (b) **Part 2**— 10
 - (i) requires a consumer to take reasonable care not to make a misrepresentation to the insurer before a consumer insurance contract is entered into or varied:
 - (ii) requires other policyholders to make to the insurer a fair presentation of the risk before a non-consumer insurance contract is entered into or varied: 15
 - (iii) provides fair remedies for a breach of those requirements:
- (c) ~~Part 3 relates to the terms of contracts of insurance, including restrictions on certain types of exclusions and other provisions:~~
- (c) **Part 3**— 20
 - (i) relates to the terms of contracts of insurance, including restrictions on certain types of exclusions and other provisions:
 - (ii) requires life and health insurers to comply with regulations about genetic testing:
 - (iii) provides for third party claims against insurers: 25
- (d) **Part 4** relates to insurance intermediaries (for example, brokers). The Part—
 - (i) provides that a payment by a policyholder to an intermediary discharges their liability to the insurer; and
 - (ii) imposes duties on brokers in relation to premiums; and 30
 - (iii) regulates insurance broking client accounts:
- (e) **Part 5** relates to life policies, including providing for—
 - (i) interest on amounts payable under life policies; and
 - (ii) the assignment of life policies; and
 - (iii) life insurance for minors; and 35
 - (iv) life insurance for spouses, civil union partners, or de facto partners:

- (f) **Part 6** contains miscellaneous provisions, including provisions relating to regulations.

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- arrange**, in relation to a contract of insurance, includes to negotiate, solicit, or procure the contract 5
- avoid**, in relation to a contract of insurance, means to avoid from its inception
- claims-made policy** has the meaning set out in **section 73**
- consent to access** has the meaning set out in **section 58**
- consumer insurance contract** has the meaning set out in **section 10** 10
- contract of insurance** has the meaning set out in **section 6**
- contract of marine insurance** has the same meaning as in section 3 of the Marine Insurance Act 1908
- court** means, in relation to any matter, the court by or before which the matter falls to be determined 15
- document** has the same meaning as in section 4(1) of the Evidence Act 2006
- duty of fair presentation** means the duty under **subpart 4 of Part 2**
- duty to take reasonable care not to make a misrepresentation** means the duty under **subpart 1 of Part 2**
- FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011 20
- FMCA** means the Financial Markets Conduct Act 2013
- health insurance** means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003) 25
- incapable person** has the meaning set out in **section 153**
- insurer**—
- (a) means a person by whom or on whose behalf the risk or part of the risk to which a contract of insurance relates is accepted; and
- (b) includes, in relation to a proposed contract of insurance, the person who would be the insurer under **paragraph (a)** if the contract were entered into 30
- life insured**, in relation to a life policy, means the person upon whose death or survival benefits payable under that life policy are contingent
- life insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010 35

life policy has the meaning set out in section 84 of the Insurance (Prudential Supervision) Act 2010

material, in relation to a representation or a circumstance, has the meaning set out in **section 36**

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act 5

non-consumer insurance contract has the meaning set out in **section 10**

policyholder—

- (a) means— 10
 - (i) the person who has entered into a contract of insurance with an insurer; or
 - (ii) if the rights of that person under the contract of insurance have been assigned, transferred by the operation of the contract, or transferred by operation of law, the person who has those rights; 15
 - and
- (b) includes, in relation to a proposed contract of insurance, the person who would be the policyholder under **paragraph (a)** if the contract were entered into

qualifying breach has the meaning set out in **section 52** 20

qualifying misrepresentation has the meaning set out in **section 27**

regulations means regulations in force under this Act

reinsurance has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

specified intermediary, in relation to a contract of insurance,— 25

- (a) ~~means a person entitled to receive from the insurer commission or other valuable consideration in consideration for the person's arranging the contract of insurance between a person other than that person and the insurer; but~~
- (b) ~~does not include an employee of the insurer~~ 30

specified intermediary has the meaning set out in **subsection (2)**

vary, in relation to a contract, includes to extend the contract.

(2) In this Act, a person (A) is a **specified intermediary**, in relation to a contract of insurance, if—

- (a) A arranges the contract of insurance between the insurer and a person other than A; and 35
- (b) A is paid or provided with a commission or other consideration in connection with arranging the contract; and

(c) the commission or consideration is paid or provided, directly or indirectly, by or on behalf of the insurer; and

(d) A is not an employee of the insurer.

6 Meaning of contract of insurance

(1) ~~For the purposes of this Act, unless the context otherwise requires, **contract of insurance**—~~ 5

(a) ~~means a contract involving the transference of risk and under which a person (the insurer) agrees, in return for a premium, to pay to or for the account of another person (the policyholder) a sum of money or its equivalent, whether by way of indemnity or otherwise, on the happening of 1 or more uncertain events; and~~ 10

(b) ~~includes a contract of reinsurance.~~

(1) For the purposes of this Act, unless the context otherwise requires, **contract of insurance** means a contract involving the transference of risk and under which a person (the insurer) agrees, in return for a premium, to pay to or for the account of another person (the policyholder) a sum of money or its equivalent, whether by way of indemnity or otherwise, on the happening of 1 or more uncertain events. 15

(2) In this section, **uncertain event** means an event—

(a) with respect to which there is (from the perspective of the policyholder) an element of uncertainty as to when or whether it will take place; and 20

(b) that is beyond the insurer's control.

(3) However, the following are not contracts of insurance for the purposes of this Act:

(a) a contract, to the extent that it provides for, or relates to, any of the matters set out in section 7(3) of the Insurance (Prudential Supervision) Act 2010: 25

(aa) a contract of reinsurance:

(b) a contract of insurance referred to in section 48 of the Natural Hazards Insurance Act 2023. 30

7 Conflict of laws

(1) This Act applies to a contract of insurance if the contract—

(a) is governed by the law of New Zealand; or

(b) would be governed by the law of New Zealand but for a choice of law provision in the contract. 35

(2) **Subsection (1)(b)** does not apply to a ~~contract of reinsurance~~ non-consumer insurance contract.

- (3) This section does not apply to **subpart 5 of Part 3** (*see* instead **sections 87(2) and (3) and 98**).

8 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

5

9 Act binds the Crown

This Act binds the Crown.

Part 2 Disclosure duties

10 Meaning of consumer insurance contract and non-consumer insurance contract 10

- (1) In this Act, **consumer insurance contract**—

(a) means a contract of insurance ordinarily entered into by a policyholder wholly or predominantly for personal, domestic, or household purposes; and

15

(b) includes a proposed contract that would be a contract of that kind if it were entered into.

- (2) In this Act, **non-consumer insurance contract**—

(a) means a contract of insurance entered into by a policyholder that is not a consumer insurance contract; and

20

(b) includes a proposed contract that would be a contract of that kind if it were entered into.

- (3) However, a contract of insurance of a particular kind defined in **subsection (1) or (2)**—

(a) includes a contract of insurance declared by the regulations to be a contract of that kind (and a proposed contract that would be a contract of that kind if it were entered into); but

25

(b) does not include a contract of insurance that is declared by the regulations to be a contract of a different kind (and does not include a proposed contract that would be a contract of that kind if it were entered into).

30

11 ~~Presumption relating to consumer insurance contract~~

~~In a proceeding under this Act in which a party claims that an insurance contract is a consumer insurance contract, it is presumed that the contract is a consumer insurance contract unless the contrary is established.~~

12 Effect of certificate

- (1) ~~An insurance contract~~ A contract of insurance is not a consumer insurance contract if—
- (a) the policyholder (**P**) has given a certificate for the contract under section 446T(1) of the FMCA; and 5
 - (b) P's confirmation under section 446T(5)(b) of that Act includes a confirmation that P understands that P must make to the insurer a fair presentation of the risk before the contract is entered into or varied.
- (2) Section 446T(2), (4), and (5) of that Act applies for the purposes of this section. 10

Subpart 1—Disclosure duty for consumer insurance contracts**13 When this subpart applies**

This subpart applies to consumer insurance contracts.

14 Policyholder must take reasonable care

- (1) A policyholder must take reasonable care not to make a misrepresentation to the insurer before the consumer insurance contract is entered into or varied. 15
- (2) Whether the policyholder has taken reasonable care must be determined with regard to all the relevant circumstances.
- (2A) A misrepresentation made dishonestly must always be taken as showing lack of reasonable care. 20
- (3) A failure by the policyholder to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this subpart (whether or not it could be apart from this subsection).

Guidance note 25

See **section 63**, which provides that the policyholder's duty replaces any duty relating to disclosure or representations by a policyholder to an insurer that existed in the same circumstances before this subpart came into force.

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 ss 2(2), (3), 3(1), (5) (UK)

15 Matters that may be taken into account 30

- (1) The following matters may be taken into account in determining whether the policyholder has taken reasonable care not to make a misrepresentation:
 - (a) the type of consumer insurance contract in question, and its target market: 35
 - (b) explanatory material or publicity produced or authorised by the insurer:
 - (c) how clear, and how specific, any questions ~~asked by the insurer of the insurer~~ asked the policyholder were:

-
- (ca) if the policyholder failed to answer a question or gave an obviously incomplete or irrelevant answer to a question, what steps the insurer took in response to that failure or answer:
- (d) how clearly the insurer communicated to the policyholder the importance of answering those questions and the possible consequences of failing to do so: 5
- (e) whether the insurer has otherwise complied with **subpart 6** (which requires the insurer to inform the policyholder of certain matters):
- (f) whether the policyholder received assistance or guidance in connection with a representation from a person referred to in **subsection (2)** (whether or not the person is an agent of the policyholder or the insurer): 10
- (g) whether the duty applies in relation to—
- (i) a new contract that has the effect of operating as a renewal of a preceding contract; or
- (ii) a new contract that does not have that effect; or 15
- (iii) a variation of an existing contract; or
- (iv) a reinstatement of a previous contract of insurance.
- (2) For the purposes of **subsection (1)(f)**, the persons are—
- (a) a financial advice provider (within the meaning of section 6 of the FMCA); or 20
- (b) a non-financial not-for-profit organisation (within the meaning of clause 13 of Schedule 5 of the FMCA); or
- (c) a lawyer (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006).
- (3) This section does not limit **section 14(2)**. 25
Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 3(2) (UK)
- 16 Standard of reasonable policyholder**
- (1) ~~The standard of care required under this subpart is that of a reasonable policyholder who enters into a consumer insurance contract.~~
- (2) ~~However, this section is subject to **sections 17 and 18**.~~ 30
Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 3(3) (UK)
- 17 Particular characteristics or circumstances of policyholder**
- ~~If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual policyholder, those must be taken into account.~~
- ~~Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 3(4) (UK)~~ 35

16 Standard of care required

- (1) The standard of care required under this subpart is that of a reasonable policyholder who enters into a consumer insurance contract.
- (2) If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual policyholder, those must be taken into account.
- (3) **Subsection (1)** is subject to **subsection (2)** and **section 14(2A)**.

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 3(3), (4) (UK)

18 ~~Fraudulent misrepresentation is always lack of reasonable care~~

~~A misrepresentation made fraudulently must always be taken as showing lack of reasonable care.~~

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 3(5) (UK)

19 ~~Failure to answer or obviously incomplete or irrelevant answer~~

- (1) ~~The policyholder must not be taken to have made a misrepresentation merely because the policyholder—~~
- (a) ~~failed to answer a question; or~~
- (b) ~~gave an obviously incomplete or irrelevant answer to a question.~~
- (2) This section is subject to **section 14(3)**.

20 Representations to specified intermediaries

If a policyholder makes a representation to a specified intermediary before the consumer insurance contract is entered into or varied, the representation must be treated as having been made to the insurer.

21 ~~Insurance on life of another~~

- (1) ~~This section applies to a consumer insurance contract that is a life policy on the life of an individual (L) who is not a party to the contract.~~
- (2) If this section applies,—
- (a) ~~specified information must be treated for the purposes of this Act as if it were provided by the person who is the party to the contract; but~~
- (b) ~~in relation to the specified information, if anything depends on the state of mind, knowledge, circumstances, or characteristics of the individual providing the information, it is to be determined by reference to L and not the party to the contract.~~
- (3) In this section, **specified information** is information provided to the insurer by L in relation to the insurance cover on L's life.

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 8 (UK)

21 Life or health insurance in relation to individual who is not party to contract

- (1) This section applies to a consumer insurance contract that is—
- (a) a life policy on the life of an individual (B) who is not a party to the contract; or 5
 - (b) a contract of health insurance relating to the health of an individual (B) who is not a party to the contract.
- (2) If this section applies,—
- (a) specified information must be treated for the purposes of this Act as if it were provided by the person who is the party to the contract; but 10
 - (b) in relation to the specified information, if anything depends on the state of mind, knowledge, circumstances, or characteristics of the individual providing the information, it is to be determined by reference to B and not the party to the contract.
- (3) This section applies regardless of whether or not the life policy or contract of health insurance also provides insurance cover relating to the life or health of a person other than B. 15
- (4) In this section, **specified information** means information provided to the insurer by B about the insurance cover relating to B's life or B's health. 20
- Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 8 (UK)

Subpart 2—Group insurance

22 When this subpart applies

- (1) This subpart applies if—
- (a) a contract of insurance is entered into by a person (A) in order to provide insurance cover for another person (B) or it is varied in order to provide insurance cover for B; and 25
 - (b) B is not a party to the contract; and
 - (e) ~~B would ordinarily have the benefit of the insurance cover wholly or predominantly for personal, domestic, or household purposes; and~~
 - (c) so far as the insurance cover for B is concerned, the contract would have been a consumer insurance contract if entered into by B rather than by A; and 30
 - (d) B provides information directly or indirectly to the insurer before the contract was entered into, or before it was varied to provide insurance cover for B. 35
- (2) However, this subpart does not apply if **section 21** applies.
- Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 7(1) (UK)

23 Person who has benefit of contract also has duty

- (1) B must take reasonable care not to make a misrepresentation to the insurer before the contract of insurance is entered into or it is varied in order to provide insurance cover for B.
- (2) So far as the cover for B is concerned, **sections 14(2) and to (3) and 15 to 20, subpart 3, and Part 1 of Schedule 2** apply— 5
 - (a) with all necessary modifications to that duty as if B were the policyholder who entered into a consumer insurance contract for that cover with the insurer; and
 - (b) with the modifications set out in **Part 3 of Schedule 2.** 10
- (3) In addition,—
 - (a) **section 27(1)(a)** applies as if it referred to a breach of the duty set out in this section; and
 - (b) **section 27(1)(b)** applies as if it required the insurer to prove that without the misrepresentation, the insurer would not have agreed to provide insurance cover for B at all, or would have done so only on different terms. 15

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 7(2), (3) (UK)

24 Breach by 1 member of group does not affect others

If there is more than 1 person who has a duty under this subpart in relation to a contract, a breach by 1 of them of the duty does not affect the contract so far as it relates to the others. 20

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 7(4) (UK)

25 Policyholder's duties not limited

This subpart does not limit any duty owed by A to the insurer, or any remedy that the insurer may have against A for breach of that duty. 25

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 7(5) (UK)

Subpart 3—Remedies for breach of disclosure duty for consumer
insurance contracts

26 ~~Subpart~~ This subpart applies to consumer insurance contracts 30

- (1) This subpart applies to consumer insurance contracts.
- (2) This section does not limit **section 23.**

27 When insurer has remedy

- (1) An insurer has a remedy against a policyholder (A) for a misrepresentation made by A before a consumer insurance contract was entered into or varied only if— 35

-
- (a) A made the misrepresentation in breach of the duty set out in **subpart 1**; and
- (b) the insurer proves that without the misrepresentation, the insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms. 5
- (2) In this Act, a misrepresentation for which the insurer has a remedy against the consumer is a **qualifying misrepresentation**.
- (3) The only such remedies available are set out in **Schedule 2**.
- (4) *See sections 35(3) and 37(4)* of the Contract and Commercial Law Act 2017, which prevent an insurer from obtaining a remedy for a misrepresentation under that Act. 10
- 28 Classification of qualifying misrepresentations**
- For the purposes of this Act, a qualifying misrepresentation is—
- (a) deliberate or reckless; or
- (b) neither deliberate nor reckless. 15
- 29 When misrepresentation is deliberate or reckless**
- A qualifying misrepresentation is deliberate or reckless if the policyholder—
- (a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading; and
- (b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer. 20
- 30 Burden of proof and presumptions**
- (1) The insurer has the burden of proving that a qualifying misrepresentation was deliberate or reckless. 25
- (2) However, it is presumed, unless the contrary is proved,—
- (a) that the policyholder had the knowledge of a reasonable policyholder; and
- (b) that the policyholder knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer. 30
- 31 Life policy for 2 or more life insureds**
- If a life policy provides insurance cover in relation to 2 or more life insureds, this subpart and **Schedule 2** apply as if the insurance cover provided in relation to each life insured were provided by a separate contract of life insurance.

Subpart 4—Disclosure duty for non-consumer insurance contracts

32 When this subpart applies

This subpart applies to non-consumer insurance contracts.

Compare: Insurance Act 2015 s 2(1) (UK)

33 Policyholder has duty of fair presentation

5

A policyholder must make to the insurer a fair presentation of the risk before the non-consumer insurance contract is entered into or varied.

Compare: Insurance Act 2015 s 3(1) (UK)

34 What is fair presentation of risk**(1) A fair presentation of the risk is one—** 10

- (a) that makes the disclosure required by **section 35**; and
- (b) that makes that disclosure in a manner that would be reasonably clear and accessible to a prudent insurer; and
- (c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith. 15

(2) A fair presentation need not be contained in only 1 document or oral presentation.

Compare: Insurance Act 2015 ss 3(3), 7(1) (UK)

35 What must be disclosed

20

(1) The policyholder is required to provide—

- (a) disclosure of every material circumstance that the policyholder knows or ought to know; or
- (b) failing that, disclosure that gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further inquiries for the purpose of revealing those material circumstances. 25

(2) However, in the absence of inquiry, **subsection (1) does not require the policyholder to disclose a circumstance if—**

- (a) it diminishes the risk; or
- (b) the insurer knows it; or 30
- (c) the insurer ought to know it; or
- (d) the insurer is presumed to know it; or
- (e) it is something as to which the insurer waives information.

(3) In this subpart, **circumstance includes any communication made to, or information received by, the policyholder.** 35

Compare: Insurance Act 2015 ss 3(4), (5), 7(2) (UK)

36 What is material

- (1) A circumstance or representation is **material** if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.
- (2) The following are examples of things that may be material circumstances: 5
- (a) special or unusual facts relating to the risk:
 - (b) any particular concerns that led the policyholder to seek insurance cover for the risk:
 - (c) anything that those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question. 10

Compare: Insurance Act 2015 s 7(3), (4) (UK)

37 What is substantially correct

A material representation is substantially correct if a prudent insurer would not consider that the difference between what is represented and what is actually correct is material. 15

Compare: Insurance Act 2015 s 7(5) (UK)

38 Representation may be withdrawn or corrected

A representation may be withdrawn or corrected before the contract of insurance is entered into or varied. 20

Compare: Insurance Act 2015 s 7(6) (UK)

39 Variations

This subpart applies to a variation of a non-consumer insurance contract with the following modifications:

- (a) references to the risk are to be read as references to changes in the risk relevant to the proposed variation; and 25
- (b) references to the contract of insurance are to the variation.

Compare: Insurance Act 2015 s 2(2) (UK)

*Knowledge of policyholder***40 Knowledge of policyholder** 30

- (1) **Sections 41 to 44** provide for what a policyholder knows or ought to know for the purposes of this subpart.
- (2) For the purposes of this section and those sections,—
- (a) **employee**, in relation to the policyholder's agent, includes an individual working for the agent, whatever the capacity in which the individual acts; and 35

- (b) an individual is **responsible** for the policyholder's insurance if the individual participates on behalf of the policyholder in the process of procuring the policyholder's insurance (whether the individual does so as the policyholder's employee or agent, as an employee of the policyholder's agent, or in any other capacity); and 5

- (c) **senior management** means those individuals who play significant roles in making decisions about how the policyholder's activities are to be managed or organised.

Compare: Insurance Act 2015 s 4(1), (8) (UK)

41 What individual knows 10

A policyholder who is an individual knows only—

- (a) what is known to the individual; and
(b) what is known to 1 or more of the individuals who are responsible for the policyholder's insurance.

Compare: Insurance Act 2015 s 4(2) (UK) 15

42 What other policyholders know

A policyholder who is not an individual knows only what is known to 1 or more of the individuals who are—

- (a) part of the policyholder's senior management; or
(b) responsible for the policyholder's insurance. 20

Compare: Insurance Act 2015 s 4(3) (UK)

43 When confidential information is not known

- (1) A policyholder is not by virtue of **section 41(b) or 42(b)** taken to know confidential information known to an individual if—

- (a) the individual is, or is an employee of, the policyholder's agent; and 25
(b) the information was acquired by the policyholder's agent (or by an employee of that agent) through a business relationship with a person who is not connected with the contract of insurance.

- (2) The persons **connected** with a contract of insurance are— the policyholder and any other persons for whom the contract provides insurance cover. 30

- (a) ~~the policyholder and any other persons for whom insurance cover is provided by the contract; and~~
(b) ~~if the contract reinsures risks covered by another contract, the persons who are (by virtue of this subsection) connected with that other contract.~~

Compare: Insurance Act 2015 s 4(4), (5) (UK) 35

44 What policyholder ought to know

- (1) A policyholder ought to know what should reasonably have been revealed by a reasonable search of information available to the policyholder (whether the search is conducted by making inquiries or by any other means).
- (2) This section applies whether or not the policyholder is an individual. 5
- (3) In this section, **information** includes information held within the policyholder's organisation or by any other person (such as the policyholder's agent or a person for whom insurance cover is provided by the contract of insurance).

Compare: Insurance Act 2015 s 4(6), (7) (UK)

Knowledge of insurer 10

45 Knowledge of insurer

Sections 46 to 48 provide for what an insurer knows, ought to know, or is presumed to know for the purposes of this subpart.

46 What insurer knows

- (1) An insurer knows something only if it is known to 1 or more of the following: 15
 - (a) any individuals who participates on behalf of the insurer in the decision whether to take the risk and, if so, on what terms (whether the individual does so as the insurer's employee or agent, as an employee of the insurer's agent, or in any other capacity):
 - (b) ~~any individual who is, or works for, a specified intermediary in relation to the contract of insurance.~~ 20
 - (b) any individual who—
 - (i) is a person referred to in **subsection (2)**; or
 - (ii) works for a person referred to in **subsection (2)** in relation to the contract of insurance. 25
- (2) The person is a specified intermediary in relation to the contract of insurance.

Compare: Insurance Act 2015 s 5(1) (UK)

47 What insurer ought to know

An insurer ought to know something only if—

- (a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in **section 46**; or 30
- (b) the relevant information is held by the insurer and is readily available to an individual mentioned in that section.

Compare: Insurance Act 2015 s 5(2) (UK) 35

48 What insurer is presumed to know

An insurer is presumed to know—

- (a) things that are common knowledge; and
- (b) things that an insurer offering insurance of the class in question to policyholders in the field of activity in question would reasonably be expected to know in the ordinary course of business. 5

Compare: Insurance Act 2015 s 5(3) (UK)

Other provisions relating to knowledge

49 Knowledge: ~~wilful blindness~~ when individual deliberately refrains from confirming or inquiring about suspected matters

10

For the purposes of this subpart, references to an individual's knowledge include not only actual knowledge, but also matters that the individual suspected, and of which the individual would have had knowledge but for deliberately refraining from confirming them or inquiring about them.

Compare: Insurance Act 2015 s 6(1) (UK)

15

50 Knowledge of fraud

Nothing in this subpart affects the operation of any rule of law according to which knowledge of a fraud perpetrated by an individual (A) either on the policyholder or on the insurer is not to be attributed to the policyholder or to the insurer (respectively) where,—

20

- (a) if the fraud is on the policyholder, A is any of the individuals mentioned in **section 41(b) or 42**; or
- (b) if the fraud is on the insurer, A is any of the individuals mentioned in **section 46**.

Compare: Insurance Act 2015 s 6(2) (UK)

25

Subpart 5—Remedies for breach of duty of fair presentation for non-consumer insurance contracts

51 ~~Subpart~~ This subpart applies to non-consumer insurance contracts

This subpart applies to non-consumer insurance contracts.

52 When insurer has remedy

30

- (1) An insurer has a remedy against a policyholder (A) for a breach of the duty of fair presentation only if the insurer proves that, but for the breach, the insurer—
 - (a) would not have entered into the contract of insurance (or agreed to the variation) at all; or
 - (b) would have done so only on different terms.

35

- (2) In this Act, a breach of the duty of fair presentation for which the insurer has a remedy against A is a **qualifying breach**.
- (3) The only remedies available are set out in **Schedule 2**.
- (4) This section is subject to **section 62**, which provides that an insurer that breaches ~~subpart 6~~ **section 56** may not have a remedy under **Schedule 2**. 5
- (5) *See sections 35(3) and 37(4)* of the Contract and Commercial Law Act 2017, which prevent an insurer from obtaining a remedy for a misrepresentation under that Act.

Compare: Insurance Act 2015 s 8(1)–(3) (UK)

53 Classification of qualifying breach 10

For the purposes of this Act, a qualifying breach is—

- (a) deliberate or reckless; or
- (b) neither deliberate nor reckless.

Compare: Insurance Act 2015 s 8(4) (UK)

54 When breach is deliberate or reckless 15

A qualifying breach is deliberate or reckless if the policyholder—

- (a) knew that it was in breach of the duty of fair presentation; or
- (b) did not care whether or not it was in breach of that duty.

Compare: Insurance Act 2015 s 8(5) (UK)

55 Burden of proof 20

The insurer has the burden of proving that a qualifying breach was deliberate or reckless.

Compare: Insurance Act 2015 s 8(6) (UK)

Subpart 6—Insurer’s duties to inform policyholder of certain matters

56 Insurer must inform policyholder of duty 25

- (1) Before a contract of insurance is entered into or varied, the insurer must take all reasonable steps to ensure that the policyholder is clearly informed of the following:

- (a) the general nature and effect of the policyholder’s duty under **subpart 1 or 4**; and 30
- (b) the potential consequences of a failure to comply with that duty.

- (2) ~~This section does not apply in relation to contracts of reinsurance.~~

57 Application to variations

Despite **section 56**, that section applies to a variation only if—

- (a) the variation— 35

- (i) will provide a kind of insurance cover that was not provided by the contract of insurance immediately before the variation; or
- (ii) will increase a sum insured under the contract of insurance; and
- (b) the variation is not an automatic variation but is required to be expressly agreed between the insurer and the policyholder before the contract is varied. 5

58 Insurer must inform policyholder about access to third party information (before contract entered into)

- (1) This section applies if,—
 - (a) under a proposed consumer insurance contract, a policyholder will give a consent to access information; or 10
 - (b) the policyholder gives a consent to access information before that contract is entered into.
- (2) Before the contract is entered into, the insurer must take ~~all~~ reasonable steps to ensure that the policyholder is clearly informed of the following: 15
 - (a) whether or not the insurer intends to access and take into account the information to which the consent relates when deciding whether to enter into the contract or when deciding on the terms on which the insurer will do so:
 - (b) if the insurer does intend to access and take into account the information,— 20
 - (i) the nature of the information that the insurer intends to access and take into account; and
 - (ii) whether and, if so, how the insurer accessing and taking into account the information affects the importance that the policyholder answer questions asked by the insurer. 25
- (3) In this Act, a policyholder gives a **consent to access** information if they consent to the insurer accessing information about the policyholder from a third party (for example, medical records).

59 Insurer must inform policyholder about access to third party information (before variation of contract) 30

- (1) This section applies if,—
 - (a) in connection with a proposed variation of a consumer insurance contract, a policyholder gives a consent to access ~~particular~~ information; and
 - (b) the policyholder has not previously given a consent to access that information. 35
- (2) Before the contract is varied, the insurer must take ~~all~~ reasonable steps to ensure that the policyholder is clearly informed of the following:

- (a) whether or not the insurer intends to access and take into account the information referred to in **subsection (1)(a)** when deciding whether to agree to the variation or when deciding on the terms on which the insurer will do so:
 - (b) if the insurer does intend to access and take into account the information,— 5
 - (i) the nature of the information that the insurer intends to access and take into account; and
 - (ii) whether and, if so, how the insurer accessing and taking into account the information affects the importance that the policyholder answer questions asked by the insurer. 10
- 60 Policyholder may be informed orally or in writing**
- The policyholder may be informed under this subpart orally or in writing.
- 61 Requirement treated as complied with if complied with in prescribed manner** 15
- (1) A requirement under this subpart to take ~~all~~ reasonable steps to ensure that the policyholder is clearly informed of certain information must be treated as having been complied with if—
 - (a) the information is given in writing in the manner prescribed by the regulations; and 20
 - (b) the requirements prescribed by the regulations for the purposes of this section (if any) are complied with.
 - (2) This section does not limit the means by which the requirement may be satisfied.
- 62 Consequences of breach** 25
- (1) If an insurer breaches ~~this subpart~~ **section 56** in relation to a non-consumer insurance contract, the insurer has a remedy under **Schedule 2** only if the policyholder knew that, or was reckless as to whether, the qualifying breach was a breach of the duty of fair presentation.
 - (2) **Subsection (1)** applies regardless of whether the insurer's breach caused or otherwise contributed to the breach of the duty of fair presentation. 30
 - (3) *See also*—
 - (a) **section 15**, which provides for the insurer's compliance with this subpart to be a matter that may be taken into account in determining whether the policyholder has taken reasonable care not to make a misrepresentation: 35
 - (b) the FMCA, which provides for **sections 56, 58, and 59** of this Act to be market services licensee obligations and to give rise to civil liability under section 449 of that Act.

Subpart 7—Effect on utmost good faith rule of law

63 Effect of Part on utmost good faith rule of law

- (1) The duties set out in **subparts 1 and 4** replace any duty relating to disclosure or representations by a policyholder to an insurer that existed in the same circumstances before those subparts came into force. 5
- (2) Accordingly, the utmost good faith rule does not have the effect of imposing on a policyholder, in connection with the disclosure of a matter to the insurer or a representation before a contract of insurance is entered into or varied, a duty other than—
 - (a) the duty to take reasonable care not to make a misrepresentation (in the case of a consumer insurance contract); or 10
 - (b) the duty of fair presentation of risk (in the case of a non-consumer insurance contract).
- (3) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished. 15
- (4) The utmost good faith rule is modified to the extent required by this section.
- (5) The **utmost good faith rule** means the rule of law to the effect that a contract of insurance is a contract based on the utmost good faith. 20

Guidance note

The law recognises that contracts of insurance are based on the utmost good faith. This imposes duties on both the insurer and the policyholder.

This Act replaces duties (and associated remedies) in connection with the disclosure of information by policyholders before a contract of insurance is entered into or varied. The utmost good faith rule is modified to that extent but otherwise continues as a rule of law. 25

Subpart 8—Miscellaneous provisions

64 Effect of warranties

- (1) This Part has effect despite any warranty by the policyholder that the policyholder's obligations under this Part have been complied with. 30
- (2) A representation made by the policyholder in connection with a proposed contract of insurance or variation is not capable of being converted into a warranty by means of any provision of the contract or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise). 35

65 Certain provisions of no effect

- (1) A term of ~~an insurance contract~~ a contract of insurance, or of any other agreement, that would put the policyholder in a worse position in relation to the

matters set out in **subsection (2)** than the policyholder would be in under this Act is to that extent of no effect.

- (2) The matters are—
 - (a) disclosure and representations by the policyholder to the insurer before the contract is entered into or varied; and 5
 - (b) any remedies for qualifying misrepresentations or breaches.
- (3) This section does not apply in relation to a contract for the settlement of a claim arising under ~~an insurance contract~~ a contract of insurance.

66 Duty for specified intermediary in relation to consumer insurance contract

- (1) This section applies if— 10
 - (a) a person (A) is a specified intermediary in relation to a consumer insurance contract; and
 - ~~(b) the policyholder makes a representation to A before the contract is entered into or varied; and~~
 - (b) before the contract is entered into or varied, the policyholder makes a representation to an individual— 15
 - (i) who is A; or
 - (ii) who works for A in relation to the contract of insurance; and
 - (c) A knows, or ought ~~reasonably~~ to know, that the representation is relevant to a question asked by the insurer of the policyholder. 20
- (2) A must take ~~all~~ reasonable steps to pass on the representation to the insurer before the insurer enters into the consumer insurance contract or agrees to the variation.
- (3) ~~A representation is relevant to a question if it has a tendency to answer the question in whole or in part.~~ 25
- (4) Compliance with this section does not place any person in breach of ~~the consumer insurance~~ any contract, or make any person liable for a civil wrong.
- (5) This section is subject to anything to the contrary expressed or implied in an agreement between A and the insurer.

67 Duty for specified intermediary in relation to non-consumer insurance contract 30

- (1) This section applies if a person (A) is a specified intermediary in relation to a non-consumer insurance contract.
- (2) A must, before the insurer enters into the contract of insurance or agrees to a variation, take ~~all~~ reasonable steps to disclose to the insurer every material circumstance that is known by any individual— 35
 - (a) who is A; or
 - (b) who works for A in relation to the contract of insurance.

- (3) Compliance with this section does not place any person in breach of ~~the non-consumer insurance~~ any contract, or make any person liable for a civil wrong.
- (4) This section is subject to anything to the contrary expressed or implied in an agreement between A and the insurer. 5
- 68 Court may order specified intermediary to pay compensation**
- (1) This section applies if the court, on application by an insurer, is satisfied that—
- (a) a specified intermediary (A) has contravened **section 66 or 67**; and
 - (b) the insurer has suffered loss or damage because of the contravention.
- (2) The court may order A to pay to the insurer the amount of the loss or damage (in whole or in part). 10
- (3) **Subsection (2)** is subject to a contract between A and the insurer that expressly or impliedly provides for any matter in connection with a remedy for a contravention of **section 66 or 67** (for example, a contract that provides a cap on liability). 15
- 69 Indemnity for specified intermediary is void**
- (1) A term of any contract between a policyholder and a specified intermediary (A) is of no effect to the extent that it makes the policyholder liable to indemnify A in connection with—
- (a) any liability for a contravention of **section 66 or 67** (whether the liability is imposed under **section 68** or otherwise); or 20
 - (b) any costs incurred by A in defending a proceeding relating to that liability (whether a proceeding under **section 68** or otherwise).
- (2) In this section, **indemnify** includes relieve or excuse from liability, whether before or after the liability arises. 25

Part 3

Contracts of insurance

Subpart 1—Implied term about payment of claims

70 Implied term about payment of claims

- (1) It is an implied term of every contract of insurance that if the policyholder makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time. 30
- (2) A reasonable time includes a reasonable time to investigate and assess the claim (including to gather information for those purposes).
- (3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things that may need to be taken into account: 35

- (a) the type of insurance:
- (b) the size and complexity of the claim:
- (c) compliance with any relevant legislation or guidance:
- (d) factors outside the insurer's control:
- (e) whether a sum due in respect of a part of the claim that is not in dispute has been paid: 5
- (f) whether the insurer has reasonable grounds for disputing the claim.
- (4) Remedies (for example, damages) available for breach of the term implied by **subsection (1)** are in addition to and distinct from— 10
 - (a) any right to enforce payment of the sums due; and
 - (b) any right to interest on those sums (whether under the contract, under any legislation, or otherwise).

Compare: Insurance Act 2015 s 13A (UK)

Subpart 2—Restrictions on terms

Arbitration 15

71 Arbitration provisions not binding

- (1) A provision of a consumer insurance contract does not bind the policyholder if the provision has the effect of—
 - (a) requiring, authorising, or otherwise providing for differences or disputes in connection with the contract to be referred to arbitration; or 20
 - (b) limiting the rights otherwise conferred by the contract on the policyholder by reference to an agreement to submit a difference or dispute to arbitration.
- (2) This section does not affect an agreement to submit a difference or dispute to arbitration if the agreement was entered into after the difference or dispute arose. 25

Compare: 1977 No 14 s 8; Insurance Contracts Act 1984 s 43 (Aust)

Manner of, or time for, making claims or commencing proceedings

72 Provisions ~~prescribing~~ specifying manner or time of claims or proceedings not binding 30

- (1) This section applies to the following kinds of provisions in a contract of insurance:
 - (a) provisions that ~~prescribe~~ specify the manner in which notice of a claim by the policyholder must be given:
 - (b) provisions that ~~prescribe~~ specify a time limit within which notice of a claim by the policyholder must be given: 35

- (c) provisions that ~~prescribe~~ specify a time limit within which a proceeding by the policyholder must be commenced.
- (2) A provision to which this section applies in a life policy does not bind the policyholder if the claim or proceeding relates to the death of the policyholder.
- (3) A provision to which this section applies in any other contract of insurance does not bind the policyholder unless the court or arbitrator determining the matter considers that, in the particular circumstances,—
 - (a) the insurer has been prejudiced by the policyholder's failure to comply with the provision; and
 - (b) as a result of that prejudice, it would be inequitable if the provision did not bind the policyholder.

Compare: 1977 No 14 s 9(1)

73 Claims-made policies

- (1) Despite **section 72(3)**, a provision of a claims-made policy is binding on the policyholder in respect of a claim (**claim A**) if—
 - (a) the provision defines the period within which claims made against the policyholder or claims arising out of circumstances notified to the insurer are within the risk accepted by the insurer under the contract; and
 - (b) the policyholder did not notify the insurer of claim A, or of circumstances that may give rise to claim A, before the date that is 90 days after the end of the relevant period.
- (2) In this ~~section~~ Act, **claims-made policy** means a contract of insurance in which the period during which liability for claims against the policyholder is within the risk accepted by the insurer (the **relevant period**) is defined by reference to the time when—
 - (a) those claims are made; or
 - (b) claims or circumstances that may give rise to a claim are notified to the insurer.

74 Insurer not liable to pay greater cost

- (1) This section applies if—
 - (a) the policyholder under a contract of insurance fails to give notice of a claim in the manner, or within the time, that is ~~prescribed~~ specified by the contract; and
 - (b) the cost of repairing, replacing, or reinstating any property when it falls to be met is greater than the cost that would have applied if the notice had been given in the manner, or within the time, that is ~~prescribed~~ specified by the contract.
- (2) The greater cost is not prejudice to the insurer for the purposes of **section 72(3)**.

- (3) However, an insurer is not liable to apply or pay in repairing, replacing, or reinstating any property a greater sum than that for which the insurer would have been liable if the notice of claim had been given in the manner, or within the time, that is ~~prescribed~~ specified by the contract of insurance.

- (4) This section does not apply to a life policy.

5

Compare: 1977 No 14 s 9(2)

Increased risk exclusions

75 Increased risk exclusions

- (1) A policyholder is not bound by an increased risk exclusion if the policyholder proves that the loss for which the policyholder seeks to be indemnified was not caused, or contributed to, by the happening of the event or the existence of the circumstance referred to in the increased risk exclusion. 10
- (2) In this section, an **increased risk exclusion** is a provision in a contract of insurance that—
- (a) defines the circumstances in which the insurer is bound to indemnify the policyholder against loss so as to exclude or limit the liability of the insurer to indemnify the policyholder on the happening of certain events or on the existence of certain circumstances; and 15
- (b) defines the liability of the insurer in that manner, in the view of the court or arbitrator determining the matter, because the happening of those events or the existence of those circumstances was, in the view of the insurer, likely to increase the risk of loss occurring. 20
- (3) However, this section does not apply to an increased risk exclusion that—
- (a) defines the age, identity, qualifications, or experience of a driver of a vehicle, a pilot of an aircraft, an operator of goods, or a master, pilot, or crew member of a ship; or 25
- (b) defines the geographical area in which the loss must or must not occur; or
- (c) excludes loss that occurs while a vehicle, an aircraft, a ship, or any goods is or are being used for commercial purposes other than those permitted by the contract of insurance. 30

Compare: 1977 No 14 s 11

*Pro rata conditions of average***76 Prohibition on including pro rata condition of average in home and contents insurance**

- (1) A contract of insurance relating to a home or any contents of a home (or both) must not contain a pro rata condition of average. 5

Guidance note

See **section 78**, which explains the nature and effect of a pro rata condition of average.

- (2) A provision of a contract of insurance that breaches **subsection (1)** is of no effect. 10
- (3) In this section, **home**—
- (a) means a building or a part of a building occupied or intended to be occupied as a separate dwelling; and
 - (b) includes any outbuildings used primarily for domestic or residential purposes. 15
- (4) The application of this section to a contract of insurance relating to a home is not excluded by reason only that part of the premises is used—
- (a) as a shop or an office; or
 - (b) for business, trade, or professional purposes. 20
- Compare: 1985 No 117 s 15

77 Disclosure of pro rata condition of average in other cases

- (1) This section applies to a contract of insurance other than—
- (a) a contract of insurance to which **section 76** applies; or
 - (b) a contract of marine insurance.
- (2) If a contract of insurance to which this section applies contains a pro rata condition of average, the condition has no effect unless, before the contract is entered into, the insurer clearly informs the policyholder in writing of the nature and effect of the condition. 25
- (3) However, if it is not reasonably practicable for the information to be given to the policyholder in writing before the contract is entered into, **subsection (2)** must be treated as having been complied with if the insurer— 30
- (a) gives the information orally before the contract is entered into; and
 - (b) gives the information in writing as soon as it is reasonably practicable to do so.

Compare: 1985 No 117 s 16(1), (2)

35

78 Requirement treated as complied with if particular form is used

- (1) The requirement under **section 77** to clearly inform the policyholder in writing must be treated as having been complied with if the information is given in writing in the following form:

“The meaning of subject to average” 5

- 1 Your contract of insurance contains a provision making it “subject to average”.
- 2 The provision will have effect only if the property insured under the contract is underinsured at the time of loss.
- 3 If the property insured under the contract is underinsured at the time of loss, the following rules apply: 10
 - (a) if you suffer a total loss, the provision will have no effect:
 - (b) if you suffer a partial loss, the maximum amount that you may recover will bear the same proportion to your actual loss as the amount for which the property is insured bears to the full value of the property: 15

Example

Your property is worth \$20,000. However, you insure it for only \$10,000. You suffer a loss of \$5,000. If your contract of insurance is subject to average, the maximum amount that you may recover will be \$2,500. 20

- (c) whatever your loss, in no case will you be entitled to recover more than the amount for which the property is insured.”
- (2) This section does not limit the means by which **section 77** may be satisfied. 25
Compare: 1985 No 117 s 16(3)

Subpart 3—Insurable interest**79 Insurable interest not required**

- (1) A person for whose use or benefit or on whose account a contract of insurance is entered into is not required to have an interest in any event for the purposes of— 30
- (a) a contract of indemnity against loss; or
 - (b) a life policy.
- (2) This section does not limit the Marine Insurance Act 1908.
Compare: 1985 No 117 s 7

80 Insurable interest in life of life insured not required

A life policy on the life of a person (A) is not void or illegal by reason only of the fact that the policyholder under the life policy does not have, or did not have when the life policy was entered into, any interest in the life of A.

Compare: 1985 No 117 s 6

5

Subpart 4—Insurance relating to contracts for sale of land**81 Interpretation in this subpart**

In this subpart,—

contract of sale means a contract for the sale of land and all or any fixtures on the land

10

relevant period means the period—

- (a) that starts when the contract of sale is entered into; and
- (b) ends on the earlier of the following:
 - (i) the purchaser taking possession of the land and fixtures:
 - (ii) final settlement under the contract of sale

15

vendor includes a mortgagee of the vendor and any person claiming through the vendor

vendor's insurance means a contract of insurance maintained by the vendor for any damage to, or destruction of, any part of the land or fixtures agreed to be sold under the contract of sale.

20

82 Purchaser of land entitled to benefits of insurance between sale and possession or settlement

- (1) During the relevant period, the vendor's insurance in respect of the land and fixtures agreed to be sold under a contract of sale has effect for the benefit of the purchaser as well as for the vendor.
- (2) In particular, the purchaser is entitled to be indemnified by the insurer or to require the insurer to reinstate that land and those fixtures in the same manner and to the same extent as the vendor would have been so entitled under the vendor's insurance if there had been no contract of sale.
- (3) This section—
 - (a) does not apply to the extent that the purchaser is entitled to be indemnified, or to require reinstatement of the land and fixtures, under any other contract of insurance; and
 - (b) does not require the insurer to pay or expend more in total under the vendor's insurance than it would have had to pay or expend if there had been no contract of sale.

25

30

35

Compare: 1985 No 117 s 13(1A)–(1C)

83 Certain defences or answers invalid

- (1) It is not a defence or an answer to a claim by a purchaser against an insurer under **section 82** that the vendor otherwise would not be entitled to be indemnified by the insurer or to require reinstatement because the vendor has suffered no loss or has suffered diminished loss because the vendor is or was entitled to be paid all, or the balance of, the purchase price by the purchaser. 5
- (2) It is not a defence or an answer to a claim by a purchaser against an insurer under **section 82**, in relation to the land or fixtures sold, that the purchaser's entitlement under the contract to which the claim relates is affected, or defeated, by the existence or terms of another contract of insurance. 10
- (3) It is not a defence or an answer to a claim by a purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the contract of insurance to which the claim relates is affected, or defeated, by a claim under **section 82**. 15
- Compare: 1985 No 117 s 13(2)

84 Purchase price reduced by amount payable to vendor's mortgagee

- (1) This section applies if, in respect of a contract of sale,—
- (a) any part of the land or fixtures agreed to be sold is damaged or destroyed during the relevant period; and
 - (b) the whole or a part of the amount payable for the damage or destruction under the vendor's insurance is payable to a mortgagee of, or any person claiming through, the vendor. 20
- (2) The purchase price payable under the contract of sale must be reduced by the amount that is payable to the mortgagee or person claiming through the vendor. 25
- Compare: 1985 No 117 s 13(3)

85 Application of this subpart

- (1) This subpart—
- (a) has effect despite any provision to the contrary in any legislation, rule of law, contract of insurance, deed, or other contract; and
 - (b) applies, with all necessary modifications, to a sale or exchange of land and fixtures by order of a court as if the order were a contract of sale. 30
- (2) However, this subpart does not apply to the extent that the purchaser and vendor under the contract of sale expressly agree at any time.
- Compare: 1985 No 117 s 13(5), (6)

86 Double insurance relating to contract for sale of land 35

If there is a contract of sale, it is not a defence or an answer to a claim by the purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the contract of insurance to which the claim

relates is affected or defeated by the existence or terms of any contract of insurance held by, or on behalf of, the vendor.

Compare: 1985 No 117 s 14

Subpart 4A—Genetic testing

- 86A Insurer must comply with regulations about genetic testing** 5
- An insurer must comply with the requirements prescribed by the regulations made under **section 86B**.
-
- Guidance note**
- See the FMCA, which provides for this section to be a market services licensee obligation and to give rise to civil liability under section 449 of that Act. 10
-
- 86B Regulations may prohibit or regulate conduct concerning genetic testing**
- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for prohibiting or regulating any conduct of insurers in connection with genetic testing.
- (2) The power under **subsection (1)** includes prohibiting or regulating any conduct of insurers that involves any of the following: 15
- (a) requiring a person (**A**) or a relative of A to undergo, or consent to, any genetic test as a condition of—
- (i) entering into, varying, or continuing a relevant contract with A or providing insurance cover for A under a relevant contract; or 20
- (ii) offering or continuing specific terms or conditions in a relevant contract with A or for that insurance cover;
- (b) requiring A, a relative of A, or any other person to disclose the results of any genetic test as a condition of engaging in an activity described in **paragraph (a)(i) or (ii)**: 25
- (c) requiring A, a relative of A, or any other person to answer a question about whether A or a relative of A has undergone any genetic test as a condition of engaging in an activity described in **paragraph (a)(i) or (ii)**:
- (d) refusing to engage in an activity described in **paragraph (a)(i) or (ii)** in respect of A on the grounds that A, a relative of A, or any other person has refused to undergo, consent to, or disclose the results of any genetic test or to answer a question referred to in **paragraph (c)**: 30
- (e) taking into account any of the following:
- (i) the results of any genetic test that have been disclosed to the insurer by, or in connection with, A or a relative of A; 35
- (ii) the answer to a question referred to in **paragraph (c)**:

- (iii) a failure or refusal to answer a question referred to in **paragraph (c)**.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5
- (5) In this subpart,—
conduct, in relation to an insurer, includes any practice or activity
genetic test means a test that analyses DNA, RNA, or chromosomes for any purpose including the prediction of disease or vertical transmission risks, or monitoring, diagnosis, or prognosis (regardless of the source of the DNA, RNA, or chromosomes) 10
relevant contract means a life policy or contract of health insurance (including a proposed life policy or contract of that kind).
- 86C Procedural requirements**
- (1) The Minister may make a recommendation under **section 86B** only if the Minister— 15
- (a) has consulted the FMA; and
- (b) has consulted the persons or representatives of the persons that the Minister considers will be substantially affected by the regulations; and
- (c) is satisfied that the regulations are necessary or desirable to avoid or mitigate any adverse effect of conduct on the health benefits (or other benefits) associated with genetic testing, including avoiding or mitigating any inefficiency or restriction on innovation in the health sector; and 20
- (d) is satisfied that the regulations are not likely to unduly prevent insurers from considering information in relation to genetic tests that is highly significant to insurance underwriting; and 25
- (e) has had regard to—
- (i) the purpose of this Act set out in **section 3**; and
- (ii) the overseas law and practices that the Minister considers are relevant. 30
- (2) For the purposes of **subsection (1)(d)**, the Minister may have regard to either or both of the following:
- (a) genetic tests generally;
- (b) any 1 or more kinds of genetic tests that the Minister thinks fit.
- (3) If the Minister decides to have regard to a particular kind of genetic test, the Minister may also have regard to 1 or more of the following: 35
- (a) whether the information from the genetic test is a significant predictor of individual risk:

-
- (b) the extent to which insurers may obtain information from the genetic test from another source of information:
- (c) whether the regulations are likely to avoid significant disadvantages for all policyholders when viewed as a group (for example, a significant increase in premiums, significantly less favourable terms, or a significant reduction in the availability of cover): 5
- (d) how common the condition to which the genetic test relates is within the New Zealand population.
- (4) A failure to comply with **subsection (1)(b)** does not affect the validity of the regulations. 10

Subpart 5—Third party claims against insurers

87 Interpretation in this subpart

- (1) In this subpart,—
- claimant** has the meaning set out in **section 88**
- insured liability** means a liability in respect of which a policyholder is entitled to be indemnified by the insurer 15

Example

An engineer (**P**) holds professional indemnity insurance with an insurer. The insurance protects **P** against claims of negligence that may be taken against **P** by **P**'s clients. 20

P's liability to pay compensation to a client for negligence is an insured liability.

liability means a liability to pay damages, compensation, or costs

policyholder—

- (a) means a person who is, in respect of a liability to a third party, entitled to indemnity under a contract of insurance; and 25
- (b) includes a person who is not a party to the contract of insurance referred to in **paragraph (a)** 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
- specified policyholder** has the meaning set out in **subsection (2)**. 30
- (2) A policyholder (**A**) is a **specified policyholder** if—
- (a) **A** is in liquidation under the Companies Act 1993; or
- (a) **A**—
- (i) is in liquidation under the Companies Act 1993; and
- (ii) is not a body corporate that is incorporated outside New Zealand; 35
- or

- (b) A is an undischarged bankrupt under the Insolvency Act 2006, is subject to an approved proposal or a debt repayment order under subpart 2 or 3 of Part 5 of that Act, or is participating in a no asset procedure under subpart 4 of Part 5 of that Act; or
- (c) A is a deceased person whose estate is being administered under Part 6 of the Insolvency Act 2006; or 5
- (d) A has been deceased for not less than 60 days, A was ordinarily resident in New Zealand immediately before their death, and no administrator of their estate has been appointed in New Zealand; or
- (e) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of A and the Receiverships Act 1993 applies to the receivership; or 10
- (f) A is otherwise subject to a New Zealand insolvency proceeding within the meaning of paragraph (i) of Article 2 of Schedule 1 of the Insolvency (Cross-border) Act 2006; or 15
- (g) A is a company that has been removed from the New Zealand register under section 317 of the Companies Act 1993; or
- (h) A is a body corporate that—
 - (i) was incorporated in New Zealand by or under an Act; and
 - (ii) has been dissolved or has ceased to exist in accordance with a process under that Act. 20
- (3) In this subpart, a person is **ordinarily resident in New Zealand** if the person—
 - (a) is domiciled in New Zealand; or
 - (b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period. 25

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 3 (NSW)

88 Claimant may recover from insurer 30

- (1) If a specified policyholder has an insured liability to a person (the **claimant**), the claimant may recover the amount of the insured liability from the insurer in a proceeding before a court.
- (2) **Subsection (1)** applies regardless of whether or not the liability has been established in any earlier proceeding before a court. 35
- (3) The amount of the insured liability is the amount of indemnity (if any) payable under the contract of insurance in respect of the specified policyholder's liability to the claimant.

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 4(1), (2) (NSW)

89 Claimant must have leave of court

A proceeding may only be brought by a claimant against an insurer under this subpart with the leave of the court.

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 5 (NSW)

90 Insurer stands in policyholder's place

5

- (1) In a proceeding brought by a claimant against an insurer under this subpart, the insurer stands in the place of the specified policyholder as if the proceeding were a proceeding to recover damages, compensation, or costs from the specified policyholder.

- (2) Accordingly, the parties have the same rights and liabilities, and the court has the same powers, as if the proceeding were a proceeding brought against the specified policyholder.

10

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 4(3) (NSW)

91 Defences generally

- (1) The insurer is entitled to rely on any defence or any other matter in answer to the proceeding under this subpart or in reduction of its liability to the claimant—

15

(a) that the insurer would have been entitled to rely on in a claim made by the specified policyholder under the contract of insurance; or

(b) that the specified policyholder would have been entitled to rely on in a proceeding brought by the claimant against the specified policyholder in respect of the liability.

20

- (2) ~~Despite **subsection (1) and section 90**, the insurer is not entitled to rely on a defence arising from an act or omission by the specified policyholder that occurred after they became a specified policyholder (for example, a defence based on the specified policyholder failing to comply with a condition to provide information or assistance to the insurer).~~

25

- (2) Despite **subsection (1) and section 90**, the insurer is not entitled to rely on any of the following:

(a) a defence arising from the specified policyholder failing to comply with a condition to provide information or assistance to the insurer after they became a specified policyholder:

30

(b) a defence arising from the specified policyholder failing to pay a premium that became due after the policyholder became a specified policyholder:

35

(c) a defence arising from the specified policyholder failing to notify the insurer of a claim, or circumstances that may give rise to a claim, within a certain period, if the claimant notifies the insurer of that matter within that period.

- (3) In the case of a claims-made policy, the period under **subsection (2)(c)** includes the 90-day period that applies under **section 73(1)(b)**.

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 7 (NSW)

92 Limitation defence does not apply in certain cases

- (1) This section applies if— 5
- (a) a claimant has commenced a proceeding in respect of the insured liability against the specified policyholder; and
 - (b) the specified policyholder does not have a defence under the Limitation Act 2010 in respect of that proceeding; and
 - (c) the claimant subsequently commences a proceeding against the insurer 10
under this subpart in respect of the same matter.
- (2) Despite **sections 90 and 91**, the insurer is not entitled to rely on a defence under the Limitation Act 2010.

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 6(2) (NSW)

93 Judgment against specified policyholder no bar to claim against insurer 15

A judgment or an order for damages, compensation, or costs in favour of the claimant against the specified policyholder in respect of an insured liability does not prevent the claimant from recovering an amount for the damages, compensation, or costs under this subpart, except to the extent that the judgment or order has been satisfied. 20

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 8 (NSW)

94 Discharge of insurer's liability

A payment made by the insurer to the claimant under this subpart in respect of an insured liability discharges, to the extent of the payment, the liability of the insurer to make a payment to the specified policyholder under the contract of insurance in respect of the insured liability. 25

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 9 (NSW)

95 Effect of payments made by insurer to specified policyholder

- (1) An insurer's liability to a claimant under this subpart is not reduced, discharged, or otherwise affected by— 30
- (a) a compromise or settlement between the insurer and the specified policyholder in respect of the insured liability; or
 - (b) a payment by the insurer to the specified policyholder in respect of the insured liability unless and to the extent that the amount of the payment is or has been paid by the specified policyholder to the claimant in 35
respect of the insured liability.

(2) However, **subsection (1)(a)** does not apply to a compromise or settlement between the insurer and the specified policyholder in respect of the insured liability that—

- (a) the insurer enters into in good faith; and
- (b) is on terms that would be reasonable in the circumstances if the parties were each acting independently. 5

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 10 (NSW)

96 Claimant may not recover from reinsurer

This subpart does not entitle a claimant to recover any amount from a reinsurer under a contract for reinsurance. 10

Compare: Civil Liability (Third Party Claims Against Insurers) Act 2017 s 4(4) (NSW)

97 Claimant may obtain information

The provisions set out in **Schedule 3** have effect according to their terms.

98 Cases with overseas element

The application of this subpart does not depend on any of the following (except to the extent that any of the following is required under **section 87(2)**): 15

- (a) whether or not the insured liability was incurred in, or under the law of, New Zealand;
- (b) where any of the parties are domiciled or living;
- (c) whether or not the contract of insurance (or a part of it) is governed by the law of New Zealand: 20
- (d) the place where sums due under the contract of insurance are payable.

Subpart 6—Miscellaneous

99 Application for shares in company not to be contained in proposal for insurance 25

- (1) A company must not issue a form of proposal for insurance that contains, or purports to be, an application for shares in the company.
- (2) If any person makes a proposal for insurance to a company, the company must not allot shares to that person without first receiving an application for shares that is contained in a document separate from the proposal for insurance. 30
- (3) If a company contravenes this section,—
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$50,000; and
 - (b) every director (A) of the company commits an offence and is liable on conviction to a fine not exceeding \$10,000 if it is proved— 35

- (i) that the act that constituted the offence under **paragraph (a)** took place with A's authority, permission, or consent; or
 - (ii) that A knew, or could reasonably be expected to have known, that the offence under **paragraph (a)** was to be or was being committed and A failed to take reasonable steps to prevent or stop it. 5
 - (4) Nothing in this section affects the validity of a contract of insurance or of an allotment of shares of a company.
 - (5) In this section, **company** has the same meaning as in section 2 of the Companies Act 1993. 10
- Compare: 1977 No 14 s 12A

Part 4

Intermediaries

100 Interpretation

- (1) In this Part, unless the context otherwise requires,— 15
 - broker**, in relation to an insurer, means a person—
 - (a) who carries on the business of arranging contracts of insurance (whether or not the business is the person's principal business or is carried on in connection with any other business); and
 - (b) who is not the employee of the insurer; and 20
 - (c) who is not appointed under a signed agreement as the agent for the insurer for the purposes of receiving—
 - (i) money due to the insurer from the policyholder; and
 - (ii) money due to the policyholder from the insurer
 - insurance broking client account** means an account established and maintained in accordance with **section 110** 25
 - insurance intermediary**—
 - (a) means a person—
 - (i) who for reward arranges contracts of insurance in New Zealand or elsewhere; and 30
 - (ii) who does so as the employee of or agent for 1 or more insurers or as the agent for the policyholder; and
 - (b) includes a broker
 - premium** includes an instalment of a premium.
- (2) For the purposes of this Part, a person who is appointed under a signed agreement as an agent of the insurer must be treated, unless the agreement states 35

otherwise, as being appointed under the agreement as an agent of the insurer for the purposes of receiving—

- (a) money due to the insurer from the policyholder; and
- (b) money due to the policyholder from the insurer.

Subpart 1—Payments to insurance intermediaries 5

101 Payment by policyholder to intermediary discharges policyholder's liability to insurer

- (1) Money paid by or on behalf of a policyholder to an insurance intermediary is a discharge, as between the policyholder and the insurer, of the liability of the policyholder to pay the money to the insurer if— 10
 - (a) the money is paid under or in relation to a contract of insurance; and
 - (b) the insurance intermediary arranged or effected the contract or will arrange or effect the contract.
- (2) This section applies whether the money is paid for a premium or otherwise. 15
Compare: 1994 No 41 s 4

102 Payment by insurer to intermediary does not discharge insurer's liability to policyholder

- (1) Money paid by or on behalf of an insurer to an insurance intermediary under or in relation to a contract of insurance does not discharge the liability of the insurer to pay the money to the policyholder. 20
- (2) This section applies whether the money is paid for a claim, to return a premium, or otherwise. 30
Compare: 1994 No 41 s 5

103 Prohibition on contracting out

- (1) An agreement is void to the extent that it purports to modify, restrict, or exclude the operation of **section 101 or 102**. 25
- (2) This section does not render void an agreement between an insurance intermediary and a policyholder to the extent that the agreement allows the intermediary to set off, against money payable to the policyholder, money payable by the policyholder to the intermediary for a premium. 30
Compare: 1994 No 41 s 6

Subpart 2—Duties of brokers in relation to premiums

104 Duties of broker in relation to premiums

- (1) This section applies if— 35
 - (a) a broker receives money by way of premium in connection with a contract of insurance; and

- (b) the risk, or a part of the risk, to which the contract relates is accepted by or on behalf of an insurer.
- (2) The broker must pay to the insurer within the relevant period—
 - (a) the amount that has been received if the amount received is equal to or less than the amount of the premium to be paid; or 5
 - (b) the amount of the premium to be paid if the amount received is more than the amount of the premium to be paid; or
 - (c) if the broker has not been informed of, and has not otherwise ascertained, the amount of the premium to be paid, the lesser of the following:
 - (i) the money that has been received: 10
 - (ii) 75% of the amount fairly estimated by the broker to be the premium that is to be paid or, if the premium is payable for a renewal of a contract of insurance, 75% of the previous year's premium for the risk or of the last instalment of the year's premium, as the case may be. 15
- (2A) The insurer may recover in any court of competent jurisdiction as a debt due any amount that is payable under **subsection (2)**.
- (3) In this subpart, **relevant period** means—
 - (a) the period of 50 days after the end of the month in which the insurance cover provided by the insurer under the contract starts to have effect; or 20
 - (b) if the sum of money is an instalment of a premium, the period of 50 days after the end of the first month to which the instalment relates.
- (4) ~~A broker who, without reasonable excuse, contravenes this section commits an offence and is liable on conviction to,—~~
 - (a) ~~in the case of an individual, a fine not exceeding \$5,000;~~ 25
 - (b) ~~in any other case, a fine not exceeding \$10,000.~~

Compare: 1994 No 41 s 8(1), (2), (4)

105 Duty does not prevent certain matters

Section 104 does not prevent any of the following:

- (a) an insurer from making a contract or an arrangement with a broker providing for ~~the~~ a variation of the relevant period: 30
- (b) an insurer from authorising a broker in writing to pay on behalf of the insurer, out of the money received by the broker as a premium in respect of a contract of insurance arranged with the insurer, any charges required by law to be paid by the insurer in respect of the contract: 35
- (c) a broker from exercising a legal right available to the broker to deduct from any money payable by the broker to the insurer any remuneration payable by the insurer to the broker in relation to a contract of insurance.

Compare: 1994 No 41 s 8(3)

106 Broker may pay another insurance intermediary

- (1) This section applies if—
- (a) a broker receives money by way of premium in connection with a contract of insurance from or on behalf of a policyholder; and
 - (b) another insurance intermediary accepts (as agent for an insurer) the risk, or a part of the risk, to which the contract relates.
- (2) For the purpose of **section 104**, payment of the premium, or part of the premium, by the broker to the intermediary must be treated as payment of the premium or part by the broker to the insurer.
- Compare: 1994 No 41 s 9

107 Lloyd's brokers

- (1) If a broker is required by this subpart to pay an amount to an insurer and, under the contract of insurance, the insurer is a Lloyd's underwriter, it is sufficient compliance with this subpart if the broker pays the amount to the Lloyd's broker concerned.
- (2) In this section,—
- Lloyd's** means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871
- Lloyd's underwriter** means an underwriting member of Lloyd's.
- Compare: 1994 No 41 s 12

Subpart 3—Duties of brokers in relation to payments due to policyholder**108 Duties of broker in relation to payments due to policyholder**

- If a broker receives money from or on behalf of an insurer for payment to or on behalf of a policyholder, the broker must pay the money to, or on behalf of, the policyholder ~~within 7 days after the broker receives the money.~~
- (a) within 7 days after the broker receives the money, in the case of a payment in connection with a consumer insurance contract; or
 - (b) as soon as is reasonably practicable after the broker receives the money, in the case of a payment in connection with a non-consumer insurance contract.

Guidance note

See section 449 of the FMCA, which provides for a contravention of this section to give rise to civil liability under that Act.

Compare: 1994 No 41 s 13(1), (2)

109 ~~Subpart~~ This subpart does not prevent certain matters

This subpart does not prevent—

- (a) a policyholder from making a contract or an arrangement with a broker providing for the broker to pay an amount to or on behalf of the policyholder before being required to do so by **section 108**; or
- (b) a broker from exercising a legal right available to the broker to deduct from any money payable by the broker to the policyholder any money payable by the policyholder to the broker in connection with a contract of insurance. 5

Compare: 1994 No 41 s 13(3)

Subpart 4—Insurance broking client accounts

110 Broker must establish and maintain insurance broking client account 10

- (1) A broker must establish and maintain 1 or more insurance broking client accounts with a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023).
- (2) A broker may establish and maintain 1 or more insurance broking client accounts outside New Zealand with 1 or more overseas banks. 15
- (3) An insurance broking client account must be a current account.

Guidance note

See section 449 of the FMCA, which provides for a contravention of this subpart to give rise to civil liability under that Act.

Compare: 1994 No 41 s 14(1)–(3) 20

111 Payments into insurance broking client account

A broker must ensure that the following money is paid into an insurance broking client account immediately after the money is received:

- (a) all money received from or on behalf of a policyholder for or on account of an insurer in connection with a contract of insurance arranged or to be arranged by the broker: 25
- (b) all money received from or on behalf of an insurer for or on account of a policyholder:
- (c) any money by way of realising an investment that must be paid into the account under **section 114**: 30
- (d) any other money that is required by the regulations to be paid into the account.

Compare: 1994 No 41 s 14(4)

112 Payments out of insurance broking client account

A broker must ensure that no money is paid out of the broker's insurance broking client account except— 35

- (a) for making a payment required or authorised by this Part; or

- (b) for making an investment in accordance with this Part; or
- (c) for withdrawing money paid into the account in error; or
- (d) otherwise in accordance with the regulations.

Compare: 1994 No 41 s 14(5)

113 Investment of broking money 5

- (1) Money in an insurance broking client account may be invested in accordance with the Trusts Act 2019.
- (2) However,—
 - (a) no money may be invested in equity securities (within the meaning of section 8 of the FMCA); and 10
 - (b) no money paid by or on behalf of a policyholder by way of premium in connection with a contract of insurance that is to be arranged or effected may be invested until the risk to which the contract relates is accepted by or on behalf of the insurer.

Compare: 1994 No 41 s 15(1), (2) 15

114 Realisation of investment

- (1) A broker must pay money received from realising any investment under **section 113** into an insurance broking client account.
- (2) If, on the realisation of any investment, the amount received in respect of the realisation is— 20
 - (a) less than the amount invested, the broker must pay into the account from which the money was withdrawn for investment an amount equal to the difference between the amount invested and the amount received; or
 - (b) more than the amount invested, the broker may retain for the broker's own benefit the amount by which the amount received exceeds the amount invested and need not pay it into, or retain it in, an insurance broking client account. 25

Compare: 1994 No 41 s 15(3)–(5)

115 Broker may retain interest or other income on insurance broking client account 30

If a broker receives interest or other income from an insurance broking client account, the broker may retain the interest or other income for the broker's own benefit and need not pay it into an insurance broking client account.

Compare: 1994 No 41 s 15(6)

116 Broking money not capable of being attached, etc 35

- (1) This section applies to—
 - (a) money that is payable, or that has been paid, into an insurance broking client account in accordance with this subpart; and

- (b) property in which that money has been invested.
 - (2) The money and property are not liable to be—
 - (a) attached; or
 - (b) taken in execution; or
 - (c) made subject to a set-off, charge, security interest, or charging order; or 5
 - (d) made subject to any process of a similar nature to a process referred to in **paragraphs (a) to (c)**.
 - (3) **Subsection (2)** does not apply in connection with a proceeding taken by a person entitled to the money or property under this Part. 10
- Compare: 1994 No 41 s 16

Subpart 5—Distribution of insurance broking client account money on insolvency

117 When this subpart applies

- (1) This subpart applies if a broker—
 - (a) has been adjudged bankrupt; or 15
 - (b) is a company to which section 385(1) of the Companies Act 1993 applies; or
 - (c) is deceased and their estate is being administered under Part 6 of the Insolvency Act 2006; or
 - (d) is in statutory management under the Corporations (Investigation and Management) Act 1989 or in resolution under the Deposit Takers Act 2023. 20
 - (2) This subpart applies despite anything to the contrary in the Insolvency Act 2006 or the Companies Act 1993. 25
- Compare: 1994 No 41 s 17(1), (2)

118 Money treated as on trust

Money in an insurance broking client account of the broker, and property in which that money has been invested, must be treated as though it were subject to a trust in favour of the persons entitled to the money or property.

Compare: 1994 No 41 s 17(3) 30

119 Payments from insurance broking client account

- (1) Money from the insurance broking client account of the broker must be paid as follows:
 - (a) first, money that has been paid into the account in error must be withdrawn from the account: 35

- (b) second, policyholders must be paid the amounts they are entitled to receive from the money in the account in respect of claims made under contracts of insurance:
 - (c) third, policyholders must be paid the amounts (other than the amounts under **paragraph (b)**) that they are entitled to receive from the money in the account: 5
 - (d) fourth, after all payments have been made under **paragraphs (b) and (c)**, insurers must be paid the amounts they are entitled to receive from the money in the account.
- (2) If the money in the account that is available to make payments required under a particular paragraph of **subsection (1)** (other than **subsection (1)(a)**) is not sufficient to meet those payments in full, the payments required under the paragraph must be made proportionally. 10
- (3) All money remaining after all payments have been made under this section is money payable to the broker. 15
- Compare: 1994 No 41 s 17(4)–(6)

120 Investment of money

Nothing in this subpart prevents money in the insurance broking client account of the broker from being invested in accordance with this Part by a person, other than the broker, who has lawful custody or control of the money. 20

Compare: 1994 No 41 s 17(7)

Subpart 6—Miscellaneous

121 Broker must comply with regulations

- (1) A broker must comply with the requirements prescribed by the regulations made under **section 166**. 25
- (2) See section 449 of the FMCA, which provides for a contravention of the regulations to give rise to civil liability under that Act.

122 ~~Part not to apply to contracts of reinsurance~~

~~This Part does not apply in relation to contracts of reinsurance or proposed contracts of reinsurance.~~ 30

Compare: 1994 No 41 s 19

Part 5

Contracts of life insurance

Interest payable under life policies

123 Interest payable beginning on 31st day after date of notification of death

- (1) This section applies if— 5
 - (a) any money becomes payable by a life insurer under a life policy as a result of the death of the life insured; and
 - (b) the money is not paid to the person entitled to the money within 30 days after the date of notification.
 - (2) The life insurer must pay to the person, at the same time as the money is paid, interest on the money for the period beginning on the 31st day after the date of notification and ending with the close of the day on which the money is paid. 10
 - (3) In this section, ~~the date of notification is~~ means the date on which the insurer first receives written or oral notice of the death. 15
- Compare: 1908 No 105 s 41A(1)

124 Interest payable in respect of assets-related money

- (1) **Section 123** does not require the life insurer to pay interest on assets-related money.
 - (2) In this section, **assets-related money** means the whole or any part of the money that becomes payable by a life insurer under a life policy as a result of the death of the life insured that— 20
 - (a) is related to the value of identifiable assets of a fund named in the life policy; and
 - (b) is required by the life policy to be calculated as at a date later than the date of death. 25
 - (3) However, **subsection (4)** applies if—
 - (a) the claim requirements have been satisfied; and
 - (b) the assets-related money is not paid within 14 days after the earliest possible date on which it could have been paid (the **earliest date**).
 - (4) The life insurer must pay to the person entitled to the assets-related money, at the same time as the money is paid, interest on the money for the period beginning on the 15th day after the earliest date and ending with the close of the day on which the money is paid. 30
- Compare: 1908 No 105 s 41A(2)

125 Basis of calculating interest payable 35

The interest payable under **section 123 or 124** must be paid at the greater of the following:

- (a) interest at the rate and calculated in the manner specified in the life policy:
- (b) interest at the rate and calculated in the manner prescribed in the regulations.

Compare: 1908 No 105 s 41A(3)

5

Assignments of policies

126 Assignment of life policy by way of ordinary transfer

- (1) A life policy is assigned by way of ordinary transfer if—
 - (a) the transferor or transferee provides a transfer instrument to the life insurer in the manner—
 - (i) prescribed by the regulations (if any); or
 - (ii) reasonably required by the insurer (if no manner is prescribed by the regulations); and
 - (b) the transfer instrument contains a statement to the effect that the transferor agrees to the assignment; and
 - (c) the life insurer registers the transfer instrument in the manner prescribed by this Part and by the regulations (if any).
- (2) An assignment under **subsection (1)** has the following effects:
 - (a) the life policy vests absolutely in the transferee:
 - (b) the transferee becomes the policyholder:
 - (c) the transferee may sue in the transferee's own name on the life policy:
 - (d) the receipt of the transferee is a valid discharge both at law and in equity for all money payable under the life policy.

Compare: 1908 No 105 s 43(1)

127 Registration of assignment

An assignment of a life policy by way of ordinary transfer is not valid until the life insurer registers the transfer instrument under **section 126(1)(c)**.

Compare: 1908 No 105 s 43(3)

Other rights may be registered

128 How right is registered if right acquired by bankruptcy or under will, intestacy, or writ of execution

- (1) This section applies if a person (A) acquires the right to a life policy—
 - (a) by bankruptcy; or
 - (b) under a will or intestacy; or
 - (c) under a writ of execution issued out of any court.

- (2) A's title to the life policy may be registered by providing an instrument to the life insurer in the manner—
 - (a) prescribed by the regulations (if any); or
 - (b) reasonably required by the insurer (if no manner is prescribed by the regulations). 5
- (3) The life insurer must register the instrument in the manner prescribed by this Part and by the regulations (if any).
- (4) However, the life insurer may require A to provide any further reasonable evidence that the insurer thinks fit to establish the right.
- (5) The registration of the instrument has the following effects: 10
 - (a) the life policy vests absolutely in A:
 - (b) A becomes the policyholder:
 - (c) A may sue in A's own name on the life policy:
 - (d) A's receipt is a valid discharge both at law and in equity for all money payable under the life policy. 15

Compare: 1908 No 105 s 52

Other provisions relating to registration

129 Registration procedure

A life insurer must, on receipt of an instrument under this Part,—

- (a) record in a register kept by the insurer for the purpose the particulars set out in the instrument and the time at which those particulars are recorded; and 20
- (b) give the person who presented the instrument for registration confirmation that the instrument has been registered; and
- (c) retain a record of the instrument. 25

130 Defective instruments

- (1) This section applies if the life insurer reasonably considers that an instrument provided to the insurer has not been provided in the manner required under this Act (for example, because it does not contain any information required by the regulations). 30
- (2) The life insurer must, as soon as is reasonably practicable after receiving the instrument, notify the person who presented the instrument for registration of that matter (and of the insurer's reasons).
- (3) The life insurer is not required to register the instrument if it acts under **subsection (2)**. 35

131 Life insurer may require reasonable evidence of matters affecting validity

A life insurer may, before it registers an instrument under this Part, require any reasonable evidence that it thinks fit about any matter that might, in its opinion, affect the validity of the instrument.

Compare: 1908 No 105 s 54

5

132 High Court may order registration

(1) The High Court may, on the application of any person, order that an assignment by way of ordinary transfer or a title to a life policy must be registered in accordance with this Part.

(2) If an application is made,—

10

(a) the applicant must, as soon as is reasonably practicable, serve notice of the application on the life insurer; and

(b) the life insurer may appear and be heard in relation to the application.

(3) The High Court may—

(a) make any other orders that it thinks fit for the purpose of giving effect to the order; and

15

(b) make an order subject to any terms and conditions that it thinks fit; and

(c) make an order as to costs.

(4) The life insurer must register the assignment or title in accordance with the order as soon as is reasonably practicable after receiving the order.

20

(5) A registration under this section discharges the life insurer from any responsibility or liability for the consequences of the registration.

Compare: 1908 No 105 s 55

133 Time of registration

For the purposes of this Part, the life insurer must record a time of registration in the register that is as close as possible to the time when the life insurer was first capable of making the registration.

25

Compare: 1908 No 105 s 56

134 Life insurer must keep record of registrations

The life insurer must, in the manner prescribed by the regulations (if any), keep a record of each registration that it has made under this Part.

30

Compare: 1908 No 105 s 57

135 Notice of unregistered dealings does not affect life insurer or other persons

(1) The life insurer, and all other persons, in all transactions and dealings of any kind concerning a life policy, are not affected by notice of an unregistered interest in the life policy.

35

- (2) No registered dealings with the duly registered assignee of a life policy are capable of being set aside or affected in any manner by notice of an unregistered interest in the life policy.
- (3) **Subsections (1) and (2)** do not apply in the case of fraud.
- (4) In this section, **unregistered interest**, in relation to a life policy, means an interest that may be registered under this Part but is not registered. 5

Compare: 1908 No 105 s 58

136 Provision for lost or destroyed instruments

- (1) The life insurer may register an instrument on any reasonable terms and conditions that it thinks fit, despite the loss or destruction of— 10
 - (a) an instrument required or permitted to be registered under this Part; or
 - (b) an instrument that needs to be provided for the purposes of a registration under this Part.
- (2) Before acting under **subsection (1)**, the life insurer must be satisfied that it has received reasonable evidence relating to— 15
 - (a) the loss or destruction of the instrument; and
 - (b) the relevant particulars set out in the instrument.

Compare: 1908 No 105 s 59

137 Courts may enforce equities

Despite the provisions in this Part relating to registration, this Part does not prevent a court from enforcing any equities that may exist between the parties to a transaction or matter relating to any of the following: 20

- (a) a life policy:
- (b) an interest in a life policy:
- (c) an interest in any money payable under a life policy. 25

Compare: 1908 No 105 s 60

138 Life insurer not affected by notice of trust

A life insurer is not bound to receive, and is not affected by, any express, implied, or constructive notice of any trust that affects a life policy.

Compare: 1908 No 105 s 42

30

139 Life insurer may not charge fee

A life insurer may not charge a fee for registering an instrument or performing any other duty under this Part.

Compare: 1908 No 105 s 61

140 Offence for non-compliance with various requirements

A life insurer commits an offence and is liable on conviction to a fine not exceeding \$50,000 if it fails, without reasonable excuse, to comply with any of the requirements of **sections 123 to 139**.

Compare: 1908 No 105 s 80

5

*Surrender values***141 Applying surrender value to keep life policy in force**

(1) A life insurer may apply the whole or any part of the surrender value of a life policy in payment of overdue premiums and interest on those overdue premiums.

10

(2) The money that is applied under **subsection (1)**, with accrued interest,—

(a) is a first charge on the money payable under the life policy and on the surrender value of the life policy; and

(b) may be deducted as against every secured party or assignee.

(3) This section is subject to—

15

(a) any rules made by the life insurer or that affect the life insurer; and

(b) the terms and conditions of the life policy.

(4) In this section and **section 142**, **surrender value** means the surrender value of the life policy that is declared by the life insurer issuing the life policy.

(5) In this section, **secured party** has the same meaning as in section 16 of the Personal Property Securities Act 1999.

20

Compare: 1908 No 105 s 63

142 Life policies kept in force by surrender value

A life policy does not become void because of the non-payment of premiums so long as the premiums and interest in arrear do not exceed the surrender value.

25

Compare: 1908 No 105 s 64

*Life insurance by minors***143 Insurance by minor under 10 years**

A minor who is under the age of 10 years may enter into a life policy on the minor's own life only if the life policy is approved under sections 98 to 101 of the Contract and Commercial Law Act 2017.

30

Compare: 1908 No 105 s 66A

144 Insurance by minor who has turned 10 years

(1) A minor of or over the age of 10 years may do all things necessary or proper for the purpose of entering into a life policy on the minor's own life.

35

- (2) However, **subsection (1)** is subject to—
- (a) sections 86 to 91 of the Contract and Commercial Law Act 2017 if the minor is under the age of 16 years; and
 - (b) section 93 of that Act if the minor has reached the age of 16 years.
- (3) **Subsection (1)** is also subject to **sections 148 and 150 to 152.** 5
- Compare: 1908 No 105 s 66B

145 Dealings by minor with life policy

- (1) If a life policy entered into on the life of a minor is owned by the minor, the minor—
- (a) may do any of the following if they are of or over the age of 16 years: 10
 - (i) surrender the life policy;
 - (ii) give discharges for the money payable under the life policy;
 - (iii) dispose of the life policy by will in accordance with section 9 or 10 of the Wills Act 2007 or section 2 of the Wills Amendment Act 1969 or section 6 of the Wills Amendment Act 1955: 15
 - (iv) dispose of, or deal with, the life policy or an interest in the life policy in any manner authorised under this Act; and
 - (b) may, if they are under the age of 16 years, do any of the things mentioned in **paragraph (a)(i), (ii), and (iv)** if those matters are done with the approval of the District Court. 20
- (2) **Subsection (1)** applies whether or not the life policy was entered into in the first place by the minor.
- (3) **Subsection (1)(a)** applies whether the life policy was entered into before or after the minor reached the age of 16 years.
- (4) If a minor of or over the age of 16 years— 25
- (a) exercises a power referred to in **subsection (1)(a)(i) or (ii)**, section 93 of the Contract and Commercial Law Act 2017 applies to the surrender or discharge:
 - (b) enters into a contract in relation to a life policy to which **subsection (1)** applies, section 93 of that Act applies to the contract. 30

Compare: 1908 No 105 s 66C

146 Presumption for policies entered into and dispositions made

- (1) This section applies so far as concerns—
- (a) the life insurer (**A**) that enters into a life policy; and
 - (b) a person (**B**) claiming under a disposition of a life policy made in good faith and for valuable consideration. 35
- (2) It is conclusively presumed—

- (a) that the person who entered into the life policy was of or over the age of 10 years at the time when the person entered into the life policy; and
- (b) that the person who disposed of the life policy was of or over the age of 16 years at the time when the person disposed of the life policy.
- (3) However, the presumption does not apply if A or B had,— 5
 - (a) at the time that the life policy was entered into, actual knowledge that the person purporting to enter into the life policy was under the age of 10 years; or
 - (b) at the time of the disposition, actual knowledge that the person purporting to dispose of the life policy was under the age of 16 years. 10
- (4) This section does not apply to a life policy that is approved under sections 98 to 101 of the Contract and Commercial Law Act 2017.

Compare: 1908 No 105 s 66D

147 Insurance on life of minor who is under 16 years

- (1) A life policy on the life of a minor who is under the age of 16 years may be entered into by any of the following persons: 15
 - (a) any 1 or more of the parents or guardians of the minor:
 - (b) a parent or guardian of the minor and the spouse, civil union partner, or de facto partner of that parent or guardian, jointly:
 - (c) any person who has obtained the consent of the District Court to do so. 20
- (2) A person may not enter into a life policy on the life of a minor who is under the age of 16 years except as provided in—
 - (a) **subsection (1)**; or
 - (b) **section 143, 144, or 148**; or
 - (c) sections 98 to 101 of the Contract and Commercial Law Act 2017. 25
- (3) **Subsection (1)** is subject to **sections 149 to 152**.

Compare: 1908 No 105 s 67

148 Endowment insurance on life of minor

It is lawful for a life insurer to enter into a life policy, on the life of a minor of any age, that provides for the payment of money— 30

- (a) when a certain period expires; or
- (b) when the minor reaches a specified age.

Compare: 1908 No 105 s 67A

*Limits on payments on death of minor***149 Limit on total amount of payments if deceased minor under 10 years**

- (1) A life insurer must not pay under a life policy, on the death of a minor who is under the age of 10 years, a sum that is more than the total of the following:
- (a) the total amount of premiums paid under the life policy, together with interest on the total amount of premiums calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016; and 5
 - (b) the amount that, when added to any other sum permitted by this paragraph to be paid by any other life insurer, equals \$15,000.
- (2) **Subsection (1)** does not limit **sections 123 to 125**. Interest under those sections may be paid in addition to the amounts required to be aggregated for the purposes of **subsection (1)** and irrespective of the limit imposed by that subsection. 10

Compare: 1908 No 105 s 67B

150 Limit on persons to whom payments may be made if deceased minor under 16 years 15

A life insurer must not pay, on the death of a minor who is under the age of 16 years, any sum under a life policy to any person other than—

- (a) a person specified in **section 147(1)**; or
- (b) an executor or administrator of a person specified in **section 147(1)**; or 20
- (c) a person to whom payment may be made under section 65(2) of the Administration Act 1969; or
- (d) a person who is entitled to the sum because of an assignment approved under **section 145(1)(b)**. 25

Compare: 1908 No 105 s 67C

151 Life insurer must give information about limits

- (1) A life insurer must not enter into a life policy on the life of a minor who is under the age of 16 years unless,—
- (a) before the life policy is entered into, the life insurer has clearly informed the policyholder in writing of the effect of **sections 149 and 150**; and 30
 - (b) the policyholder has signed an acknowledgment that they are aware of the limits imposed by those sections.
- (2) A life policy that is entered into in breach of **subsection (1)** does not make the life policy illegal, unenforceable, or of no effect.

Compare: 1908 No 105 s 67D

35

152 Offences relating to breach of limits

- (1) A life insurer commits an offence and is liable on conviction to a fine not exceeding \$50,000 if the life insurer knowingly breaches **section 149, 150, or 151(1)**.
- (2) A person commits an offence and is liable on conviction to a fine not exceeding \$20,000 if the person,— 5
- (a) under a life policy, claims money on the death of a minor under the age of 16 years; and
 - (b) knowingly does either or both of the following:
 - (i) produces to the life insurer a false certificate of death or one fraudulently obtained; or 10
 - (ii) in any way attempts to defeat the provisions of this Act concerning payments on the death of minors.

Compare: 1908 No 105 s 67E

Money payable for benefit of minor or incapable person 15

153 When sections 154 and 155 apply

- (1) **Sections 154 and 155** apply if—
- (a) any money becomes payable under a life policy to, or for the benefit of, a minor or an incapable person; and
 - (b) there is no trustee or other person capable in law of giving a valid discharge for the money on behalf of the minor or incapable person. 20
- (2) In this Act, **incapable person** means a person who is incapable of exercising their rights.

Compare: 1908 No 105 s 69(1)

154 Money may be paid to Public Trust 25

The money may be paid to Public Trust unless another trustee, or other person who is capable in law of giving a valid discharge, is appointed in due course of law.

Compare: 1908 No 105 s 69(1)

155 High Court may appoint trustee 30

The High Court may, on an application that is made on behalf of the person beneficially interested, appoint Public Trust or any other person as trustee of the money on the terms that the High Court thinks fit.

Compare: 1908 No 105 s 69(2)

156 Powers of Public Trust receiving money 35

- (1) If any money is paid to Public Trust under **section 154**, Public Trust may act as trustee of the money as effectively and with the same powers as if it had

been duly appointed as trustee under **section 155** or by any person entitled to appoint a trustee.

- (2) This section applies unless and until another trustee is appointed.

Compare: 1908 No 105 s 70

157 Trustee may apply money for person's maintenance, education, protection, or advancement in life 5

- (1) This section applies to—

(a) Public Trust (whether acting under **section 154** or by special appointment); or

(b) any other trustee of the money payable under a life policy to, or for the benefit of, a minor or an incapable person. 10

- (2) Public Trust or the trustee may, in the manner they think fit, apply all or part of the capital or income of the money for the maintenance, education, protection, or advancement in life of the person on whose behalf Public Trust or the trustee holds the money. 15

- (3) This section does not apply, in the case of an appointment, if Public Trust or the trustee is directed otherwise by the appointing instrument.

Compare: 1908 No 105 s 71

158 Payment to trustee is valid discharge

- (1) The payment made to Public Trust, or to any other trustee under this Part, is a valid discharge to the life insurer for the money that is paid. 20

- (2) The life insurer is not bound to see to the application of the money.

- (3) The life insurer is not liable for a trustee subsequently misapplying or failing to apply the money.

Compare: 1908 No 105 s 72

25

159 Investment of insurance money

- (1) Public Trust or any other trustee may invest money received under this Part in accordance with the Trusts Act 2019.

- (2) Public Trust or any other trustee must—

(a) capitalise any part of the annual income arising from the investment of the money that is not required for the maintenance, education, protection, or advancement in life of the minor or the incapable person; and 30

(b) invest the capitalised amount in accordance with the Trusts Act 2019.

Compare: 1908 No 105 ss 73, 74

*Life insurance for spouse, partner, or children***160 Person may insure their own life for spouse, partner, or children**

- (1) This section applies if—
 - (a) a person (A) enters into a life policy on A's own life; and
 - (b) the life policy is expressed to be for the benefit of— 5
 - (i) A's spouse, civil union partner, or de facto partner; or
 - (ii) A's children; or
 - (iii) A's spouse, civil union partner, or de facto partner and A's children; or
 - (iv) any 1 or more of those persons. 10
 - (2) The life policy creates a trust in favour of the objects named in the life policy.
 - (3) The money payable under the life policy, as long as any object of the trust remains unperformed,—
 - (a) does not form part of A's estate; and
 - (b) is not subject to A's debts. 15
 - (4) However, if it is proved that the life policy was entered into and the premiums paid with intent to defraud A's creditors, the creditors are entitled to receive, out of the money payable under the life policy, a sum equal to the premiums that are paid. 20
- Compare: 1908 No 105 s 75A(2)

161 Appointment of trustees and investment of money

- (1) This section applies to a life policy referred to in **section 160**.
- (2) In relation to the money payable under the life policy, the policyholder may, by the life policy or by an instrument signed by the policyholder, do 1 or more of the following: 25
 - (a) appoint a trustee:
 - (b) appoint a new trustee:
 - (c) provide for the appointment of a new trustee:
 - (d) provide for the investment of the money payable under the life policy.
- (3) If a trustee is not appointed under **subsection (2)**, the life policy, when it is entered into, vests in the policyholder or their legal personal representatives in trust for the objects referred to in **section 160**. 30
- (4) The High Court may appoint a trustee or a new trustee if, at the time of the policyholder's death or at any time afterwards, there is no trustee or it is desirable to appoint a new trustee or new trustees. 35
- (5) A receipt given by the following is a discharge to the life insurer for the money payable under the life policy, or for the value of the policy, in whole or in part:

- (a) a person who has been appointed as trustee:
- (b) the policyholder's legal personal representatives if—
 - (i) a trustee has not been appointed; or
 - (ii) the life insurer has not received notice of the appointment of a trustee.

5

Compare: 1908 No 105 s 75A(3)–(6)

162 Reversion or vesting of life policy assigned to spouse or partner

- (1) This section applies if—
 - (a) a policyholder (**A**) has assigned a life policy on A's own life to A's spouse, civil union partner, or de facto partner (**B**); and 10
 - (b) B has died in A's lifetime without having disposed of the life policy by will; and
 - (c) either or both of the following apply:
 - (i) the premiums actually paid on the life policy do not, at the date of B's death, exceed the amount prescribed by the regulations for the purposes of this subparagraph: 15
 - (ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed by the regulations for the purposes of this subparagraph.
- (2) The life policy, with all bonus additions to the life policy, reverts to and vests in A. 20
- (3) The life policy remains subject to all outstanding interests and equities that affect the life policy.

Compare: 1920 No 84 s 2(1)

163 Life insurer may declare executor or other persons to be policyholder 25

- (1) This section applies if—
 - (a) a policyholder (**A**) has assigned a life policy on A's own life to A's spouse, civil union partner, or de facto partner (**B**); and
 - (b) B has died in A's lifetime having made a will under which B has disposed of the life policy; and 30
 - (c) either or both of the following apply:
 - (i) the premiums actually paid on the life policy do not, at the date of B's death, exceed the amount prescribed by the regulations for the purposes of this subparagraph:
 - (ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed by the regulations for the purposes of this subparagraph. 35

- (2) The life insurer may, without requiring probate of the will, declare that the executor of the will, or any person who may be entitled under the will to the life policy, is the policyholder.
- (3) If a declaration is made, the life insurer must—
 - (a) record in a register kept by the insurer for the purpose the particulars of the declaration and the time at which the particulars are recorded; and 5
 - (b) issue a certificate of those particulars and forward it to the person who is declared to be the policyholder; and
 - (c) retain a record of the declaration.
- (4) The executor or other person becomes the policyholder on the record being made, subject to all outstanding interests and equities that affect the life policy. 10
- (5) The life insurer may, in its discretion, require probate of the will to be taken out.

Compare: 1920 No 84 s 2(2)

Vesting life policy without requiring probate or letters of administration 15

164 Vesting life policy without requiring probate or letters of administration

- (1) This section applies if—
 - (a) the policyholder of a life policy (A) is not the life insured; and
 - (b) A dies in the lifetime of the life insured.
- (2) The life insurer may, without requiring probate or letters of administration, 20

declare that a person is the policyholder if—

 - (a) that person proves to the satisfaction of the life insurer either or both of the following:
 - (i) that the person is entitled to the benefit of the rights conferred by the life policy (whether under A's will or on A's intestacy): 25
 - (ii) that the person is entitled to obtain probate of A's will or letters of administration of A's estate; and
 - (b) either or both of the following apply:
 - (i) the premiums actually paid on the life policy do not, at the date of A's death, exceed the amount that is prescribed by regulations made for the purposes of section 65(5) of the Administration Act 1969: 30
 - (ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed under those regulations.
- (3) If a declaration is made, the life insurer must— 35
 - (a) record in a register kept by the insurer for the purpose the particulars of the declaration and the time at which the particulars are recorded; and

- (b) issue a certificate of those particulars and forward it to the person who is declared to be the policyholder; and
 - (c) retain a record of the declaration.
 - (4) The person becomes the policyholder on the record being made, subject to all outstanding interests or equities affecting the life policy. 5
 - (5) This section does not apply to any life policy to which **section 162 or 163** applies.
- Compare: 1925 No 25 ss 2, 5

Part 6 Regulations and miscellaneous provisions 10

Regulations

165 General regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) providing for anything this Act says may or must be provided for by regulations: 15
 - (b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing—
 - (i) by whom, when, where, and how the thing must be done: 20
 - (ii) the form that must be used in connection with doing the thing:
 - (iii) what information or other evidence or documents must be provided in connection with the thing:
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply: 25
 - (c) declaring matters for the purposes of **section 10(3)** (which relates to declarations concerning consumer insurance contracts and non-consumer insurance contracts):
 - (d) prescribing matters for the purposes of **section 125(b)**:
 - (e) amending the amount in **section 149(1)(b)**: 30
 - (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under **subsection (1)(c) to (e)** may be made only on the recommendation of the Minister.
- (3) The Minister must, before recommending that regulations be made under **subsection (1)(c)**,— 35

- (a) consult the FMA; and
 - (b) have regard to the economic substance of the contracts of insurance to which the declaration will relate; and
 - (c) be satisfied that the declaration is necessary or desirable in order to promote either or both of the matters in **section 3(a) or (b)**. 5
- (4) The Minister must, before recommending that regulations be made under **sub-section (1)(d)**, be satisfied that the rate and manner of calculation that will apply under **section 125(b)** are consistent with the following objectives:
- (a) simple, accessible, and predictable law:
 - (b) commercially realistic, and fair, compensation for persons who are entitled to be paid money under life policies. 10
- (5) The Minister must, before recommending that regulations amend the amount in **section 149(1)(b)**, be satisfied that the amendment is necessary or desirable to take into account any increase in the Consumers Price Index (All Groups) published by Statistics New Zealand. 15
- (6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

166 Regulations for purpose of Part 4

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 20
- (a) specifying the duties and obligations of brokers in relation to insurance broking client accounts, including obligations to make payments into those accounts:
 - (b) providing for the protection of money deposited in insurance broking client accounts or invested from claims by persons other than the person for whom, or on whose behalf, the money is held: 25
 - (c) restricting the combining of any insurance broking client account with any other account or the combining of any property in which money from such an account is invested with any other property:
 - (d) providing for the audit, review, and inspection of the accounts and records kept by brokers: 30
 - (e) stating which provisions of regulations made under this section (if any) are Part 6 services provisions for the purposes of the FMCA (*see* section 449(4) and Part 8 of that Act, in which Part 6 services provisions are specified to be civil liability provisions). 35
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1994 No 41 s 18

*Miscellaneous***167 Marine Insurance Act 1908 to be subject to this Act**

The Marine Insurance Act 1908 does not limit any provision of this Act, and the provisions of this Act prevail in any case where they are in conflict with any provision of that Act.

5

168 No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract of insurance or other agreement.
- (2) **Subsection (1)** does not limit **sections 64, 65, 66(5), and 67(4)**.

Part 7

10

Repeals and amendments to other Acts*Repeals***169 Repeals**

The following legislation is repealed:

- (a) the Insurance Intermediaries Act 1994 (1994 No 41):
- (b) the Insurance Law Reform Act 1977 (1977 No 14):
- (c) the Insurance Law Reform Act 1985 (1985 No 117):
- (d) the Life Insurance Act 1908 (1908 No 105):
- (e) Part 3 of the Law Reform Act 1936.

15

Amendments to Marine Insurance Act 1908

20

170 Principal Act

Sections 171 to 173 amend the Marine Insurance Act 1908.

171 Cross-heading above section 18 replaced

Replace the cross-heading above section 18 with:

When contract is deemed to be concluded

25

172 Sections 18 to 20, 34 to 39, and 42 repealed

Repeal sections 18 to 20, 34 to 39, and 42.

173 Section 40 amended (Warranty of seaworthiness of ship)

After section 40(5), insert:

- (6) An insurer may not rely on a warranty under this section if the assured proves that the loss for which the assured seeks to be indemnified was not caused, or contributed to, by the matters that gave rise to the breach of the warranty.

Amendments to Fair Trading Act 1986

174 Principal Act 5

Sections 175 to 178 amend the Fair Trading Act 1986.

175 Section 26D amended (Specified trade contracts: trading relationship, annual value threshold, and other definitions)

Replace section 26D(4)(d)(i) with:

- (i) in relation to a small trade contract that is a contract of insurance (within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010), means \$20,000; and 10
- (ia) in relation to any other small trade contract, means \$250,000; and

176 New section 46KA inserted (Other matters relating to insurance contracts)

After section 46K, insert:

15

46KA Other matters relating to insurance contracts

- (1) This section applies to contracts of insurance within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010.
- (2) For the purposes of section 46K(1)(a), a term of a contract of insurance defines the main subject matter of the contract only to the extent that the term— 20
 - (a) identifies the uncertain event or otherwise specifies the subject matter insured or the risk insured against; or
 - (aa) relates to the amount of a premium payable under a life policy or a contract of health insurance; or
 - (b) specifies the sum or sums insured or assured; or 25
 - (c) describes the basis on which a claim under the contract of insurance may be settled; or
 - (d) specifies any contributory sum due from, or amount to be borne by, a policyholder in the event of a claim under the contract of insurance; or
 - (e) excludes or limits the liability of the insurer to indemnify the policyholder on the happening of certain events or on the existence of certain circumstances. 30
- (3) **Subsection (2)** does not limit section 46K(1).
- (4) ~~In this section, **uncertain event** has the meaning set out in section 7(2) of the Insurance (Prudential Supervision) Act 2010.~~ 35
- (4) In this section,—

	contract of health insurance means a contract of health insurance within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010	
	life policy has the meaning set out in section 84 of the Insurance (Prudential Supervision) Act 2010	
	premium has the meaning set out in section 6(1) of the Insurance (Prudential Supervision) Act 2010	5
	uncertain event has the meaning set out in section 7(2) of the Insurance (Prudential Supervision) Act 2010.	
177	Section 46L amended (When term in consumer contract or specified trade contract is unfair)	10
	Repeal section 46L(4) and (5).	
178	Schedule 1AA amended	
(1)	In Schedule 1AA, clause 1(3), definition of specified date, paragraph (a), replace “1 April 2025” with “1 April 2028”.	
(1)	In Schedule 1AA, clause 1(3), definition of specified date , replace paragraph (a) with:	15
(a)	the date that is the third anniversary of Royal assent of the Contracts of Insurance Act 2024 ; or	
(2)	In Schedule 1AA,—	
(a)	insert the Part set out in Schedule 4 of this Act as the last Part; and	20
(b)	make all necessary consequential amendments.	
	<i>Amendments to Financial Markets Conduct Act 2013</i>	
179	Principal Act	
	Sections 180 to 189 amend the Financial Markets Conduct Act 2013.	
180	Section 6 amended (Interpretation)	25
(1)	In section 6(1), replace the definition of contract of insurance with:	
	contract of insurance —	
(a)	has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010; but	
(b)	in subparts 6A and 6B of Part 6, does not include a contract of reinsurance within the meaning of that Act	30
(2)	In section 6(1), insert in their appropriate alphabetical order:	
	consumer insurance contract has the meaning set out in section 446P(1)	
	health insurance means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)	35

~~life insurance~~ means insurance of the kind described in section 84(1)(a) to (f) of the Insurance (Prudential Supervision) Act 2010

life insurance—

(a) means insurance of the kind described in section 84(1)(a) to (f) of the Insurance (Prudential Supervision) Act 2010; but

(b) does not include insurance under a contract referred to in section 84(3) or (4) of that Act

- (3) In section 6(1), definition of **market services licensee obligation**, after paragraph (d), insert:

(da) **sections 56, 58, and 59, and 86A** and **Part 4** of the Contracts of Insurance Act **2024**:

181 Section 431Z amended (Application of conduct obligations)

Replace section 431Z(2)(d) with:

(d) do not apply to a broker within the meaning of **section 100** of the Contracts of Insurance Act **2024** in relation to any money to which **subpart 4 of Part 4** of that Act applies.

182 Section 446P amended (Other definitions used in subpart)

- (1) In section 446P(1), repeal the definitions of **contract of insurance**, **health insurance**, and **life insurance**.

- (2) ~~In section 446P(1), definition of **consumer insurance contract**, paragraph (a), replace “entered” with “ordinarily entered”.~~

- (2) In section 446P(1), definition of **consumer insurance contract**, replace paragraph (a) with:

(a) means a contract of insurance ordinarily entered into by a New Zealand policyholder wholly or predominantly for personal, domestic, or household purposes; and

- (3) In section 446P(2)(c), replace “have the benefit” with “would ordinarily have the benefit”.

- (4) After section 446P(2) (after the example), insert:

(3) **Subsection (2)** does not apply to a contract if the insurance cover referred to in that subsection is only a minor or an incidental part of the insurance cover provided by the contract as a whole.

182A Section 446S repealed (Presumption relating to consumer insurance contract)

Repeal section 446S.

183B Section 446T amended (Effect of certificate from policyholder or client)

- (1) In section 446T(1), replace “An insurance contract” with “A contract of insurance”.
- (2) In section 446T(5)(a), replace “insurance contract” with “contract of insurance”.

5

183 New subpart 6B of Part 6 inserted

After section 446W, insert:

Subpart 6B—Duties to assist policyholders to understand insurance contracts

447 When this subpart applies

10

This subpart applies to—

- (a) a consumer insurance contract that is entered into by a licensed insurer; and
- (b) a contract of insurance that—
 - (i) is entered into by a licensed insurer; and
 - (ii) provides for life insurance or health insurance (or both).

15

447A Insurer must ensure contract is worded and presented in clear, concise, and effective manner

- (1) An insurer under a contract of insurance to which this subpart applies must ensure that the contract is worded and presented in a clear, concise, and effective manner. 20
- (2) An insurer must, when performing the duty under **subsection (1)**, have regard to whether the wording and presentation of the contract assist consumers to understand their rights and obligations under the contract.
- (3) All other information that the insurer has or will provide to policyholders to ensure that they are reasonably aware of the implications of entering into contracts of insurance with the insurer may be taken into account in determining whether the insurer has complied with this section. 25
- (4) In this section, **concise** refers to the wording and presentation of particular terms of the contract, rather than the overall length of the contract. 30
- (5) This section is not a civil liability provision for the purposes of subpart 3 of Part 8 (but *see* subpart 1 of Part 8, which allows the FMA to make a stop order if an insurer does not comply with this section).

447B Insurer must ensure contract complies with prescribed requirements relating to form and presentation

An insurer under a contract of insurance to which this subpart applies must ensure that the contract complies with all requirements of the regulations relating to the form and presentation of the contract.

5

447C Insurer must make information publicly available

(1) This section has following purposes (in addition to those set out in sections 3 and 4):

- (a) to assist consumers to make decisions relating to the provision of insurance:
- (b) to promote and facilitate transparency in connection with an insurer's insurance business.

10

(2) **Subsection (1)** does not limit section 3 or 4.

(3) An insurer under a contract of insurance to which this subpart applies must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the information that is required to be made publicly available by the regulations.

15

(4) The regulations may require disclosure of any information in connection with either or both of the following:

- (a) contracts of insurance entered into by the insurer:
- (b) the business, operation, or management of the insurer as an insurer.

20

Example

The regulations may require an insurer to disclose information about claim acceptance rates, the length of time to settle claims, contract cancellations, complaints made against the insurer, and disputes the insurer is or has been involved in.

25

184 Section 447 replaced (Application of regulations made under this subpart)

Replace section 447 with:

447D Application of regulations made under this subpart

Regulations made under this subpart may apply to a derivatives issuer (whether or not it is licensed and whether or not it makes any regulated offer).

30

185 Section 449 amended (Part 6 services provisions)

(1) After section 449(4)(k), insert:

(kaa) **section 447B** (insurer must ensure contract complies with prescribed requirements relating to form and presentation):

(kab) **section 447C** (insurer must make information publicly available):

35

(2) After section 449(4)(m), insert:

- (n) **sections 56, 58, 59, 86A, and 108** and **subpart 4 of Part 4** of the Contracts of Insurance Act **2024**: 5
- (o) those provisions of the regulations made under **section 166** of the Contracts of Insurance Act **2024** that are stated by those regulations to be Part 6 services provisions.
- 186 Section 462 amended (When FMA may make stop orders)**
- (1) In section 462(1)(h), replace “or 431X” with “, 431X, **447A, 447B, or 447C**”.
- (2) After section 462(1)(h), insert:
- (i) **section 86A** of the Contracts of Insurance Act **2024** has been, or is likely to be, contravened in respect of the supply of market services. 10
- 187 Section 463 amended (Terms of stop order)**
- After section 463(d), insert:
- (da) prohibit an insurer from entering into contracts of insurance of the kind specified in the order while the order is in force:
- 188 Section 546 amended (Regulations for purposes of Part 6 (market services))** 15
- After section 546(1)(og), insert:
- (oga) regulating the form and presentation of contracts of insurance, including—
- (i) prescribing explanatory material or guidance that must, or must not, be contained in a contract of insurance; and 20
- (ii) prescribing requirements as to the layout or method of presentation of contracts of insurance (including the length of a contract and of parts of a contract, the size of type used, and when information may be incorporated by reference); and 25
- (iii) prescribing the documents that must, or must not, accompany a contract of insurance:
- (ogb) prescribing the information that must be made publicly available under **section 447C**, the times or events referred to in that section, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared): 30
- 189 Schedule 4 amended**
- In Schedule 4,—
- (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and 35
- (b) make all necessary consequential amendments.

*Amendments to Personal Property Securities Act 1999***190 Principal Act**

Sections 191 and 192 amend the Personal Property Securities Act 1999.

191 Section 16 amended (Interpretation)

In section 16(1), insert in its appropriate alphabetical order:

5

non-life contract of insurance means a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**) other than a life policy (with the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010)

192 Section 23 amended (When Act does not apply)

10

In section 23(e)(vi), replace “policy of insurance” with “non-life contract of insurance”.

*Amendments to other legislation***193 Amendments to other legislation**

(1) Amend the Acts specified in **Part 1 of Schedule 6** as set out in that schedule.

15

(2) Amend the secondary legislation specified in **Part 2 of Schedule 6** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 8

Part 1

Provisions relating to this Act as enacted

5

1 New disclosure duties apply to new contracts and variations

Part 2 of this Act applies to—

- (a) any contract entered into on or after the commencement of this clause (including any new contract that has the effect of operating as a renewal of a contract of insurance entered into before that commencement); and 10
- (b) any variation of a contract of insurance that is made on or after the commencement of this clause (whether the contract of insurance was entered into before or after that commencement).

2 Charges on insurance moneys under Law Reform Act 1936

- (1) If a charge exists immediately before the commencement of this clause, the charge ceases to exist on that commencement. 15
- (2) However,—
 - (a) **subclause (1)** does not apply to a charge that is the subject of an existing proceeding; and
 - (b) nothing in this Act affects the completion of the existing proceeding. 20
- (3) Section 9 of the Law Reform Act 1936 continues to have effect for the purposes stated in **subclause (2)** as if it had not been repealed.
- (4) In this clause,—

charge means a charge created by section 9 of the Law Reform Act 1936

existing proceeding means a proceeding in a court under section 9 of the Law Reform Act 1936 that is commenced, but not completed, before the commencement of this clause. 25

3 Third party claims against insurers

- (1) **Subpart 5 of Part 3** of this Act may apply regardless of whether—
 - (a) the event or conduct that gives rise to an insured liability occurred before or after the commencement of that subpart; or 30
 - (b) the policyholder became a specified policyholder before or after the commencement of that subpart.
- (2) However, **subpart 5 of Part 3** of this Act does not apply if the event or conduct that gives rise to an insured liability is the subject of an existing proceeding (as defined in **clause 2(4)**). 35

- (3) In this clause, **insured liability** and **specified policyholder** have the same meanings as in **section 87**.

3A Contract or arrangement between insurer and broker about premiums

- (1) This clause applies to a contract or an arrangement that, immediately before the commencement of **section 105** of this Act, is in effect for the purposes of section 8(3)(a) of the Insurance Intermediaries Act 1994. 5
- (2) The contract or arrangement continues in effect for the purposes of **section 105(a)**.
- (3) This clause does not prevent the termination or variation of the contract or arrangement. 10

4 References relating to banks and other deposit takers

- (1) Until section 10 of the Deposit Takers Act 2023 comes into force, the reference to a licensed deposit taker in **section 110(1)** includes—
- (a) a registered bank within the meaning of section 2(1) of the Banking (Prudential Supervision) Act 1989; and 15
- (b) a licensed NBDT within the meaning of section 4(1) of the Non-bank Deposit Takers Act 2013.
- (2) The reference in **section 117(1)(d)** to resolution under the Deposit Takers Act 2023 includes statutory management under the Banking (Prudential Supervision) Act 1989. 20

5 Life Insurance Act 1908 continues to apply to existing mortgages and certain assignments

- (1) This clause applies to—
- (a) an assignment otherwise than by way of ordinary transfer of an existing policy that is made before the commencement of this clause; and 25
- (b) a mortgage of an existing policy that is given before the commencement of this clause.
- (2) Part 2 of the 1908 Act continues to apply to the assignment or mortgage as if that Part had not been repealed.
- (3) In relation to an assignment or a mortgage to which this clause applies, the definition of registered in section 4 of the Property Law Act 2007 must be treated as meaning registered under Part 2 of the 1908 Act. 30
- (4) Section 111(6) of the Property Law Act 2007 (as in force immediately before the commencement of this clause) must be treated as continuing to apply to a mortgage to which this clause applies. 35
- (5) In this clause,—
- 1908 Act** means the Life Insurance Act 1908

existing policy means a policy to which the 1908 Act applied that was entered into before the repeal of that Act.

6 Personal Property Securities Act 1999 amendment does not apply to existing mortgages of life policies

The amendment made by **section 192** does not apply in respect of a mortgage referred to in **clause 5(1)(b)**. 5

Schedule 2

Insurer's remedies for qualifying misrepresentation or breach

ss 27, 52

Contents

	Page
Part 1	
Remedies for contracts (other than variations)	
1 When this Part applies	81
2 Deliberate or reckless misrepresentation or breach	82
3 Neither deliberate nor reckless misrepresentation or breach	82
4 Insurer would not have entered into contract	82
5 Insurer would have entered into contract on different terms	83
Part 2	
Remedies for variations	
6 When this Part applies	84
7 Deliberate or reckless misrepresentation or breach	84
8 Neither deliberate nor reckless misrepresentation or breach and premium increased or unchanged	84
9 Insurer would not have agreed to variation	85
10 Insurer would have agreed to variation	85
11 Neither deliberate nor reckless misrepresentation or breach and premium decreased	85
12 Insurer would not have agreed to variation	85
13 Insurer would have agreed to variation	85
14 Insurer may <u>increase premium and</u> reduce proportionately amount to be paid on claim	86
Part 3	
Modifications for group insurance	
15 Modifications for group insurance	87
Part 4	
Miscellaneous provision	
16 Marine Insurance Act 1908 subject to this schedule	87

Part 1		
Remedies for contracts (other than variations)		5
1	When this Part applies This Part—	

-
- (a) applies to qualifying misrepresentations and qualifying breaches in relation to contracts of insurance that are entered into; but
 - (b) does not apply to qualifying misrepresentations and qualifying breaches in relation to variations of contracts of insurance (*see* instead **Part 2**).
- 2 Deliberate or reckless misrepresentation or breach** 5
- If a qualifying misrepresentation or breach was deliberate or reckless, the insurer—
- (a) may avoid the contract and refuse all claims; and
 - (b) need not return any of the premiums paid.
- 3 Neither deliberate nor reckless misrepresentation or breach** 10
- (1) **Clauses 4 and 5** apply if a qualifying misrepresentation or breach was neither deliberate nor reckless.
 - (2) The insurer's remedies under those clauses are based on what it would have done if the qualifying misrepresentation or breach had not occurred, and those clauses are to be read accordingly. 15
- 4 Insurer would not have entered into contract**
- (1) If the insurer would not have entered into the contract on any terms, the insurer ~~may~~—
 - (a) may avoid the contract and refuse all claims; but
 - (b) must in that event return the premiums paid. 20
 - (2) However, in the case of a life policy within the meaning of section 84(1)(a) to (c) of the Insurance (Prudential Supervision) Act 2010,—
 - (a) **subclause (1)** applies only if the qualifying misrepresentation or breach occurred within the 3-year period immediately preceding the earlier of the following: 25
 - (i) the date on which the contract is sought to be avoided;
 - (ii) the date of the death of the life insured; and
 - (b) if **subclause (1)** does not apply, the insurer may, by notice to the policyholder, vary the life policy in a way that places the insurer in the position in which the insurer would have been if the qualifying misrepresentation or breach had not occurred. 30
 - (3) The following applies for the purposes of **subclause (2)(b)**:
 - (a) the position of the insurer under a life policy (**policy A**) that is varied must not be inconsistent with the position in which other reasonable and prudent insurers would have been if— 35
 - (i) they had entered into similar life policies to policy A; and

- (ii) there had been no qualifying misrepresentation or breach in relation to the similar life policies:
- (b) a life policy (**policy B**) is **similar** to another life policy (policy A) if—
 - (i) policy B provides insurance cover that is the same as, or similar to, the kind of insurance cover provided by policy A; and 5
 - (ii) the similar policy was entered into at, or close to, the time policy A was entered into.

5 Insurer would have entered into contract on different terms

- (1) If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract must be treated as if it had been entered into on those different terms if the insurer so requires. 10
- (2) In addition, if the insurer would have entered into the contract, but would have charged a higher premium, the insurer may ~~reduce proportionately the amount to be paid on a claim~~ do either or both of the following:
 - (a) by notice to the policyholder, increase the premium for the remainder of the term of the contract: 15
 - (b) reduce proportionately the amount to be paid on a claim.
- (2A) The increased premium under **subclause (2)(a)** must be no more than the higher premium that the insurer would have charged.
- (2B) If the insurer acts under **subclause (2)(a)**, **subclause (2)(b)** does not apply to— 20
 - (a) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the increased premium takes effect: 25
 - (b) a claim under any other contract of insurance if the claim arises out of events that occur after the increased premium takes effect.
- (3) In **subclause (2)**, **reduce proportionately** means that the insurer need pay on the claim only the percentage of the amount otherwise payable on a claim that is determined in accordance with the following formula: 30

$$y = (p_1 \div p_2) \times 100$$

where—

y is the percentage

p₁ is the premium actually charged (before any increase under **subclause (2)(a)** 35

p_2 is the higher premium.

Example

A policyholder (**A**) makes a qualifying misrepresentation to an insurer in relation to A's home policy. The misrepresentation is neither deliberate nor reckless.

A is actually charged a \$900 premium, but the insurer would have charged \$1,000 if the misrepresentation had not been made.

After the misrepresentation is discovered, the insurer increases the premium to \$1,000 for the rest of the term.

But before the increased premium takes effect, A suffers some damage to their home. The amount otherwise payable on the claim would have been \$100,000. However, the insurer only has to pay 90% of the claim (being \$90,000).

- (4) **Subclause (2)** applies whether the terms relating to matters other than the premium would have been the same or different.
- (5) In this clause, **amount otherwise payable on a claim** means the amount the insurer would otherwise have been under an obligation to pay under the terms of the contract of insurance (or, if applicable, under the different terms provided for by virtue of **subclause (1)**).

Part 2

Remedies for variations

- 6 When this Part applies** 20
- This Part applies to qualifying misrepresentations or qualifying breaches in relation to variations to contracts of insurance.
- 7 Deliberate or reckless misrepresentation or breach**
- If a qualifying misrepresentation or breach was deliberate or reckless, the insurer—
- (a) may, by notice to the policyholder, treat the contract as having been terminated with effect from the time when the variation was made; and
- (b) need not return any of the premiums paid.
- 8 Neither deliberate nor reckless misrepresentation or breach and premium increased or unchanged** 30
- (1) **Clauses 9 and 10** apply if—
- (a) a qualifying misrepresentation or breach was neither deliberate nor reckless; and
- (b) the total premium was increased or not changed as a result of the variation.

- (2) The insurer's remedies under those clauses are based on what it would have done if the qualifying misrepresentation or breach had not occurred, and those clauses are to be read accordingly.

9 Insurer would not have agreed to variation

If the insurer would not have agreed to the variation on any terms, the insurer— 5

- (a) may treat the contract as if the variation was never made; but
- (b) must, if it acts under **paragraph (a)**, return any extra premium paid.

10 Insurer would have agreed to variation

- (1) This clause applies if **clause 9** does not apply. 10
- (2) If the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires.
- (3) **Clause 14** also applies if (in the case of an increased premium) the insurer would have increased the premium by more than it did, or (in the case of an unchanged premium) the insurer would have increased the premium. 15

11 Neither deliberate nor reckless misrepresentation or breach and premium decreased

- (1) **Clauses 12 and 13** apply if—
 - (a) a qualifying misrepresentation or breach was neither deliberate nor reckless; and 20
 - (b) the total premium was reduced as a result of the variation.
- (2) The insurer's remedies under those clauses are based on what it would have done if the qualifying misrepresentation or breach had not occurred, and those clauses are to be read accordingly. 25

12 Insurer would not have agreed to variation

If the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, and **clause 14** also applies.

13 Insurer would have agreed to variation 30

- (1) This clause applies if **clause 12** does not apply.
- (2) If the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation must be treated as if it had been entered into on those different terms if the insurer so requires.
- (3) **Clause 14** also applies if the insurer would have increased the premium, would not have reduced the premium, or would have reduced it by less than it did. 35

- 14 Insurer may increase premium and reduce proportionately amount to be paid on claim**
- (1) If this clause applies, the insurer may ~~reduce proportionately the amount to be paid on a claim arising out of events after the variation; do either or both of the following:~~ 5
- (a) by notice to the policyholder, increase the premium for the remainder of the term of the contract:
- (b) reduce proportionately the amount to be paid on—
- (i) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the variation: 10
- (ii) a claim under any other contract of insurance if the claim arises out of events after the variation.
- (1A) The increased premium under **subclause (1)(a)** must be no more than,— 15
- (a) in the case of **clause 10(3)**, the premium that the insurer would have charged:
- (b) in the case of **clause 12**, the original premium:
- (c) in the case of **clause 13(3)**, the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced premium the insurer would have charged. 20
- (1B) If the insurer acts under **subclause (1)(a)**, **subclause (1)(b)** does not apply to—
- (a) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the increased premium takes effect: 25
- (b) a claim under any other contract of insurance if the claim arises out of events that occur after the increased premium takes effect.
- (2) In **subclause (1)**, **reduce proportionately** means that the insurer need pay on the claim only the percentage of the amount otherwise payable on a claim that is determined in accordance with the following formula: 30
- $$y = (p_1 \div p_2) \times 100$$
- where—
- y is the percentage 35
- p₁ is the premium actually charged (before any increase under **subclause (1)(a)**
- p₂ is in the case of—
- (a) **clause 10(3)**, is the premium the insurer would have charged:

- (b) **clause 12**, is the original premium:
- (c) **clause 13(3)**, is the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced premium the insurer would have charged.
- (3) **Subclause (1)** applies whether the terms relating to matters other than the premium would have been the same or different. 5
- (4) ~~In this clause, **amount otherwise payable on a claim** means the amount the insurer would otherwise have been under an obligation to pay under the terms of the contract of insurance (whether on the original terms, or as varied, or under the different terms provided for by virtue of **clause 10(2) or 13(2)**, as the case may be).~~ 10
- (4) In this clause,—
amount otherwise payable on a claim means the amount the insurer would otherwise have been under an obligation to pay under the terms of the contract of insurance (whether on the original terms, or as varied, or under the different terms provided for by virtue of **clause 10(2) or 13(2)**, as the case may be) 15
original premium means the premium in effect immediately before the variation.

Part 3

Modifications for group insurance 20

15 Modifications for group insurance

- (1) **Part 1** applies subject to the modifications set out in this Part in relation to insurance cover provided for B under a contract of insurance mentioned in **section 22**.
- (2) In this Part, **B** has the meaning set out in **section 22**. 25
- (3) References to the contract of insurance (however described) are to that part of the contract that provides for insurance cover for B.
- (4) References to claims and premiums are to claims and premiums in relation to that cover.

Part 4

Miscellaneous provision 30

16 Marine Insurance Act 1908 subject to this schedule

Section 84 of the Marine Insurance Act 1908 (return of premium for failure of consideration) is subject to this schedule in relation to contracts of marine insurance. 35

Schedule 3

Information and disclosure for third party claimants

s 97

Contents

		Page
1	Interpretation	88
2	Third party claimant may request information from specified policyholder	88
3	Third party claimant may request information from other persons	88
4	Information that may be requested	89
5	Person to whom notice is given must provide information	89
6	Person to whom notice is given may require payment of reasonable charge	90
7	Contract of insurance must not prohibit, prevent, or restrict person from providing information or giving disclosure	90
8	Other rights to information	91
9	When person is able to provide information and has control of document	91
1	Interpretation	
	Any term or expression that is defined in section 87 and used, but not defined, in this schedule has the same meaning as in section 87 .	5
2	Third party claimant may request information from specified policyholder	
(1)	This clause applies if a person (A) reasonably believes that—	
(a)	another person (B) has incurred an insured liability to A; and	
(b)	B is a specified policyholder.	10
(2)	A may, by notice in writing, request from B the information of a kind referred to in clause 4 that is specified in the notice.	
(3)	A must include in the notice particulars of the facts A relies on as enabling them to give the notice.	
3	Third party claimant may request information from other persons	15
(1)	This clause applies if a person (A) reasonably believes that—	
(a)	an insured liability has been incurred to A; and	
(b)	A may be able to recover the amount of the insured liability from the insurer under subpart 5 of Part 3 ; and	
(c)	there is a person (C) who is able to provide information of the kind referred to in clause 4 .	20

- (2) A may, by notice in writing, request from C the information of a kind referred to in **clause 4** that is specified in the notice.
- (3) A must include in the notice particulars of the facts A relies on as enabling them to give the notice.
- 4 Information that may be requested** 5
- (1) The following is the information that may be requested:
- (a) whether there is a contract of insurance that covers the supposed liability or might reasonably be regarded as covering it:
- (b) if there is such a contract, any of the following:
- (i) who the insurer is: 10
- (ii) what the terms of the contract are:
- (iii) whether the policyholder has been informed that the insurer has claimed not to be liable under the contract in respect of the supposed liability:
- (iv) whether there is or has been any proceeding between the insurer and the policyholder in respect of the supposed liability and, if so, relevant details of the proceeding: 15
- (v) if the contract sets a limit on the fund available to meet claims in respect of the supposed liability and other liabilities, how much of it (if any) has been paid out in respect of other liabilities: 20
- (vi) whether there is a security interest to which any sums paid out under the contract in respect of the supposed liability would be subject.
- (2) For the purpose of **subclause (1)(b)(iv)**, relevant details of the proceeding are,— 25
- (a) in the case of a court proceeding, the following:
- (i) the name of the court and the registry of the court:
- (ii) the number of the proceeding:
- (iii) the contents of all documents served in the proceeding in accordance with rules of court or orders made in the proceeding, and the contents of any such orders; or 30
- (b) in the case of an arbitration, the following:
- (i) the name of the arbitrator:
- (ii) information corresponding with that referred to in **paragraph (a)(iii)**. 35
- 5 Person to whom notice is given must provide information**
- (1) A person (**R**) who receives a notice under **clause 2 or 3** must, within 28 days after receiving the notice,—

- (a) provide to the person who gave the notice the information specified in it that R is able to provide; and
 - (b) in relation to any information specified in the notice that R is not able to provide, notify that person why R is not able to provide it.
- (2) **Subclause (3)** applies if— 5
 - (a) a person (**R**) receives a notice under **clause 2 or 3**; and
 - (b) there is information specified in the notice that R is not able to provide because it is contained in a document that is not in R's control; and
 - (c) the document was at one time in R's control; and
 - (d) R knows or believes that it is now in another person's control. 10
- (3) R must, within 28 days after receiving the notice, provide the person who gave the notice with all particulars R can as to the nature of the information and the identity of that other person.
- (4) If R fails to comply with a duty imposed on R by this clause, the person who gave R the notice may apply to the High Court for an order requiring R to comply with the duty. 15
- (5) R does not have a duty under this clause in respect of information to which a claim of legal professional privilege could be maintained in a proceeding.
- 6 Person to whom notice is given may require payment of reasonable charge**
- (1) A person (**R**) who receives a notice under **clause 3** may require the person (**A**) who gave the notice to pay a reasonable charge to R to meet the cost of providing the information if— 20
 - (a) R gives A written notice that a charge will be imposed for providing the information; and
 - (b) the notice specifies and explains the charge; and 25
 - (c) the notice is given within 21 days after R receives the notice under **clause 3**.
- (2) ~~R must comply with **clause 5** regardless of whether A pays the charge.~~
- (2) R may refuse to comply with a notice under **clause 3** until the charge is paid.
- (3) A charge payable to R is recoverable by R in any court of competent jurisdiction as a debt due to R. 30
- 7 Contract of insurance must not prohibit, prevent, or restrict person from providing information or giving disclosure**
- A provision of a contract of insurance is of no effect to the extent that it purports, whether directly or indirectly,— 35
 - (a) to avoid or terminate the contract or alter the rights of the parties under it in the event of a person providing information, or giving disclosure,

that the person is required to provide or give under a notice under this schedule; or

- (b) otherwise to prohibit, prevent, or restrict a person from providing such information or giving such disclosure.

8 Other rights to information 5

A right to information that a person has under this schedule is in addition to any such rights that the person has apart from this schedule.

9 When person is able to provide information and has control of document

For the purposes of this schedule,—

- (a) a person is **able to provide** information only if— 10
- (i) the person can obtain it without undue difficulty from a document that is in that person's control, or
- (ii) if the person is an individual, the information is within that person's knowledge; and
- (b) a document is in a person's **control** if it is in that person's possession or 15
if the person has a right to possession of it or to inspect or take copies of it.

Schedule 4
New Part 3 inserted into Schedule 1AA of Fair Trading Act 1986

s 178

Part 3

Provisions relating to Contracts of Insurance Act **2024**

3 Amendments relating to unfair contract terms do not apply to existing insurance contracts

(1) This clause applies to—

- (a) a contract of insurance entered into on or after 17 March 2015 but before the commencement of this clause; and
- (b) any variation of the contract referred to in **paragraph (a)**; and
- (c) any new contract that has the effect of operating as a renewal of the contract referred to in **paragraph (a)**, and any subsequent renewal.

(2) However, this clause does not apply to any contract to which section 26A(3) applies.

(3) The amendments made by **sections 176 and 177** of the Contracts of Insurance Act **2024** do not apply to a contract or variation to which this clause applies, and sections 46H to 46M as in force before the commencement of this clause continue to apply as if that Act had not been enacted.

Schedule 5
New Part 9 inserted into Schedule 4 of Financial Markets Conduct
Act 2013

s 189

Part 9		5
Provisions relating to Contracts of Insurance Act 2024		
99	Duties to assist policyholders to understand insurance contracts	
(1)	Sections 447A and 447B do not apply to an existing contract.	
(2)	However, if a variation of an existing contract is entered into after the commencement of this clause, sections 447A and 447B apply to any part of the existing contract that has been varied.	10
(3)	Section 447C applies in relation to any contracts of insurance (regardless of whether or not they are existing contracts).	
(4)	In this clause, existing contract —	
(a)	means a contract of insurance entered into before the commencement of this clause; and	15
(b)	does not include any new contract entered into after that commencement that has the effect of operating as a renewal of a contract referred to in paragraph (a) or any subsequent renewal.	

Schedule 6

Amendments to other legislation

s 193

Part 1

Amendments to other Acts

5

Administration Act 1969 (1969 No 52)

In section 65(5), replace “policy or policies of insurance within the meaning of the Life Insurance Act 1908” with “life policy (within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010)”.

In section 65(5), replace “company liable under the policy or policies” with “insurer liable under the life policy”. 10

In section 65(5), replace “lawful for the company” with “lawful for the insurer”.

Arbitration Act 1996 (1996 No 99)

Replace section 11(6)(b) with:

- (b) a contract of insurance to which **section 71** of the Contracts of Insurance Act **2024** applies. 15

Contract and Commercial Law Act 2017 (2017 No 5)

In section 34, insert as subsection (2):

- (2) This section does not apply in relation to **sections 35(3) and 37(4)**. 20

After section 35(2), insert:

- (3) Subsection (1)(a) does not apply if— 20
- (a) the contract is a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**); and
 - (b) A is the insurer under that contract. 25

After section 37(3), insert:

- (4) Subsection (1)(a) does not apply if— 25
- (a) the contract is a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**); and
 - (b) the party that has been induced to enter into the contract by a misrepresentation is the insurer. 30

In section 92(1)(b), replace “section 66B of the Life Insurance Act 1908” with “**section 144** of the Contracts of Insurance Act **2024**”.

Financial Markets Authority Act 2011 (2011 No 5)

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Financial Markets Authority Act 2011 (2011 No 5)—continued**Contracts of Insurance Act 2024****Fire and Emergency New Zealand Act 2017 (2017 No 17)**

In section 81(1), replace the definition of **insurance intermediary** with:

insurance intermediary has the same meaning as in **section 100** of the Contracts of Insurance Act **2024**

5

Replace section 94(5) with:

- (5) In this section, **arrange** has the same meaning as in **section 5** of the Contracts of Insurance Act **2024**.

In section 111(3), replace the definition of **arrange** with:

arrange has the same meaning as in **section 5** of the Contracts of Insurance Act **2024**

10

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Repeal section 46.

Income Tax Act 2007 (2007 No 97)

Replace section EY 11(4) and the heading above section EY 11(4) with:

15

Trustee cannot be a life insurer

- (4) At all times in the income year, no trustee of the fund is a life insurer within the meaning of section 6 of the Insurance (Prudential Supervision) Act 2010.

Natural Hazards Insurance Act 2023 (2023 No 1)

In section 121(7), replace the definition of **insurance intermediary** with:

20

insurance intermediary has the same meaning as in **section 100** of the Contracts of Insurance Act **2024**

Property Law Act 2007 (2007 No 91)

In section 4, definition of **registered**, replace paragraph (f) with:

- (f) in relation to an instrument concerning a life policy within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010 (other than an instrument creating a security interest over a life policy), means registered under **Part 5** of the Contracts of Insurance Act **2024**:

25

Repeal section 111(6).

Trade Unions Act 1908 (1908 No 196)

30

Repeal section 6(1)(b).

Part 2
Amendment to secondary legislation

Overseas Investment Regulations 2005 (SR 2005/220)

Replace regulation 43(b) with:

- (b) the investment is of funds held in the overseas person’s statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010). 5

Legislative history

29 April 2024
2 May 2024

Introduction (Bill 41–1)
First reading and referral to Finance and Expenditure Committee