



INSURANCE CONTRACTS AMENDMENT ACT 2013

COMPREHENSIVE OVERVIEW
(CURRENT AS AT 28 JANUARY 2014)

IMPORTANT NOTICE

This document is designed to provide helpful guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date relevance. You must ensure that you seek appropriate advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you.

OVERVIEW

The *Insurance Contracts Amendment Act 2013* (***the Act***) makes some of the most significant amendments to the *Insurance Contracts Act 1984* (Cth) (**IC Act**) since its original inception.

The following 3 tables are high level summaries of the key changes (in order of timing) applying to:

- General insurance and life insurance;
- General insurance only; and
- Life insurance only.

These are followed but more detailed guidance identifying for each of the above:

- The current position;
- The change made;
- Any changes made for the last 2010 Bill;
- The amended section with amendments made by the Act identified in italics;
- The timing of the changes; and
- A high level to do list.

CHANGES AFFECTING BOTH GENERAL INSURANCE AND LIFE INSURANCE	APPLIES TO AND FROM (IN ORDER IF TIMING)
<p>Changes to duty of utmost good faith (DOUGF) (s13,14A and 11F)</p> <p>The duty in section 13 will be extended to apply to third party beneficiaries (i.e. persons specified as covered under the policy who are not contacting insureds) from time of contract entry.</p> <p>A breach of the duty by an insurer will also result in a breach of the IC Act and allow ASIC to bring a representative action and/or take action under the <i>Corporations Act 2001</i> (Cth) for such a breach.</p>	<p>General insurance – new contracts entered into or any renewals after Royal Assent (RA). 28 June 2013</p> <p>Life insurance:</p> <ul style="list-style-type: none"> • New contracts entered into after Royal Assent (RA) and • Contracts entered into before RA and varied after RA to: <ul style="list-style-type: none"> ○ Increase a sum insured under the contact in respect of one or more life insureds; or ○ To provide one or more additional kinds of insurance cover; and ○ The variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contact was carried; <p>But only to extent of the variation</p>
<p>Bundled contracts (s9(1))</p> <p>Insurance contracts that include IC Act-type cover and non-IC Act-type cover will be subject to new rules that effectively split them into separate contracts for the purposes of the IC Act.</p>	
<p>Electronic Communication (ss71, 72 and 72A)</p> <p>IC Act notices/information/documents/statements will clearly be able to be given by electronic means (previously arguable).</p>	<p>Notices, documents or information given from the earlier of the day after end of period of 6 months from RA or proclamation date. 28 December 2013</p>
<p>Insured's duty of disclosure – reasonable person test (s21(1)(b))</p> <p>Two new non-exclusive factors to be taken into account when considering what a reasonable person in the circumstances could be expected to know to be a matter to be relevant for purposes of duty of disclosure will be added, being:</p> <ul style="list-style-type: none"> • The class of person who would ordinarily be expected to apply for cover of the type; and • The nature and extent of cover provided by the policy. 	<p>Same as DOUGF above, expect from day after end of period of 20 months from RA. 28 December 2015.</p> <p>Notice: Insurer can comply with s21B earlier if special requirement met.</p>

Duty of disclosure in relation to “eligible contracts” – new business (s21A)

The right for an insurer to ask an exceptional circumstances question will be removed from s21A which only applies in relation to eligible contracts as defined). The insurer will only be able to ask specific questions. A failure to comply results in a waiver of the insurer’s rights regarding a breach of the duty of disclosure.

Duty of disclosure of eligible contracts – renewal (s21B)

New duty if disclosure obligations will apply for renewal of eligible contracts. The insurer will only be able to ask specific questions and/or provide copy of prior disclosure requestions update before renewal. A failure to comply results in a waiver of the insurer’s rights regarding a breach of the duty of disclosure but won’t affect rights regarding past failures for original entry or renewals. No response by insured is deemed to be no change.

Duty of Disclosure notice changes (s22) and deemed notice change in s11(1) and 11(10A) affecting s40 and certain liability policies

These will provide:

- For an update prescribed form of notice given s21A and s21B changes above
- A new obligation to explain that the duty of disclosure up until entry into the policy
- That is and insurer’s acceptance or counter offer is more than 2 months after the insured’s last disclosure, the insurer must in the counter offer or acceptance, remind the insured that the duty applies until entry.
- Amend the ‘deemed notice exception’ in s11(10) to also require the section 22 and s40(2) notice for a variation where the varied policy

will provide “a kind of insurance cover that was not provided by the policy immediately before the variation”

CHANGES AFFECTING GENERAL INSURANCE ONLY	APPLIES TO AND FROM (IN ORDER OF TIMING)
<p>Bundled Workers Compensation Policies – (s9(1)(f))</p> <p>Mixed workers’ compensation and common law personal injury cover will be totally excluded from the IC Act. Previously the common law cover was subject to the IC Act. The entire policy is now to be exempted from the IC Act.</p> <p>This means that any contracts entered into (or proposed to be entered into) that bundle compulsory worker’s compensation cover and cover in respect of an employer’s liability under the rule of common law that requires payment of damages to a person for employment-related personal injury will be exempt from the IC Act. To the extent that they are mixed with other forms of cover different rules apply (see bundled contracts section above).</p>	<p>New contracts entered into or any renewals after RA. 28 June 2013</p>
<p>Subrogation (s67)</p> <p>Subrogation provision has been significantly amended to provide what is considered to be a fairer result. Rights will also be extended to apply to third party beneficiaries.</p>	<p>New contracts entered into or any renewals from day after end of period of 6 months from RA. 28 December 2013</p>

Third Part beneficiaries (TPB) (ss48 and 41)

Section 48(3) will be amended to make it clear that, in defending an action brought by a TPB, a general insurer may raise defences relating to the conduct of the insured which occurred either before or after the policy was entered into (e.g. non-disclosure by the insured).

Section 41 will be amended to apply to TPBs as well as the contracting insured. This section gives the right to request that the insurer notify whether they admit policy applies to the claim, and if so whether they will conduct for insured the defence. A failure to do so prevents reliance on such matters by insurer.

Section 13 will be amended to extend the duty of utmost good faith in relation to TPBs as well as contracting insureds. However, the duty will only apply after the policy is entered into because to apply the duty pre contractually would be impractical. The duty is of most relevance to TPBs where they wish to make a claim under the policy.

New contracts entered into or any renewals from day after end of period of 12 months from RA. **28 June 2014**

New contracts entered into or any renewals from day after end of period of 12 months from RA. **28 June 2014**

Rights of third parties to recover against liability insurer (s51)

Third parties will now gain access to the liability insurance of third part beneficiaries under a policy in circumstances where they die or cannot be found have been extended to. The right is currently limited to the policy of an insured.

New contracts entered into or any renewals from day after end of period of 12 months from RA. **28 June 2014**

CHANGES AFFECTING LIFE INSURANCE ONLY	APPLIES TO AND FROM (IN ORDER OF TIMING)
<p>Unbundling of Life Policies – (s27A)</p> <p>Section 27A introduced new unbundling rules regarding life policies that provide two or more kinds of insurance cover (e.g. death and disability cover), or a single kind of cover that is provided on different terms (i.e. an element that is underwritten and another element that isn't – e.g. group life policy that provides automatic cover and which has a top-up option) or cover for two or more life insureds.</p> <p>It allows the remedies for misrepresentation and non-disclosure to apply to each different element of the life policy as if each element or aspect were a separate contract.</p>	<p>The unbundling provisions of section 27A have retrospective effect and will apply to a life policy whether originally entered into before or after the date of Royal Assent.</p>
<p>Remedy for Misstatement of Date of Birth – (s30)</p> <p>An additional remedy if included which will allow an insurer to vary the life policy by changing its expiration date to a date calculated on the basis of the correct date of birth (where known) in circumstances relevant to section 30.</p>	<p>The amendments apply to:</p> <ul style="list-style-type: none"> • New contracts entered into after Royal Assent (RA 28 June 2013); and • Contracts entered into before RA and varied after RA to: <ul style="list-style-type: none"> ○ Increase a sum insured under the contract in respect of one or more life insureds; or ○ Provide one or more additional kinds of insurance cover; and ○ The variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied; <p>But only to extent of the variation</p>

<p>Cancellation of Life Policies – (s59A, s63)</p> <p>A new section 59A is to provide a life insurer with the right to cancel a life policy for the same reasons that an insurer may cancel a contract of general insurance, except in relation to non-payment of a premium (which will still be regulated by the <i>Life Insurance Act</i>).</p> <p>The current section 63 (which prohibits an insurer from cancelling a general insurance policy except as provided for in the IC Act and which renders all such cancellations void) will be amended to provide for a mirror contravention in relation to purported cancellations (contrary to section 63) of life policies.</p> <p>Accordingly, cancellations of life policies (other than under the <i>Life Insurance Act</i>) will be void, unless they are effected in accordance with the new section</p>	<p>The amendments apply to a contract of life insurance that is originally entered into after Royal Assent.</p>
<p>Third Party Beneficiaries (Life Policies) – (s48A)</p> <p>Section 48A is to be amended to:</p> <ul style="list-style-type: none"> • Allow for circumstances in which a person whose life insured under a life policy may be a TPB; • Ensure that a TPB who has a claim over money payable under a life policy may bring an action against the insurer in the respect of the claim without the intervention of the policy holder; and • Ensure that the TPB is capable of giving a valid discharge to the insurer in relation to the insurer’s obligations in respect of the claim. 	<p>The amendments to s48A, 29, 48AA and 32 apply to the same contracts as section 30 above (and in the same manner), but from the day after end of period of 12 months from RA. 28 June 2014.</p>
<p>Third Party Beneficiaries (Life Policies) – (s48AA)</p> <p>A change has been made in subsection 48AA(3) to make it clear that in defending an action made by a TPB the life insurer may raise defences relating to the conduct of the insured and the conduct that may have</p>	

occurred either before or after the policy was entered into (e.g. non-disclosure by the insured).

Remedies for Non-Disclosure and Misrepresentation

A new section 29 will now provide remedies for non-disclosure and misrepresentation in respect of all life policies (whether it is a traditional life policies with surrender value or non-traditional life policies without surrender value like TPDs).

It makes it clear that the insurer can avoid the particular policy if they would not have extended cover under policy on any terms, had the true facts been known.

In case of a life policy which does not involve a surrender value or does not provide cover for death of a life insured, under section 29:

- The insurer may vary the contract at any time; or
- If the insurer does not avoid the contract or vary the contract using the statutory formula, the insurer may vary the contract in such a way as to place the insurer in the position in which the insurer, would have been if the duty of disclosure has been complied with or the misrepresentation had not been made (subject to certain qualifications)

In the case of life policy which does involve a surrender value or does provide cover for death of a life insured, the insurer may vary the contract using the prescribed formula before the expiration of 3 years after the contract was entered into (i.e. the current treatment of traditional life insurance contracts is not affected as a result of the changes in the Act).

It does not apply where the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds (see section 30).

<p>Non-Disclosure and Misrepresentation by Members of Life Insurance Schemes - (s32).</p> <p>Section 32 is amended to provide:</p> <ul style="list-style-type: none"> • That where there is a delay from the time of joining the scheme until the time that cover is actually effected, the relevant life policy is taken to be entered into at the time proposed life insured became a life insured under the scheme (i.e. at the time life insurance cover under the scheme took effect in relation to the member concerned) and; • For a broader term 'group life contract' which is defined to mean a life policy that is maintained for the purpose of a superannuation or retirement scheme, or another scheme (including one not related to employment). 	
<p>Non-Disclosure by Life Insureds – (s31A)</p> <p>The proposed section 31A effectively applies the duty of disclosure to a life insured and provides that any non-disclosure by a life insured is imputed to the insured.</p> <p>The exceptions for non-disclosure of matters that currently apply to section 21 will also now apply to the new section 31A (e.g. matters known to the insurer of which the insurer waives the duty in relation to).</p>	<p>The amendments under section 31A apply to the same contracts as section 30 above (and in the same manner), but from the day after the expiry of the period of 30 months from RA 28 December 2015</p>

GUIDANCE ON CHANGES AFFECTING BOTH GENERAL INSURANCE AND LIFE INSURANCE

AREA AFFECTED AND CHANGES	REVISED SECTIONS WITH CHANGES INCORPORATED (ACTUAL AMENDMENTS IN ITALICS)	TIMING AND TO DO LIST
<p>DUTY OF UTMOST GOOD FAITH</p> <p>Current Position Currently, section 13 of the IC Act implies into a policy a provision requiring each party to act towards the other in respect of any matter arising under and in relation to it with the utmost good faith. It only applies to the insurer and contracting insured.</p> <p>Changes The changes will:</p> <ul style="list-style-type: none"> • Extend the obligation to apply to third party beneficiaries (TPBs) who currently do not benefit from the duty. The duty only commences after the contract is entered into for TPBs because to apply the duty pre contractually would be impractical. The duty is of most relevance to TPBs where they wish to make a claim under the policy. • Mean that a breach of this obligation is also a breach of the IC Act although a breach is not an offence under the IC Act and will not attract any penalty, this and other new provisions will allow ASIC to: <ul style="list-style-type: none"> – Commence or continue a representative action pursuant to section 55A of the IC Act for such a 	<p>13 The duty of utmost good faith</p> <ol style="list-style-type: none"> 1. A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith. 2. <i>A failure by a party to contract of insurance to comply with the provision implied in the contract by subsection (1) is a breach of the requirements of this Act.</i> 3. <i>A reference in this section to a party to contract of insurance includes a reference to a third party beneficiary under the contract.</i> 4. <i>This section applies in relation to a third party beneficiary under a contract of insurance only after the contract is entered into</i> <p>14A Powers of ASIC – insurer’s failure to comply with the duty of the utmost good faith in relation to handling or settlement of claims</p> <ol style="list-style-type: none"> 1. <i>This section applies if an insurer under a contract of</i> 	<p>Timing</p> <p>These changes apply for the date the Act receives Royal Assent. 28June 2013 to:</p> <ul style="list-style-type: none"> • A contract of insurance that is originally entered into after the commencement of this item; and • A contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement. <p>If:</p> <ul style="list-style-type: none"> • A contract of life insurance that was originally entered into before the commencement if this item is varied after that commencement to: <ul style="list-style-type: none"> ○ Increase a sum insured under the contract in

<p>breach. Pre-conditions to ASIC undertaking representative action on behalf of an insured are that the insured or insureds (or TPB) have suffered damage or there has been a breach of the IC Act.</p> <ul style="list-style-type: none"> – Pursuer remedies under the Corporation Act against insurers that hold an AFS Licence (AFSL). The power in this regard has also been extended to cover claims handling and settlement services which are not themselves financial services. <p>These remedies include a banning order under section 920A of the Corporations Act, suspension or cancellation of the insurer’s financial services licence, the imposition of conditions on the licence or the acceptance of an enforceable undertaking not to act in a particular manner.</p> <p>Banning orders made by ASIC have the effect of prohibiting the affected person from providing all financial services, or one or more specified types or financial service. They may be permanent or last only for a specified period. An example of the type of conduct leading to a permanent banning order is a pattern of persistent contravention that indicates systemic failures or a general lack of understanding of, and regard for compliance. Isolated breaches of the duty would not be expected to result in ASIC pursuing a banning order.</p> <p>Change from 2010 Bill proposals</p> <p>Change made to timing regarding life insurance contracts</p>	<p><i>insurance had failed to comply with the duty if the utmost good faith in the handling or settlement of a claim or potential claim under the contract.</i></p> <p>2. <i>Despite any provision of Chapter 7 of the Corporations Act 2001 or any regulation made under the Chapter, ASIC may exercise its powers under Subdivision C of Division 4 of Part 7.6 of the Act or Subdivision A of Division 8 of that Part in relation to the insurer as if the insurer’s failure to comply with a financial services law</i></p> <p><i>Note: Subdivision C of Division 4 of Part 7.6 of the Corporations Act 2001 deals with variation, suspension and cancellation of an Australian financial services licence and Subdivision A of Division 8 of that Part deals with banning persons from providing financial services</i></p> <p>3. <i>In this section financial services law has the meaning given by section 761A of the Corporations Act 2001.</i></p> <p>Associated Changes:</p> <p><i>11(1) “duty of the utmost good faith” means the duty referred to in section 13(1)</i></p> <p><i>11(1) third party beneficiary, under a contract of insurance, means a person who is not a party to the contract but is specified or referred to in the contract, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends.</i></p>	<p>respect of one or more life insureds; or</p> <ul style="list-style-type: none"> ○ Provide one or more additional kinds of insurance cover; and ● The variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied; <p>Then:</p> <ul style="list-style-type: none"> ● The contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and ● The amendments made by this Part apply to the contract to the extent of the variation <p>To do</p> <p>As most insurers are probably already treating third party beneficiaries in the same way as they would treat an insured, it is unlikely the change will have a significant impact for most insurers. Insurers and their agents will need to consider if any reference in Policy wordings to the DOUGF need to be updated and change claims</p>
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<p>to take account of automatic variation issues.</p>		<p>procedures regarding TPBs.</p> <p>Insurance brokers need to be aware of the new rights when representing the interest of third part beneficiaries.</p> <p>All need to be aware f ASIC’s new powers and take DOUGF breaches seriously.</p>
<p>ELECTRONIC COMMUNICATION CHANGES</p> <p>Current Position Whether or not notices and information can be delivered electronically under the IC Act has been open to some debate. The IC Act is currently excluded from the operation of the Electronic Transactions Act 1999 (Cth) which allows for written notices to be given electronically subject to certain rules being met.</p> <p>Changes The Electronics Transactions Act regulations will be amended to remove the IC Act exclusion and the IC Act notice provisions have been amended to permit electronic communication of notices or other documents or information under the IC Act.</p> <p>Current section 77 of the IC Act is repealed but replaced with new section 72A which:</p> <ul style="list-style-type: none"> • Has removed the rule s77(2) regarding notice by post of cancellation i.e. “(2) If a notice of cancellation of a 	<p>72 Content and other requirements to notices etc. to be given in writing.</p> <p><i>A reference in the Act to the giving of a notice or other document or information to a person, in writing, is a reference to giving the person a notice or other document of information in writing that complies with the requirements (if any) prescribed as to:</i></p> <p>a) <i>The content and legibility of the notice, other document or information; and</i> b) <i>The material that may accompany the notice, other document or information</i></p> <p>72A Method for giving written notices of documents</p> <p><i>A notice or other document that is required or permitted by the Act to be given to a person in writing may be given:</i></p> <p>a) <i>To a body corporate in any way in which documents may be served on the body corporate; or</i></p>	<p>Timing</p> <p>These changes will apply to a notice or other document or information given to a person under the IC Act from a date to be proclaimed, but no later than the day after the end of the period of 6 months form Royal Assent. 28 December 2013</p> <p>The aim is to proclaim a date that is consistent with the changes to be made to the <i>Electronic Transactions Act</i>.</p> <p>Other comments This is a significant change for the industry and one that is likely to allow great costs savings.</p> <p>Other legislation needs to be considered in taking advantage of</p>

<p>contract of insurance is given to an insured by post, the notice shall be deemed to have been given at the time at which it would have been delivered in the ordinary course of post unless the insured proves that, through no fault of the insured, the insured did not receive it". Section 29 of the Acts Interpretation Act 1909 deals with that subject; and</p> <ul style="list-style-type: none"> • Adds a new note that, "A notice or other document may also be given to a person by electronic communication in accordance with the Electronic Transactions Act 1999 and any regulations made under that Act". The fact that there is only a note and not an amendment to the section would support the view taken by some insurers that such electronic provision of notices is in fact currently permitted. Currently FOS takes the view it is not but this is clearly open to argument. Once the change is in force the FOS position can no longer be taken. <p>Section 72A is not intended to affect the operation of subsection 71(!), which covers situations where insurance is arranged by brokers acting of the insured.</p> <p>The updated section 72 will also provide a new regulation-making power regarding the content and legibility of notices and documents and material accompanying them. The aim is to ensure that the content of relevant statutory notices under the IC Act is able to be digested by the recipient without interruption or distraction by other material provided with the notice. Regulations are yet to be released.</p> <p>There is no change regarding the operation of section</p>	<p>b) <i>To a natural person:</i></p> <p>(i) <i>Personally; or</i></p> <p>(ii) <i>By post to that person's last known address.</i></p> <p><i>Note: A notice or other document may also be given to a person by electronic communication in accordance with the Electronic Transactions Act 1999 and any regulations made under that Act.</i></p> <p>Associated changes:</p> <p>71 Agency</p> <ol style="list-style-type: none"> 1) A provision of this Act (other than subsection 58(2)) for or with respect to giving a <i>notice or other document or information</i> to an insured before a contract of insurance is entered into does not apply where the contract was arranged by an insurance broker, not being an insurance broker acting under a binder, as agent of the insured. 2) Where: <ol style="list-style-type: none"> a) A person who is not an insurance intermediary acted as agent of an insured in arranging a contract of insurance; and b) The insurer gave that person a <i>notice, other document or any information</i> as mentioned in this Act; <p>The insurer shall be deemed to have given a notice or other document or information to the insured.</p> <ol style="list-style-type: none"> 3) An insurance intermediary, other than an insurance broker who is not acting under a binder, shall, in relation to giving of a <i>notice or other document or</i> 	<p>the change e.g. SPAM Act, Privacy and Chapter 7 of the Corporations Act,</p> <p>Insurers need to consider:</p> <ul style="list-style-type: none"> • Procedural changes to take advantage of the above. • The right in conjunction with Corporations Act changes re electronic PDS delivery etc and other legislation e.g. Spam Act. • What documentation changes will need to take account of above. • What claims processes will need to take account of above.
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71(1) which provides that any provision of the IC Act other than the obligation to give a renewal notice under subsection 58(2) with respect to the giving of a notice or other document or information to the insured before a policy is entered into, does not apply where the policy was arranged by an insurance broker as agent of the insured.

No change from 2010 Bill proposals

information that, by this Act, is required or permitted to be given, be deemed to be the agent of the insurer and not of the insured.

62 Cancellation of instalment contracts of general insurance

- 1) An instalment contract of general insurance may include provisions inconsistent with section 59 with respect to the cancellation of the contract for non-payment of an instalment of the premium.
- 2) An insurer may not rely on such provision unless:
 - a) At least one instalment of the premium has remained unpaid, at the time when the contract is sought to be cancelled, for a period of at least one month; and
 - b) Before the contract was entered into, the insurer clearly informed the insured in writing of the effect of the provision.

(reference to s77 was removed because of repeal below)

70 Notices to be given to life insureds in certain cases

Where, by this Act, provision is made with respect to the giving of a *notice or other document* or information to an insured, then, in the case of an individual superannuation contract, a reference in the provision to the insured shall be read as a reference to the life insured.

77 Giving Notices (repealed)

<p>SECTION 21 – THE INSURED’S DUTY OF DISCLOSURE</p> <p>Current Position Currently, under section 21(1), an insured has a duty to disclose to the insurer, before the relevant policy is entered into, every matter that is known to the insured, being a matter that:</p> <ul style="list-style-type: none"> • The insured knows to be a matter relevant to the decision of the insurer whether to accept the risk, and if so, on what terms – ss21(1)(a); or • A reasonable person in the circumstances could be expected to know to be a matter so relevant – ss21(1)(b). <p>The relevant test in s21(1)(b) contains both subjective elements (what the insured knows to be relevant to the insurer’s decision) and objective elements (what a reasonable person in the circumstances could be expected to know would be relevant to the insurer’s decision).</p> <p>Change Government has included both the class of persons who would ordinarily be expected to apply for cover of that type and the nature and extent of cover provided by the contract of insurance in the subjective/objective test in section 21 of the ICA.</p> <p>The inclusion of these non-exclusive factors (i.e. A court can consider other factors it sees fit) is considered to provide appropriate outcomes for consumers and insurers alike.</p>	<p>21 The insured’s duty of disclosure</p> <ol style="list-style-type: none"> 1) Subject to this Act, an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured being a matter that: <ol style="list-style-type: none"> a) The insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or b) A reasonable person in the circumstances could be expected to know to be a matter so relevant, having regard to factors including, but not limited to: <ol style="list-style-type: none"> (i) <i>The nature and extent of the insurance cover to be provided under the relevant contract of insurance; and</i> (ii) <i>The class of persons who would ordinarily be expected to apply for insurance cover of that kind</i> 2) The duty of disclosure does not require the disclosure of a matter: <ol style="list-style-type: none"> a) That diminishes the risk; b) That is of common knowledge; c) That the insurer knows or in the ordinary course of the insurer’s business as an insurer ought to know; or d) As to which compliance with the duty of disclosure is waived by the insurer 3) Where a person: <ol style="list-style-type: none"> a) Failed to answer; or b) Gave an obviously incomplete or irrelevant answer to; 	<p>Timing</p> <p>The amendment commences on the day after the end of the period of 30 months form Royal Assent. 28 December 2015.</p> <p>The amendment made by this Part applies to:</p> <ul style="list-style-type: none"> • A contract of insurance that is originally entered into after the commencement of this item; and • A contract of general insurance that was originally entered into before the commencement if this item and is renewed after that commencement. <p>If:</p> <ul style="list-style-type: none"> • A contract of life insurance that was originally entered into before the commencement of this item is carried after that commencement to: <ul style="list-style-type: none"> ○ Increase a sum insured under the contract in respect of one or more life insureds; or ○ Prove one more additional kinds of insurance; or ○ Provide on or more
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<p>This change appears unlikely to fix the issues which have previously arisen in relation to this test.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>The timing for its implementation has also changed to the day after the end of the period of 30 months from Royal Assent – see Timing and to do list.</p> <p>Change made to timing regarding life insurance contracts to take account of automatic variation issues.</p>	<p>A question included in a proposal form about a matter, the insurer shall be deemed to have waived compliance with the duty of disclosure in relation to the matter.</p>	<p>additional kinds of insurance cover; and</p> <ul style="list-style-type: none"> • The variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied; <p>Then:</p> <ul style="list-style-type: none"> • The contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and • The amendments made by this Part apply to the contract to the extent of the variation. <p>To do</p> <p>Claims procedures will need to be considered in light of this but little change is likely as the new factor is probably within the procedures insurers already have in place.</p>
<p>NEW DUTY OF DISCLOSURE IN RELATION TO ELIGIBLE CONTRACTS</p> <p>Current Position</p> <p>Currently under the IC Act different duty of disclosure obligations apply in relation to “eligible contracts”.</p>	<p>21A Eligible contracts of insurance – duty of disclosure before contract originally entered into</p> <p><i>Scope</i></p> <p>1) <i>This section applies in relation to the original entering into of an eligible contract of insurance.</i></p> <p><i>Note: This section does not apply in relation to the</i></p>	<p>Timing</p> <p>21A applies to an eligible contract of insurance that is originally entered into after the section’s commencement which is day after the end of the period of 30 months</p>

<p>An eligible contract is essentially defined in Regulation 2B as a contract which is for new business and wholly in a specified class of contracts which are: Regulations 5 (Motor Vehicle Insurance), Regulation 9 (Home Buildings Insurance), Regulation 12 (Home Contents Insurance), Regulation 21 (Consumer Credit Insurance – this also applies to life policies); and Regulation 25 (Travel Insurance).</p> <p>A contract of new business that is not within the above classes can still be an eligible contract if the insurer, in accordance with the regulation, chooses to “opt in”.</p> <p>New Business Change – s21A Section 21A only applies when the relevant eligible contract is first entered into (i.e. new business and not for renewals, variations, reinstatements, extensions or replacements).</p> <p>The Government was concerned that the current ability to ask ‘catch all’ questions tended to undermine the benefits for insureds of the framework for eligible contracts of insurance. Insurers should be in a position to decide what matters are material to their decision to provide eligible contracts of insurance and formulate specific questions accordingly. In the event that an insurer is unable to foresee a matter that is relevant to their decision whether to accept the risk of a particular contract, then Government considered that it is difficult to justify expecting an unsophisticated insured to realise its relevance.</p> <p>The changes made by the introduction of a new section</p>	<p><i>renewal, extension, reinstatement or variation of an eligible contract of insurance. Section 21B applies in relation to the renewals of an eligible contract of insurance</i></p> <p><i>Position of the insurer</i></p> <ol style="list-style-type: none"> 2. <i>Before the contract is originally entered into, the insurer may request the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms</i> 3. <i>If the insurer does not make a request in accordance with subsection (2), the insurer is taken to have waived compliance with the duty of disclosure in relation to the contract</i> 4. <i>If the insurer:</i> <ol style="list-style-type: none"> a) <i>Makes a request in accordance with subsection (2); and</i> b) <i>Requests the insured to disclose to the insurer any other matter that could be covered by the duty of disclosure in relation to the contract; then the insurer is taken to have waived compliance with the duty of disclosure in relation to that other matter</i> <p><i>Position of the insured</i></p> <ol style="list-style-type: none"> 5) <i>If:</i> <ol style="list-style-type: none"> a) <i>The insurer makes a request in accordance with subsection (2); and</i> b) <i>In answer to each specific question included in the request, the insured discloses each matter that:</i> <ol style="list-style-type: none"> (i) <i>Is known to the insured; and</i> 	<p>from Royal Assent. 28 December 2015.</p> <p>Section 21B commences from the date of royal Assent BUT the section itself provides that it does not apply in relation to the renewal of an eligible contract of insurance during the transition period (i.e. day after the end of the period of 30 months from Royal Assent) unless, before the contract is renewed, the insurer has clearly informed the insured in writing of the general nature and effect of this section.</p> <p>This gives insurers a transition period if they want it but gives them the ability to comply earlier without breaching the law.</p> <p>Section 21 will apply in all other cases.</p> <p>Regulations that were in force under subsection 21A(9) of the Insurance Contracts Act 1984 immediately before the commencement of this item continue to have effect after that commencement as if they had been made under subsection 21A(6) of the Insurance Contracts Act 1984, as substituted by item 3.</p>
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<p>21A and 21B are designed to:</p> <ul style="list-style-type: none"> Remove the ability of insurers to ask ‘catch all’ questions in relation to eligible contracts; and Apply enhanced rules for the duty of disclosure on original inception and renewal of eligible contracts. <p>Section 21A currently requires the insurer to ask the insured specific questions and, where the insurer chooses to do so, an exceptional circumstances question as well. If the insurer does not comply with these requirements it effectively waives its duty of disclosure in relation to the failure.</p> <p>Section 21A is to be amended so that the insurer will only be permitted to ask specific questions for new business eligible contracts. No exceptional circumstances questions will be permitted.</p> <p>Renewal Changes – s21B</p> <p>In addition to the above, a new section 21B will apply in relation to the renewal of eligible contracts of insurance.</p> <p>This requires an insurer wishing to rely on the duty of disclosure to:</p> <ul style="list-style-type: none"> Ask specific questions, (in the same manner as when the policy was originally entered into); and/or Provide the insured, prior to renewing the policy, with a copy of any matters previously disclosed by the insured in relation to the policy and request the insured to disclose any changes to those matters or to indicate if there are no such changes 	<p>(ii) <i>A reasonable person in the circumstances could be expected to have disclosed in answer to that question:</i></p> <p><i>Then the insured is taken to have complied with the duty of disclosure in relation to the contract</i></p> <p><i>Definition</i></p> <p>6) <i>In this section:</i></p> <p><i>Eligible contract of insurance</i> means a contract of insurance that is specified in the regulations for the purposes of this section.</p> <p><i>Saving of regulations</i></p> <p>1) <i>Regulations that were in force for the purposes of subsection 21A(9) of the Insurance Contracts Act 1984 immediately before the commencement of this item continue to have effect after that commencement as if they have been made for the purposes of subsection 21A(6) of the Insurance Contracts Act 1984, as submitted by item 6.</i></p> <p>2) <i>Sub item (1) does not prevent the amendment or repeal of regulations covered by that sub item</i></p> <p><i>21B Eligible contracts of insurance – disclosure before contract renewed</i></p> <p><i>Scope</i></p> <p>1) <i>This section applies in relation to the renewal of an eligible contract of insurance after the commencement of this section (regardless of when the contract was originally entered into).</i></p> <p>2) <i>However, this section does not apply in relation to the</i></p>	<p>To do</p> <p>Insurers will have to amend existing documentation and sales and claims procedures to take the above into account.</p> <p>Insurance brokers need to be aware of these new rights and obligations when advising their clients regarding their duty of disclosure obligations.</p>
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If the insurer fails to do these things, it is taken to have waived compliance with the duty in relation to the renewed policy. However, this does not affect the insurer's rights in relation to non-disclosures made under previous renewals or at the time of the policy's original inception. An insurer can rely on any such non-disclosure or misrepresentation made prior to the last disclosure but not in relation to any changes that occur after that time.

Where the insurer asks the insured to update matters previously provided and the insured provides no response before the policy is renewed, the insured is deemed to have advised the insurer that there is no change to the matter.

Interestingly, section 21 will apply to all variations, extensions and reinstatements of eligible contracts that do not constitute renewals.

This means, that depending on the circumstances, three different types of obligation can apply.

Change from 2010 Bill proposals

An opt in provision has been added in relation to section 21B. An insurer can opt in earlier to comply with s21B. The section provides that it will not apply in relation to the renewal of an eligible contract on insurance during the transition period (30 months beginning on date of Royal Assent) unless, before the contract is renewed, the insurer has clearly informed the insured in writing of the general nature and effect of this section.

renewal of an eligible contract of insurance during the transition period unless, before the contract is renewed, the insurer has clearly informed the insured in writing of the general nature and effect of this section

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

Position of the insurer

- 3) *Before the contract is renewed, the insurer may do either or both of the following things:*
- a) *Request the insured to answer one or more specific, questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms;*
 - b) *Give the insured a copy of any matter previously disclosed by the insured in relation to the contract and request the insured:*
 - (i) *To disclose to the insurer any change to that matter, or*
 - (ii) *To inform the insurer that there is no change to that matter.*

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

- 4) *If the insurer does not:*
- a) *Make a request in accordance with paragraph (3)(a); or*
 - b) *Give the insurer a copy of any matter previously disclosed by the insured and make a request in accordance with paragraph (3)(b);*

If this were not done insurers would not technically have been able to opt in earlier and would have faced difficulties in the timing of compliance.

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

Note: This subsection is affected by subsection (12)

5) *If the insurer:*

(a) Makes a request in accordance with paragraph (3)(a); and

(b) Also requests (other than in accordance with paragraph (3)(b) the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the renewed contract;

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

Note: This subsection is affected by subsection (12)

6) *If the insurer:*

(a) Gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and

(b) Also requests (other than in accordance with paragraph (3)(a) the insured to disclose to the insurer any other matter that would be covered by the duty of disclosure in relation to the renewed contract;

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

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

	<p><i>Position of the insured</i></p> <p>7) <i>If:</i></p> <ul style="list-style-type: none"> (a) <i>The insurer makes a request in accordance with paragraph (3)(a), but does not give the insured a copy of any matter previously disclosed by the insured or make a request in accordance with paragraph (3)(b); and</i> (b) <i>Before the contract is renewed, the insured discloses, in answer to each specific question included in the request, each matter that:</i> <ul style="list-style-type: none"> (i) <i>Is known to the insured; and</i> (ii) <i>A reasonable person in the circumstances could be expected to have disclosed in answer to that questions;</i> <p><i>Then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract.</i></p> <p><i>Note: This subsection is affected by subsection (12).</i></p> <p>8) <i>If:</i></p> <ul style="list-style-type: none"> (a) <i>The insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b), but does not make a request in accordance with paragraph (3)(a); and</i> (b) <i>Before the contract is renewed, the insured:</i> <ul style="list-style-type: none"> (i) <i>Discloses any change to the matter; or</i> (ii) <i>If there is no change to the matter – informs the insurer that there is no change to the matter;</i> <p><i>Then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract</i></p>	
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	<p><i>Note: This subsection is affected by subsection (12).</i></p> <p>9) <i>If:</i></p> <p>(a) <i>The insurer:</i></p> <p>(i) <i>Makes a request in accordance with paragraph (3)(a); and</i></p> <p>(ii) <i>Gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and</i></p> <p>(b) <i>Before the contract is renewed, the insured:</i></p> <p>(i) <i>Discloses each matter referred to in paragraph (7)(b); and</i></p> <p>(ii) <i>Does either of the things referred to in paragraph (8)(b);</i></p> <p><i>Then the insured is taken to have complied with the duty of disclosure in relation to the renewed contract.</i></p> <p><i>Note: This subsection is affected by subsection (12)</i></p> <p>10) <i>If:</i></p> <p>(a) <i>The insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and</i></p> <p>(b) <i>Before the contract is renewed, the insured does not disclose any change to the matter;</i></p> <p><i>Then the insured is taken to have informed the insurer that there is no change to the matter</i></p> <p>11) <i>If:</i></p> <p>(a) <i>The insurer gives the insured a copy of any matter previously disclosed by the insured and makes a request in accordance with paragraph (3)(b); and</i></p>	
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*(b) Before the contract is renewed, the insured informs the insurer under subsection (8) or (9), or is taken to have informed the insurer under subsection (10), that there is no change to the matter;
Then neither subsection 21(3) nor does section 27 applies in relation to any failure by the insured to disclose any change to the matter.*

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

*12) If the insured failed to comply with the duty of disclosure in relation to the contract as originally entered into or any renewal of that contract, then, despite any other provision of this section:
(a) The insurer is not taken to have waived compliance with the duty of disclosure in relation to the earlier failure; and
(b) The insured is not taken to have complied with the duty if disclosure in relation to the earlier failure*

Definitions

13) In this section:

***Change**, to a matter previously disclosed by an insured in relation to an eligible contract of insurance, means a change to the matter that:
(a) Is known to the insured; and
(b) A reasonable person in the circumstances could be expected to disclose in relation to that matter.*

***Eligible contract of insurance** has the same meaning as in section 21A.*

	<p>Renewed contract means an eligible contract of insurance that is entered onto by way of renewal.</p> <p>Transition period means the period of 30 months beginning on the day this section commences</p>	
<p>NOTICE OBLIGATION CHANGES (s22 – also deemed notice changes affecting s40 and certain liability policies)</p> <p>Current Position Insurers have a current obligation, before the policy is entered into, to clearly inform the insured in writing of the general nature and effect of the duty of disclosure and, where it has application, section 21A.</p> <p>There is a prescribed form of writing which can be used (and varied by the insurer but at the insurer’s own peril). Any insurer that has not complied may not exercise a right in respect of a failure to comply with a duty of disclosure unless the failure was fraudulent.</p> <p>Exceptions to this obligation apply, notably:</p> <ul style="list-style-type: none"> • where an insurance broker is acting as agent of the client (s71). As a matter of practice insurers do in fact provide such notices in their documentation. A broker is however required to take responsibility for ensuring that its client is aware of its duty of disclosure which can in some cases go beyond the simple provision of the relevant prescribed form of notice; and • where, at or before the original entering into, or the renewal, extension or reinstatement, of a policy, the insurer has given the notice to the insured, the 	<p>22 Insurer to inform of duty of disclosure</p> <ol style="list-style-type: none"> 1) <i>the insurer must, before a contract of insurance is entered into, clearly inform the insured in writing:</i> <ol style="list-style-type: none"> (a) <i>of the general nature and effect of the duty of disclosure; and</i> (b) <i>if section 21A or 21B applies to the contract – of the general nature and effect of that section; and</i> (c) <i>if the contract is contract of life insurance – of the effect of section 31A; and</i> (d) <i>that the duty of disclosure applies until the proposed contract is entered into</i> <i>note: if the insurer wishes to rely on section 21B during the transition period (within the meaning of section 21B) in relation to the renewal of an eligible contract of insurance, the insurer must also comply with subsection 21B(2) before the contract is renewed</i> 2) <i>if the proposed contract is a contract of life insurance, the insurer must also before the contract is entered into, clearly inform, in writing, any person (other than the insured) who, under the contract, would become a life insured of the matters referred to in subsection (1).</i> 3) <i>If:</i> <ol style="list-style-type: none"> (a) <i>An insurer complies with subsection (1) in relation</i> 	<p>Timing</p> <p>The changes are to apply to contracts originally entered into or renewed, extended, varied or reinstated after commencement of the section which is the day after the end of the period of 30 months from Royal Assent. 28 December 2015.</p> <p>This means that the new section 22 comes into effect at the same time as section 21A but in some cases later than the operation of section 21B where an insurer opts in earlier.</p> <p>The result seems to be that for an insurer that has opted for section 21B earlier:</p> <ul style="list-style-type: none"> • The old s22 notice obligation must be complied with; and • Subsection 21B(2) requirement must be complied with – this requires the insurer to clearly inform the insured in writing of

<p>requirement to give the notice is deemed to be satisfied at or before any subsequent renewal, extension or reinstatement of the policy, except in relation to a variation involved in a renewal, extension or reinstatement of the policy (in which case the notice must be given). This is referred to as the "deemed notice exception".</p> <p>Changes The changes:</p> <ul style="list-style-type: none"> • amend the section 22 notice obligation to take into account the new duty of disclosure obligations that are to apply to eligible contracts (see s21A and s21B above); • require any notice to explain that the duty applies up until the time that the proposed policy is entered into; • require the insurer, where the insurer's acceptance or counter-offer, in relation to the insurance is made more than two months after the insured's most recent disclosure for the purposes of complying with the duty, to provide with its acceptance or counter-offer, a reminder that the duty applies until the proposed policy or in the case of a counter-offer (the other policy) is entered into. This additional reminder requirement is not extended to a life insured unless the life insured is also the contracting insured. <p>The aim of this change is to ensure that, where there is a significant delay between the initial disclosure and the</p>	<p><i>to a proposed contract of insurance; and</i></p> <p><i>(b) The insurer accepts an offer by the insured to enter into the proposed contract, or makes a counter offer to enter into another contract of insurance with the insured; and</i></p> <p><i>(c) The insurer's acceptance or counter offer is made more than 2 months after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the proposed or other contract is entered into. Then the insurer must give to the insured, with the acceptance or counter offer, a reminder notice stating that the duty of disclosure applies until the proposed or other contract is entered into.</i></p> <p>4) <i>If the regulation prescribe a form of writing to be used:</i></p> <p><i>(a) For informing a person of the matters referred to in subsection (1); or</i></p> <p><i>(b) For the reminder notice referred to in subsection (3);</i> <i>The writing to be used may be in accordance with the prescribed form</i></p> <p>5) <i>An insurer who has not complied with subsection (1) and (if applicable) subsection (2) may not exercise a right in respect of a failure to comply with the duty of disclosure, unless the failure was fraudulent.</i></p> <p>6) <i>If:</i></p> <p><i>(a) An insurer is required to comply with subsection (3) in relation to contract of insurance; and</i></p> <p><i>(b) The insurer does not do so;</i> <i>Then the insurer may not exercise a right in respect of a failure to comply with the duty of disclosure in</i></p>	<p>the general nature and effect of section 21B.</p> <p>To do Insurers will need to amend existing documentation and sales and claim procedures to the changes into account.</p> <p>New procedures will also be required regarding the reminder notice requirement and the claims process regarding the amendments. Insurers also need to ensure procedures take account of the deemed notice change regarding sections 22 and 40.</p> <p>Insurance brokers acting as agents of insurers I need to do the above where they have responsibility for such matters for the insurer.</p> <p>Insurance brokers acting for clients need to need to be aware of these new rights and obligations when advising their clients regarding their duty of disclosure obligations.</p>
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<p>policy commencing, the insured is well aware of its obligation to continue to update the disclosure.</p> <p>The "deemed notice exception" (see above) has been amended to also require the section 22 notice for a variation where the varied policy will provide "a kind of insurance cover that was not provided by the policy immediately before the variation".</p> <p>The above deemed notice change also affects notices to be given by reason of s40. This section applies in relation to a contract of liability insurance the effect of which is that the insurers liability is excluded or limited by reason that notice of a claim against the insured in respect of a loss suffered by some other person is not given to the insurer before the expiration of the period of the insurance cover provided by the contract. The insurer must, before the contract is entered into:</p> <ul style="list-style-type: none"> clearly inform the insured in writing of the effect of subsection (3) (in effect deemed claim provision where facts that might give rise to a claim against the insured are notified before expiry); and if the contract does not provide insurance cover in relation to events that occurred before the contract was entered into, clearly inform the insured in writing that the contract does not provide such cover. <p>It is important to note that the deemed notice exception won't work for:</p> <ul style="list-style-type: none"> renewals, extensions or reinstatements of the contract; if the varied contract will not provide a kind of insurance cover that was not provided by the contract 	<p><i>relation to a new matter relating to the contract, unless the failure was fraudulent.</i></p> <p>7) <i>For the purposes of subsection (6)m a new matter relating to a contract of insurance is a matter of which the insured first becomes aware after the insured's most recent disclosure for the purpose of complying with the duty of disclosure in relation to the contract.</i></p> <p>Associated changes: 11(10) (10) Notwithstanding subsection (9):</p> <ol style="list-style-type: none"> Subject to paragraph ©, where, after the commencement of this Act and at or before the original entering into, or the renewal, extension or reinstatement, of a contract of insurance, the insurer has given information to the insured as required by section 22, 35, 37, 37C, 40, 44, 49 or 68, the requirement by that section to give information to the insured shall be deemed to be satisfied at or before any subsequent renewal, extension or reinstatement of the contract; Section 22 and 40 do not require and insurer to give information to the insured at or before a variation of the relevant contract of insurance <i>unless subsection (10A) applies to the variation</i> Sections 35, 37, 37C, 44, 49 and 68 require a insurer to give information to the insured at or before a variation of the relevant contract of insurance, but only to the extent that the information relates to the provision or provisions varied or proposed to be varied. 	
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<p>immediately before the variation; or</p> <ul style="list-style-type: none"> • in the case of variation of a contract of life insurance if the variation will, increase a sum insured in respect of the insured, <p>provided the variation was not an automatic variation but required express agreement between the insurer and the insured before the contract was varied.</p> <p>Life insurance contracts may contain some common variations, such as consumer price index increases, that are normally contained within the contract, as such these automatic variations would not (in a practical sense) be considered to be variations to which the legislation would apply. Therefore to ensure automatic variations are not captured by section 11(9) of ICA, section 11(10) has been amended and new section 11(10A) has been inserted to ensure that if agreement between the insurer and the insured is not required in respect to that variation before a contract is entered into, that variation (automatic variation) is not considered to be a variation for the purposes of the application of the ICA.</p> <p>New forms of prescribed notice will be required and implemented in the regulations (yet to be released).</p> <p>No change has been made to the rights that an insured has if the insurer fails to provide the section 22 notice. A failure to comply with the new reminder obligation precludes the insurer from exercising a right in respect of the failure to disclose any "new matter" (i.e. a matter that the insured first becomes aware of after its most recent disclosure).</p> <p>Specific changes have also been made in relation to life insurance duty of disclosure obligations which are dealt</p>	<p><i>(10A) This subsection applies to a variation of a contract of insurance if:</i></p> <p><i>(a) The variation:</i></p> <ul style="list-style-type: none"> <i>(i) Is involved in a renewal, extension or reinstatement of the contract; or</i> <i>(ii) Will provide a kind of insurance cover that was not provided by the contract immediately before the variation; or</i> <i>(iii) In the case of a contract of life insurance – will increase a sum insured under the contract in respect of one or more of the like insureds; an</i> <p><i>(b) The variation is not automatic variation but is required to be expressly agreed between the insurer before the contract is varied.</i></p>	
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<p>with in the life insurance section below.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>An amendment to take account of life insurance automatic variations</p>		
<p>BUNDLED CONTRACTS GENERALLY</p> <p>Current Position There are no provisions or unbundling rules in the IC Act in relation to contracts that cover insurance caught by the IC Act.</p> <p>Changes New rules have been introduced to provide for the unbundling of contracts which contain both types of cover.</p> <p>Essentially, as a result of the new rules, the different covers and relevant provisions applicable to them will be treated as separate contracts for the purposes of the IC Act as the IC Act affected cover will be treated as one contract and the non IC Act cover treated as another when applying the IC Act.</p> <p>A different rule applies in relation to bundled workers' compensation and common law cover as discussed below. Those two covers will be treated together as a separate policy to the other covers that might be caught by the IC Act.</p> <p>The other covers will, to the extent that they are and are not caught by the IC Act, be separated in accordance with</p>	<p>9(1A) to 9(1C)</p> <p><i>(1A) If a contract of insurance, or proposed contract of insurance includes:</i></p> <p><i>a) Provisions (the first group of provisions) that would, if they comprised a single contract or proposed contract, form a contract referred to in any paragraphs (1)(a) to (f); and</i></p> <p><i>b) Provisions (the second group of provisions) that would, if they comprised a single contract proposed contract, form a contract other than a contract referred to in any of paragraphs (1)(a) to (f); Then subsection (1) applies as if the first group of provisions and the second group of provisions were each a separate contract or proposed contract</i></p> <p><i>(1B) Despite subsection (1A), if a contract of insurance, or a proposed contract of insurance, includes:</i></p> <p><i>a) A provisions (the second group of provisions) that provide insurance cover of the kind referred to in subparagraph (1)(f)(ii);</i></p> <p><i>b) Then subsection (1) applies as if the first group of provisions and the second group of provisions were together a separate contract or proposed contract.</i></p> <p><i>(1C) If:</i></p>	<p>Timing</p> <p>The amendment made by this Part applies from the date the Act receives Royal Assent 28 June 2013 to:</p> <ul style="list-style-type: none"> • A contract of insurance that is originally entered onto the commencement of this item; and • A contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement. <p>If:</p> <ul style="list-style-type: none"> • A contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to: <ul style="list-style-type: none"> ○ Increase a sum insured under the contract in respect of one or more life insureds; or

<p>the rules.</p> <p>Bundled contracts will be unbundled into separate contracts for the purpose of applying remedies in section 29 of the IC Act when the provisions contained in the bundled contracts can be separated into group of provisions that would constitute a standalone contract that provides a particular type of cover.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>Minor changes to 1C regarding related provisions and application related to life insurance. An amendment to take account of life insurance automatic variations.</p>	<p>a) <i>A provisions (a related provision) of a contract of insurance, or a proposed contract of insurance, relates to or affects the operation of a group or groups of provisions included in the contract or proposed contract; and</i></p> <p>b) <i>Because of subsection (1A) or (1B), subsection (1) applies as if that group or those groups or provisions were a separate contract or proposed contract or proposed contract;</i></p> <p><i>then the related provision is, for the purposes of subsection (1), to be regarded as a provision included in that separate contract or proposed contract</i></p> <p>Bundled contracts will be unbundled into separate contacts for the purpose of applying remedies in section 29 of the ICA when the provisions contained in the bundled contracts can be separated onto groups of provisions that would constitute a standalone contract that provides a particular type of cover.</p>	<ul style="list-style-type: none"> ○ Provided one or more additional kinds of insurance cover; and ● The variation was not an automatic variation but was required to be expressly agreed between the insurer and he insured before the contract was varied; <p>then:</p> <ul style="list-style-type: none"> ○ The contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and ○ The amendments made by this Part apply to the contract to the extent of the variation <p>To do Amend wordings and claims procedures to take these changes into account.</p>
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GUIDANCE ON CHANGES AFFECTING GENERAL INSURANCE ONLY

AREA AFFECTED AND CHANGES	REVISED SECTIONS WITH CHANGES INCORPORATED (ACTUAL AMENDMENTS IN ITALICS)	TIMING AND TO DO LIST
<p>BUNDLED WORKERS COMPENSATION POLICIES</p> <p>Current Position The IC Act currently exempts certain policies or proposed policies that have been entered into for the purposes of a state or territory law that relates to worker’s compensation or compensation for death or injury to a person arising from the use of a motor vehicle (per s9(1)€).</p> <p>Some contracts provide employees with cover that is both within the scope of the IC Act and outside the scope of the IC Act (e.g. contracts of insurance that bundle both cover for compulsory worker’s compensation purpose and cover for liability to employees at common law arising from employment-related personal injury).</p> <p>Changes (s9(1)(f)) The entire policy is now to be exempted from the IC Act,</p> <p>This means that any contracts entered into (or proposed to be entered into) that bundle compulsory workers’ compensation cover and cover in respect of an employer’s liability under the rule of common law that requires payment of damages to a person for employment-related personal injury will be exempt from the IC Act. To the extent that they are mixed with other forms of cover</p>	<p>9 Exceptions to application of Act</p> <p>(1) Except as otherwise provided by this Act, this Act does not apply to or in relation to contracts and proposed contracts:</p> <p>(a) Of reinsurance; or</p> <p>(b) Of insurance entered into, or proposed to be entered into, by a private health insurer within the meaning of the Private Health Insurance Act 2007 in respect of its health insurance business within the meaning of Division 121 or that Act; or</p> <p>(c) of insurance entered into, or proposed to be entered into, by a private health insurer within the meaning of the Private Health Insurance Act 2007 in respect of its health-related business within the meaning of section 131-15 of that Act that is conducted through a health benefits fund (as defined by section 131-10 of that Act); or</p> <p>(d) of the insurance entered into, or proposed to be entered into, by a friendly society; or</p> <p>(e) of insurance entered into, or proposed to be entered into, by the Export Finance and Insurance Corporation, other than short-term insurance contracts within the meaning of the Export Finance and Insurance Corporation Act 1991 that are entered into on or after the</p>	<p>Timing</p> <p>The amendment made by this Part applies from the date the Act receives Royal Assent 28 June 2013 to:</p> <ul style="list-style-type: none"> • a contract of insurance that is originally entered into after the commencement of this item; and • a contract of general insurance that was originally entered into before the commencement of this item and is renewed after that commencement. <p>To do Amend wordings and claims procedures to take these changes into account. Of note is the fact that the common law personal injury cover is no longer subjected to IC Act.</p>

<p>different rules apply (see bundled contracts section above).</p> <p><i>No change from 2010 Bill proposals.</i></p>	<p>commencement of this paragraph; or</p> <p>(f) to or in relation to which the Marine Insurance Act 1909 applies; or</p> <p>(g) entered into or proposed to be entered into for the purposes of a law (including a law of a State or Territory) that relates to:</p> <p>(i) workers' compensation; or</p> <p>(ii) compensation for the death of a person, or for injury to a person, arising out of the use of a motor vehicle; or</p> <p>(h) <i>entered into a proposed to be entered into:</i></p> <p>(i) <i>for the purpose of a law (including a law of State or a Territory) that relates to workers' compensation; and</i></p> <p>(ii) <i>to provide insurance cover in respect of an employer's liability under a rule of the common law that requires payment of damages to a person for employment related personal injury.</i></p>	
<p>THIRD PARTY BENEFICIARIES</p> <p>Current Position</p> <p>The concept of a third party beneficiaries (i.e. a person specified in the policy as entitled to claim but who is not a contracting insured) is currently only dealt with in section 48 of the IC Act.</p> <ul style="list-style-type: none"> • Under subsection 48(1), TPBs can recover from the insurer under the policy any loss suffered by the TPB even though it is not a party policy. • Under subsection 48(2) the TPB has the same obligations in relation to a claim as the TPB would 	<p>41 Contracts of liability insurance – consent of insurer required for settlement etc. of claim</p> <p>1) <i>This section applies in relation to a contract of liability insurance if it would constitute a breach of the contract if, without the consent of the insurer, the insured or any third party beneficiary were:</i></p> <p>(a) <i>To settle or compromise a claim made against the insured or third party beneficiary; or</i></p> <p>(b) <i>To make and admission or payment in respect of such a claim.</i></p> <p>2) <i>If the insured or any third party beneficiary (the claimant) under the contract has made a claim under</i></p>	<p>Timing</p> <p>Commences the date after the end of the period of 12 months from Royal Assent. 28 June 2014</p> <p>The amendments apply to a contract of general insurance that:</p> <ul style="list-style-type: none"> • Is originally entered into after the commencement of this item; and • Was originally entered into before the commencement of

<p>have if it were the insured.</p> <ul style="list-style-type: none"> Under subsection 48(3) it was open to debate as to whether a general insurer in defending an action brought by a TPB, could raise defences relating to the conduct of the insured which occurred either before or after the policy was entered into (e.g. non-disclosure by the insured). <p>Under section 41 of the IC Act, an insured that has made a claim under a contract of liability insurance may require the insurer to inform in writing:</p> <ul style="list-style-type: none"> Whether the insurer admits that the policy applies to the claim, and If the insurer so admits, whether they propose to conduct, on behalf of the insured, the negotiations in any legal proceedings in respect of a claim made against the insured. <p>If the insurer fails to do so within a reasonable time the insurer is prevented from refusing the claim or reducing the amount payable by reason of a breach of the policy for the above reasons.</p> <p>Changes</p> <p>A new definition of “Third Party Beneficiary” (TPB) has been inserted into the Act because the term is now used in a number of provisions other than section 48.</p> <p>A TPB is defined as a person who is not a party to the policy but it specified or referred to in the policy, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the policy extends</p>	<p><i>a contract, the claimant may at any time, by notice in writing given to the insurer, require the insurer to inform the insured in writing:</i></p> <p><i>(a) Whether the insurer admits that the contract applies to the claim; and</i></p> <p><i>(b) If the insurer so admits, whether the insurer proposes to conduct, on behalf of the claimant, the negotiations and any legal proceedings in respect of the claim made against the claimant.</i></p> <p>3) <i>If the insurer does not, within a reasonable time after being given a notice under subsection (2), inform the claimant:</i></p> <p><i>(a) That the insurer admits that the contract of liability insurance applies to the claim; and</i></p> <p><i>(b) That the insurer proposes to conduct, on behalf of the claimant, the negotiations and any legal proceedings in respect of the claim made against the claimant.</i></p> <p><i>Then:</i></p> <p><i>(c) The insurer may not refuse payment of the claim; and</i></p> <p><i>(d) The amount payable in respect of the claim is not reduced;</i></p> <p><i>by reason only that the claimant breached the contract as mentioned in subsection (1).</i></p> <p>48 Contracts of general insurance – entitlements of third party beneficiaries</p> <p>1) <i>A third party beneficiary under a contract of general insurance has a right to recover from the insurer, in accordance with the contract, the amount of any loss suffered by third party beneficiary even though the</i></p>	<p>the item and is renewed after that commencement.</p> <p>To do</p> <p>It is crucial that people understand that different rights and obligation of such third party beneficiaries when compared with the rights and obligations of the contracting insured.</p> <p>A failure to do so can expose insurance brokers to risk and insurers to disputes.</p> <p>In relation to section 41 insurers need to check that liability policy documentation isn’t inconsistent with the change and amend claims procedures where appropriate.</p>
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<p>(section 11 (1)).</p> <p>No change has been made to the rights under subsection 48(1) or (2) as they exist.</p> <p>Subsection 48(3) has been clarified to make it clear that, in defending and action brought by a TPB, a general insurer may raise defences relating to the conduct of the insured which occurred either before or after the policy was entered into (e.g. non-disclosure by the insured).</p> <p>Section 41 will be amended to extend the right in relation to a policy of a TPB, not just the contracting insured.</p> <p>In addition, section 13 has been amended to extent the duty of utmost good faith in relation to TPBs as well as contracting insureds. However, the duty only applies after the policy is entered into because to apply the duty pre-contractually would be impractical. The duty is of most relevance to TPBs where they wish to make a claim under the policy.</p> <p><i>No change from 2010 Bill proposals</i></p>	<p><i>third party beneficiary is not a party to the contract.</i></p> <p>2) Subject to the contract, <i>the third party beneficiary</i></p> <p>(a) <i>Has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and</i></p> <p>(b) <i>May discharge the insured's obligations in relation to the loss</i></p> <p>3) The insurer has the same defences to an action under this section as the insurer would have in action by the insured, <i>including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into).</i></p>	
<p>RIGHTS OF THRID PARTIES TO RECOVER AGAINST INSURERS</p> <p>Current Position</p> <p>Currently section 51 of the IC Act provides that under a contract of liability insurance, where an insured has died or cannot, after reasonable enquiry, be found, a third party may bring an action against the insurer directly for an amount equal to the insurer's liability under the policy</p>	<p>51 Claims against insurer in respect of liability of insured or third party beneficiary</p> <p>1) <i>If:</i></p> <p>(a) <i>The insured or any third party beneficiary under a contract of liability insurance is liable in damages to another person; and</i></p> <p>(b) <i>The contract provides insurance cover in respect of the liability; and</i></p>	<p>Timing</p> <p>Commences day after the end of the period of 12 months after Royal Assent. 28 June 2014</p> <p>The amendments made by this Part apply to:</p>

<p>regarding the liability of the insured.</p> <p>Changes Section 51 will be amended to also cover the liability of a TPB so the third party can exercise similar rights in relation to a TPB covered under the relevant policy.</p> <p><i>No significant change from 2010 Bill proposals</i></p>	<p>(c) <i>The insured or the third party beneficiary has died or cannot, after reasonable inquiry, be found; Then the other person may recover from the insurer and amount equal to the insurer's liability under the contract in respect in respect of the liability of the insured or third party beneficiary</i></p> <p>2) A payment under subsection (1) is a discharge, to the extent of the payment, in respect of:</p> <p>(a) The insurer's liability under the contract; and (b) <i>The liability of the insured or third party beneficiary, or the legal personal representative of the insured or third party beneficiary, to the other person</i></p> <p>3) This section does not affect any right that the <i>other person has in respect of the liability of the liability of the insured or third party beneficiary</i> being a right under some other law of the Commonwealth or under a law of a State or Territory.</p>	<p>(a) A contract of liability insurance that is originally entered into after the commencement of this item; and</p> <p>(b) A contract of liability insurance that was originally entered into before the commencement of this item and is renewed after that commencement.</p> <p>To do Insurers need to check liability policy documentation isn't inconsistent with the change and change liability claims procedures where appropriate.</p> <p>Insurance brokers need to be aware of this new right for TPBs they act for.</p>
<p>SUBROGATION CHANGES</p> <p>Current Position The rules regarding subrogation are currently set out in section 67.</p> <p>Changes The current rules are to be replaced by new rules which apply where an insurer that is liable under general insurance policy in respect of a loss has a right of subrogation in respect of the loss and an amount is recovered (whether by the insurer or insured) in respect of</p>	<p>67 Rights with respect to moneys recovered under subrogation etc.</p> <p><i>Scope</i></p> <p>1) <i>This section applies if:</i></p> <p>(a) <i>An insurer is liable under a contract of general insurance in respect of a loss; and</i></p> <p>(b) <i>The insurer has a right of subrogation in respect of the loss; and</i></p> <p>(c) <i>An amount is recovered (whether by the insurer or the insured) from another person in respect of the loss.</i></p>	<p>Timing</p> <p>The changes apply to a contract originally entered into 6 months after Royal Assent or originally entered into before Royal Assent and renewed 6 months after it. 28 December 2013.</p> <p>To do This is a significant change and</p>

<p>the loss.</p> <p>Any of the new rules are subject to the terms of the policy and any agreement made after the relevant loss has occurred.</p> <p>The rules have been extended to apply to TPBs as well as the contracting insured.</p> <p>Where the insurer has recovered the relevant amount:</p> <ul style="list-style-type: none"> • The insurer is entitled to get the amount paid to the insured for the loss under the policy and an amount paid by the insurer for administrative and legal costs incurred in connection with recovery (the initial amount). the insurer is also entitled to any interest awarded on any amount recovered; and • If the recovery exceeds the above, the insured gets the excess up to the insured's overall loss (the insured's overall loss is defined as their loss less the payment made to them by the insurer) and the insurer gets any amount in excess of that. <p>Where insured recovers the amount:</p> <ul style="list-style-type: none"> • The insured gets their overall loss and any amount paid by the insured for administrative and legal costs incurred in connection with the recovery (initial amount). The insured is also entitled to any interest awarded on any amount recovered; and • If the recovery exceeds the above, the insurer is entitled to get the amount paid to the insured for the loss under the policy and the insured gets any amount 	<p><i>Amount recovered by insurer</i></p> <p>2) <i>If the amount is recovered by the insurer in exercising the insurer's right subrogation in respect of the loss:</i></p> <p>(a) <i>The insurer is entitled under this paragraph to so much of the amount as does not exceed the sum of:</i></p> <p>(i) <i>The amount paid by the insurer to the insured in respect of the loss; and</i></p> <p>(ii) <i>The amount paid by the insurer for administrative and legal costs incurred in connection with the recovery; and</i></p> <p>(b) <i>If the amount recovered exceeds the amount to which the insurer is entitled under paragraph (a) – the insured is entitled under this paragraph to so much of the excess as does not exceed the insured's overall loss; and</i></p> <p>(c) <i>Of the amount recovered exceeds the sum of:</i></p> <p>(i) <i>The amount to which the insurer is entitled under paragraph (a); and</i></p> <p>(ii) <i>The amount (if any) to which the insured is entitled under paragraph (b);</i></p> <p><i>the insurer is entitled to the excess</i></p> <p><i>Amount recovered by insured</i></p> <p>3) <i>If the amount is recovered by the insured:</i></p> <p>(a) <i>The insurer is entitled under this paragraph to so much of the amount as does not exceed the sum of:</i></p> <p>(i) <i>The insured's overall loss; and</i></p> <p>(ii) <i>The amount paid by the insured for administrative and legal costs incurred in connection with the recovery; and</i></p>	<p>insurers will need to consider current practices having regard to these new default rules and amend procedures and policies where appropriate.</p> <p>Insurance brokers will need to consider how any such changes will impact on their client's rights.</p>
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in excess of that.

Where there is a joint recover:

- Where the amount recovered is equal to the sum of the initial amounts each is entitled to, each get these; and
- Where the amount is greater than the sum of the initial amounts each is entitled to:
 - Each gets these initial amounts;
 - The portion of the remainder is calculated on a pro-rate basis in proportion to administrative/legal costs incurred in connection with recovery by both parties; and
 - Interest awarded on the amount recover is to be divided fairly having regard to the amount each is entitled to under the above and the period of time for which each have lost the use of the money.

No significant change from 2010 Bill proposals

- (b) *The amount recovered exceeds the amount to which the insured is entitled under paragraph (a) – the insurer is entitled to so much of the excess as does not exceed the amount paid by the insurer to the insured in respect of the loss; and*
- (c) *If the amount recovered exceeds the sum of:*
 - (i) *The amount to which the insured is entitled under paragraph (a); and*
 - (ii) *The amount (if any) to which the insurer is entitled under paragraph (b);**the insured is entitled to the excess*

Amount recovered by insurer and insured jointly

- 4) *Subsection (5), (6) and (7) apply if the amount is recovered by the insurer and the insured jointly.*
- 5) *If the amount recovered is less than the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount, the insurer and the insured are each entitled to a portion of the amount recovered, calculated on a pro rata basis in proportion to the paragraph (2)(a) amount and the paragraph (3)(a) amount*
- 6) *If the amount recovered is equal to the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount:*
 - (a) *The insurer is entitled to the paragraph (2)(a) amount; and*
 - (b) *The insured is entitled to the paragraph (3)(a) amount*
- 7) *If the amount recovered exceeds the sum of the paragraph (2)(a) amount and the paragraph (3)(a) amount, then;*
 - (a) *The insurer is entitled to the paragraph (2)(a) amount; and*

- (b) *The insured is entitled to the paragraph (3)(a) amount; and*
- (c) *In addition to those amounts, the insurer and the insured are each entitled to a proportion of the remainder of the amount recovered, calculated on a pro rate basis is proportion to the amounts referred to in subparagraphs (2)(a)(ii) and (3)(a)(ii).*

Amount awarded by way of interest

8) *If an amount (the **interest amount**) by way of interest is awarded in respect of the amount recovered (the **principal amount**), the following apply:*

- (a) *If the principal amount was recovered by the insurer, the insurer is entitled to the interest amount;*
- (b) *If the principal amount was recovered by the insured, the insured is entitled to the interest amount;*
- (c) *If the principal amount was recovered by the insurer and the insure jointly, the interest amount is to be divided fairly between the insurer and the insured, having regard to:*
 - (i) *The amounts to which the insurer and the insured are each entitle under subsection (5), (6) or (7), as the case requires; and*
 - (ii) *The period of time during which the insurer and the insured have lost the use of their money*

Rights of insurer and insured are subject to contract and any agreement

9) *The rights of the insurer and the insured under this*

section in respect of a loss are subject to:

- (a) The relevant contract of insurance; and
- (b) Any agreement made between the insurer and the insured after the loss occurred.

Definitions

10) In this section:

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

Paragraph (2)(a) amount means the sum of the amounts referred to in subparagraphs (2)(a)(i) and (ii)

Paragraph (3)(a) amount means the sum of the amounts referred in subparagraphs (3)(a)(i) and (ii),

Associated change:

Before section 65 insert:

64 Application to third party beneficiaries

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

GUIDANCE ON CHANGES AFFECTING LIFE INSURANCE ONLY

AREA AFFECTED AND CHANGES	REVISED SECTIONS WITH CHANGES INCORPORATED (ACTUAL AMENDMENTS IN ITALICS)	TIMING AND TO DO LIST
<p>UNBUNDLING OF LIFE POLICES</p> <p>Current Position Currently, due to the bundling of life policies, remedies which are available for misrepresentation or non-disclosure in relation to only one aspect of a bundled life policy, have to be applied to the policy as a whole.</p> <p>Change Section 27A proposes to change this by providing that:</p> <ul style="list-style-type: none"> • If a life policy contains two or more groups of provisions (e.g. death and disability cover) or two or more life insureds, then the remedies in Division 3 of Part IV for misrepresentation and non-disclosure apply to each type of cover of each life insured, as if the policy contained only the one type of cover in relation to only the one insured; and • Where a life policy contains an element of cover that is not underwritten or is underwritten on different terms (e.g. group life policy that provides automatic cover and which has a top-up option), the elements are regarded as separate kinds of cover for the purposes of section 27A. 	<p>27A (new)</p> <p>27A Certain contracts of life insurance may be treated as if they comprised 2 or more separate contracts of life insurance</p> <p>1) If:</p> <p>(a) A contract of life insurance includes 2 or more groups of provisions (for example, provisions that are grouped into 2 or more separate parts); and</p> <p>(b) Each group of provisions could form a single contract of life insurance; then this Division applies as if each group of provisions were a separate contract of life insurance.</p> <p>2) If:</p> <p>(a) A contract of life insurance includes 2 or more groups of provisions (for example, provisions that are grouped into 2 or more separate parts); and</p> <p>(b) Because of subsection (1), this Division applies as if each group of provisions were a separate contract of life insurance; and</p> <p>(c) The contract also includes provisions (related</p>	<p>Timing The unbundling provisions of section 27A have retrospective effect and will apply to a life policy whether originally entered into before or after the date of Royal Assent.</p> <p>The amendments made by this Part do not affect any proceedings in progress at the commencement of this item in relation to a contract of life insurance or any appeal in relation to any such proceedings.</p> <p>To do This is a significant change and insurers will need to amend their policies and procedures to reflect the changed rights of life insureds in such circumstances.</p> <p>Insurance brokers need to ensure they advise their clients about the new rights in situations where there is alleged non-disclosure and</p>

<p>The above allows the remedies for misrepresentation and non-disclosure to apply to each different element of the policy as if each element or aspect were a separate contract.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>The 2010 Bill proposals have been refined to move from the “kind of insurance” provided to an approach which more closely align with Part 3 of the 201 Act.</p> <p>Bundled contracts will be unbundled into separate contracts for the purpose of applying remedies in section 29 of the ICA when the provisions that would constitute a standalone contract that provides a particular type of cover.</p> <p>It was also clarified that the amendments made by this Part do not affect any proceedings at the commencement of this item in relation to a contract of life insurance or any appeal in relation to any such proceedings.</p>	<p>provisions) that relate to or affect the operation of one or more of the groups of provisions referred to in paragraph (a). then the related provisions are, for the purpose of this Division, to be regarded as provisions included in each relevant separate contract of life insurance referred to in paragraph (b).</p> <p>3) If a contract of life insurance provides insurance cover in relation to 2 or more life insureds, this Division applies as if the insurance cover provided in relation to each life insured were provided by a separate contract of life insurance.</p> <p>4) If a contract of life insurance provides:</p> <p>(a) Insurance cover in relation to a life insured that is underwritten on particular terms; and</p> <p>(b) Insurance cover relation to that life insured that:</p> <p>(i) Is not underwritten; or</p> <p>(ii) Is underwritten on different terms;</p> <p>then this Division applies as if the insurance cover referred to in paragraph (a) and the insurance cover referred to in paragraph (b) were each provided by a separate contract of life insurance.</p> <p>Note: The effect of this section in relation to a contract of life insurance to which subsection (1), (3) or (4) applies is that different remedies may be available to the insurer in respect of each separate contract of life insurance that is taken to exist by virtue of the relevant subsection.</p>	<p>misrepresentation.</p>
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<p>REMEDY FOR MISSTATEMENT OF DATE OF BIRTH</p> <p>Current Position Currently, section 30 of IC Act sets out specific remedies for life insurers in circumstances where the date of birth of one or more of the life insureds was incorrectly stated at the time life policy was entered into.</p> <p>Change An additional remedy is to be included which will allow an insurer to vary the life policy by changing its expiration date to a date calculated on the basis of the correct date of birth (where known) in circumstances relevant section 30.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>No changes to Bill proposals.</p>	<p>30 Misstatement of age</p> <p>1) In this section, the standard formula, in relation to a contract of like insurance means the formula:</p> $\frac{SP}{Q}$ <p>Where: S is the number of dollars that is equal to the sum insured (including any bonuses). P is the number of dollars that is equal to the premium that has, or the sum of the premiums that have, become payable under the contract: and Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that would have become payable under the contract if it or they had been ascertained on the basis of the correct date of birth or dates of birth.</p> <p>2) If the date of birth of one or more of the life insureds under a contract of life insurance was not correctly stated to the insurer at the time when the contract was entered into:</p> <p>(a) Where the sum insured (including any bonuses) exceeds the amount in dollars ascertained in accordance with the standard formula – the insurer may at any time vary the contract by substituting for the sum insured (including any bonuses) an amount that is not less than the amount in dollars so ascertained; and</p> <p>(b) Where the sum insured (including any bonuses) is less than the amount so ascertained, the</p>	<p>Timing</p> <p>The amendment commences on the date the Act receives the Royal Assent. 28 June 2013</p> <p>The amendment made by this Part applies to a contract of life insurance that is originally entered into after the commencement of this item.</p> <p>If:</p> <ul style="list-style-type: none"> • a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to: <ul style="list-style-type: none"> • increase a sum insured under the contract in respect of one or more life insureds; or • provide one or more additional kinds of insurance cover; and • the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied; <p>then:</p> <ul style="list-style-type: none"> • the contract is treated, to
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	<p>insurer shall either:</p> <p>(i) Reduce, as from the date on which the contract was entered into, the premium payable if the contract had been based on the correct date of birth or correct dates of birth and repay the amount of overpayments of premium (less any amount that has been paid if the contract had been based on the correct date of birth or correct dates of birth) together with interest on that amount at the prescribed rate computed from the date on which the contract was entered into; or</p> <p>(ii) Vary the contract by substituting for the sum insured (including any bonuses) the amount in dollars so ascertained.</p> <p>3) In the application of subsection (2) in relation to a contract that provides for periodic payments, the sum insured means each payment (including any bonuses).</p> <p><i>If:</i></p> <p>(a) <i>The expiration date of a contract of life insurance is calculated by reference to the date of birth of a person which is a life insured under the contract; and</i></p> <p>(b) <i>The person's date of birth was not correctly stated to the insurer at the time when the contract was entered into;</i></p> <p><i>then the insurer may (instead of doing any of the things referred to in subsection (2)) vary the contract by changing its expiration date to the date that would have been the expiration date if the contract had been based on the correct date</i></p>	<p>the extent of the variation, as if it had been originally entered into after the commencement of this item; and</p> <ul style="list-style-type: none"> the amendments made by this Part apply to the contract to the extent of the variation. <p>To do</p> <p>Insurers will need to amend their wordings and procedures to take account of the above.</p> <p>Insurance brokers will need to advise their clients of the impact of this new insurer remedy when explaining the client's duty of disclosure and obligations regarding representations.</p>
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	<p>of birth.</p> <p>4. A variation of a contract under subsection (2) or (3A) has effect from the time when the contract was entered into.</p>	
<p>CANCELLATION OF LIFE POLICIES</p> <p>Current Position Currently, there is no section 60 (general insurance cancellation rights) equivalent for life policies, and no provision in the IC Act that allows for a life insurer to cancel a life policy for any reason (cancellation of life policies for non-payment of premium is currently regulated by the <i>Life Insurance Act 1995</i> (Cth))</p> <p>Changes A new section 59A allows the insurer under a contract of life insurance to cancel the contract if the insured has made a fraudulent claim under the first contract or another contract with the insure that provides insurance cover. The rights for cancellation of non-payment of premium are unchanged.</p> <p>The ability for an insurer to cancel contracts where a fraudulent claim has been made under that contract or another contract is provided on the basis that if a fraudulent claim occurred, the relationship between the insurer and the insured could have sourced to the point that the insurer no longer wants to cover the insured under any terms.</p>	<p>59A Cancellation of contracts of life insurance (new)</p> <p>1) <i>An insurer under a contract of life insurance (the first contract) may cancel the contract if the insured has made a fraudulent claim:</i></p> <p>(a) <i>Under first contract; or</i></p> <p>(b) <i>Under another contract of insurance with the insurer that provides insurance cover during any part of the period during which the first contract provides insurance cover</i></p> <p>2) <i>If an insurer has cancelled a contract of life insurance under subsection (1) because of a fraudulent claim by the insured under the contract, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:</i></p> <p>(a) <i>Disregard the cancellation of the contract; and</i></p> <p>(b) <i>Order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and</i></p> <p>(c) <i>Order the insurer to reinstate the contract</i></p> <p>3) <i>If an insurance has cancelled a contract of life insurance (the cancelled contract) under subsection (1) because of a fraudulent claim by the insured under another contract of insurance with the insurer, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do</i></p>	<p>Timing</p> <p>The changes will apply to life policies that were originally entered into after Royal Assent. 28 June 2013</p> <p>To do</p> <p>Insurers will need to change policies and procedures to take the above new cancellation right into account.</p> <p>Insurance brokers will need to understand the change to properly advise their clients where an insurer relies on a cancellation right</p>

<p>However:</p> <ul style="list-style-type: none"> if an insurer has cancelled a contract of life insurance because of a fraudulent claim, in any proceedings in relation to the claim, the court may if it would be harsh or unfair not to do so, disregard the cancellation and order the insurer to pay, in relation to the claim, any amount the court considers just and equitable in the circumstances and order the insurer to reinstate the contract. If an insurer has cancelled a contract because of a fraudulent claim by the insured under another contract of insurance, the court may if it would be harsh or unfair not to do so, order the insurer to pay, in relation to the claim, any amount the court considers just and equitable in the circumstances and order the insurer to reinstate the cancelled contract. If an insurer has cancelled a contract because of a fraudulent claim, then, in any proceedings in relation to the cancellation, the court may if it would be harsh or unfair not to do so, reinstate the cancelled contract. <p>The court when exercising these powers must have regard to any other matter.</p> <p>Accordingly, cancellations of life policies (other than under the <i>Life Insurance Act</i>) will be void, unless they are effected in accordance with the new section 59A.</p> <p><i>Change from 2010 Bill proposals</i></p> <ul style="list-style-type: none"> Cancellation under this clause is now limited to where the insured has made a fraudulent claim. 	<p>so:</p> <ul style="list-style-type: none"> (a) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and (b) order the insurer to reinstate the cancelled contract. <p>4) <i>If an insurer has cancelled a contract of life insurance under subsection (1), then, in any proceedings in relation to the cancellation, the court may, if it would be harsh and unfair not to do so, order the insurer to reinstate the contract. This subsection does not limit, and is not limited by, subsection (2) or (3).</i></p> <p>5) <i>In exercising the power conferred by subsection (2), (3), or (4), the court:</i></p> <ul style="list-style-type: none"> (a) <i>Must have regard to the need to deter fraudulent conduct in relation to insurance; and</i> (b) <i>May also have regard to any other relevant matter.</i> <p>63 Cancellations of contracts of insurance void (whole section replace)</p> <p>1) <i>Except as provided by this Act, an insurer must not cancel a contract of general insurance.</i></p> <p>2) <i>Except as provided by this Act or section 210 of the Life Insurance Act 1995, an insurer must not cancel a contract of life insurance</i> <i>Note: Section 210 of the Life Insurance Act 1995 deals with cancellation of a contract of life insurance because non-payment of premium</i></p> <p>3) <i>Any purported cancellation of a contract of insurance</i></p>	
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<ul style="list-style-type: none"> The 2010 Bill proposal included where the insured failed to comply with the duty of utmost good faith, duty of disclosure, a misrepresentation during negotiation of the contract or failed to comply with provision of the contract (other than a failure to pay premium) Court's power in any proceedings in relation to the claim where an insurer has cancelled a contract of life insurance because of a fraudulent claim has been inserted. 	<p><i>in contravention of subsection (1) or (2) is of no effect.</i></p>	
<p>THIRD PARTY BENEFICIARIES (TPBs) (LIFE POLICIES) 48A Life policy for the benefit of <i>third party beneficiary</i></p> <p>Current Position Currently, section 48A applies to life policies that are effected on the life of one person, but expressed to be for the benefit of another person (a TPB)</p> <p>Changes Section 48A is to be amended to:</p> <ul style="list-style-type: none"> Allow for circumstances in which a person whose life is insured under a life policy may be a TPB; Ensure that a TPB who has claim over money payable under a life policy may bring an action against the insurer in respect of the claim without the intervention of the policy holder; and Ensure that the TPB is capable of giving a valid discharge to the insurer in relation to the insurer's obligations in respect of the claim. <p><i>Change from 2010 Bill proposals</i></p>	<p>48A Life policy for the benefit of <i>third party beneficiary</i></p> <p>1) <i>The following paragraphs have effect in relation to a contract of life insurance to the extent that the contract is expressed to be for the benefit of a third party beneficiary (who may be the life insured).</i></p> <p>(a) <i>The third party beneficiary has a right to recover from the insurer any money that becomes payable under the contract even though the third party beneficiary is not a party to the contract;</i></p> <p>(b) <i>If the third party beneficiary is not the life insured, any money paid to the third party beneficiary under the contract does not form part of the estate of the life insured.</i></p> <p>(1a) <i>Paragraph (1)(a) has effect in relation to a contract of life insurance that is maintained for the purposes of a superannuation or retirement scheme, subject to:</i></p> <p>(a) <i>The terms of the contract and the scheme; and</i></p> <p>(b) <i>Any other law;</i></p> <p><i>Relating to the payment of money under the contract of the scheme.</i></p>	<p>Timing</p> <p>Section 48A applies from the day after the end of the period of 12 months from Royal Assent. 28 June 2014</p> <p>The amendment made by part applies to:</p> <ul style="list-style-type: none"> a contract of life insurance that is originally entered into after the commencement of this item; <p>If:</p> <ul style="list-style-type: none"> a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to: <ul style="list-style-type: none"> increase a sum insured under the contract in

<p>The changes have been broadened to apply to any contract of like insurance, whereas the 2010 Bill proposal applied only to TPBs under a contract entered into under a RSA.</p> <p>Subsection 1A has been amended so that while a third party beneficiary has the right to recover from an insurer any money that becomes payable under a contract of insurance, for life insurance contracts maintained for the purposes of a superannuation or retirement scheme, the payment of money under the contract or the scheme is subject, the payment of money under the contract or the scheme is subject to the terms of the contract and the scheme and any other relevant laws.</p>	<p>2) <i>Subject to the contract, the third party beneficiary;</i> (a) <i>Has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and</i> (b) <i>May discharge the insured's obligations in relation to the payment of any money to the third party beneficiary under the contract.</i></p> <p>3) Nothing in this section restricts the capacity of a person to exercise any right or power under a contract of life insurance to which the person is a party. In particular nothing in this section restricts the capacity of a person:</p> <p>(a) To surrender a contract of life insurance to which the person is a party; or (b) To borrow money on the security of a contract of life insurance; or (c) To obtain a variation of a contract of life insurance, including a variation having the result that the contract ceases to be a contract to which this section applies.</p>	<p>respect of one or more life insureds; or</p> <ul style="list-style-type: none"> • provide one or more additional kinds of insurance cover; and • the variation was not an automatic variation but was required to be expressly agreed between the insurer and the insured before the contract was varied; <p>then:</p> <ul style="list-style-type: none"> • the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and • the amendments made by this Part apply to the contract to the extent of the variation. <p>To do Insurers will need to check policy documentation isn't inconsistent with this change and change claims procedures where appropriate.</p> <p>It is crucial that insurance brokers understand the different rights and obligation of such third party</p>
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		beneficiaries when compared with the rights and obligations of the contracting insured.
<p>48AA Life policy in connection with RSA for the benefit of third party beneficiary</p> <p>Current Position Section 48AA applies where a retirement savings account (RSA) provider takes out a policy for the benefit of RSA holders. It provides the same rights to an RSA holder as those provided under section 48 referred to above in relation to general insurance.</p> <p>Changes As with subsection 48(3), a change has been made in subsection 48AA(3) to make it clear in defending an action made by a TPB the life insurer may raise defences relating to the conduct of the insured and the conduct that may have occurred either before or after the policy was entered into (e.g. non-disclosure by the insured).</p> <p><i>No significant change from 2010 Bill proposals</i></p>	<p>48AA Life policy in connection with RSA for the benefit of third party beneficiary</p> <p>1) <i>This section applies in relation to a contract of life insurance if:</i> (a) <i>The contract is entered into in connection with an RSA; and</i> (b) <i>The owner of the policy is an RSA provided</i></p> <p><i>(1A) A third party beneficiary under the contract has a right to recover a benefit from the insurer in accordance with the contract even though the third party beneficiary is not a party to the contract</i></p> <p>2) Subject to the contract, <i>the third party beneficiary</i> (a) <i>Has, in relation to the third party beneficiary's claim, the same obligations to the insurer as the third party beneficiary would have if the third party beneficiary were the insured; and</i> (b) <i>May discharge the insured's obligations in relation to the payment of a benefit</i></p> <p>3) The insurer has the same defences to an action under this section as <i>the insurer</i> would have in an action by the insured, <i>including, but not limited to, defences relating to the conduct of the insured (whether the conduct occurred before or after the contract was entered into).</i></p>	<p>Timing</p> <p>Same as for section 48A</p> <p>To do Insurers will need to check policy documentation isn't inconsistent with this change and change claims procedures where appropriate.</p> <p>It is crucial that insurance brokers understand the different rights and obligation of such third party beneficiaries when compared with the rights and obligations of the contracting insured.</p>

<p>REMEDIES FOR NON DISCLOSURE AND MISREPRESENTATION</p> <p>Current Position Currently, section 29 of the IC Act provides certain remedies to life insurers in respect of non-disclosure and misrepresentation. There was a concern that these remedies were too limited in scope and were not applicable to many types of life policies available on the market.</p> <p>Change A new section 29 will now provide remedies in respect of all like policies (whether it is a traditional life policy with a surrender value or non-traditional life policy without a surrender value like TPD).</p> <p>Section 29 has been amended to make it clear that the insurer can avoid the particular policy if they would not have extended cover under any policy on any terms, had the true facts been known.</p> <p>In case of a life policy which does not involve a surrender value or does not provide cover for death of a life insured, under section 29:</p> <ul style="list-style-type: none"> • The insurer may vary the contract at any time; or • If the insurer does not avoid the contract or vary the contract using the statutory formula, the insurer may vary the contract in such a way as to place the insurer in the position in which the insurer would have been if the duty of disclosure had been complied with or the misrepresentation had not been made. In varying a 	<p>29 Life insurance</p> <p><i>Scope</i></p> <p>1) This section applies where the person who became the insured under a contract of like insurance upon the contract being entered into:</p> <ol style="list-style-type: none"> (a) Failed to comply with the duty of disclosure; or (b) Made a misrepresentation to the insurer before the contract was entered into; <p>But does not apply where:</p> <ol style="list-style-type: none"> (c) The insurer would have entered into the contract even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or (d) The failure or misrepresentation was in respect of the date of birth of one or more of the life insureds. <p><i>Note: If subsection 27A(1), (3) or (4) applies to the contract of life insurance, different remedies may be available to the insurer in respect of each separate contract of life insurance that is notionally taken to exist by virtue of relevant subsection.</i></p> <p><i>Insurer may avoid contract</i></p> <ol style="list-style-type: none"> 2) If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract 3) <i>If the failure was not fraudulent or the misrepresentation was not made fraudulently, the insurer may, within 3 years after the contract was entered into, avoid the contract</i> 	<p>Timing</p> <p>Same as for section 48A</p> <p>To do Insurers will need to amend their wordings and procedures to take account of the change.</p> <p>Insurance brokers will need to advise their clients of the impact of this change where appropriate</p>
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contract, the insurer must have regard to the position in which other reasonable and prudent insurers that had entered into similar contracts of life insurance and there had been no failure to comply with the duty of disclosure and no misrepresentation, by the insureds under the similar contracts, at the time the relevant contract was entered into.

In case of a life policy which does involve a surrender value or does provide cover for death of a life insured, the insurer may vary the contract using the prescribed formula before the expiration of 3 years after the contract was entered into (i.e. the current treatment of traditional life insurance contracts is not affected as a result of the changes in the Act)

It does not apply where the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds. Section 30 deals with this scenario.

Change from 2010 Bill proposals

Provides additional provisions regarding variations to the contract if the insurer does not avoid the contract within the relevant timeframe by requiring the varied contract to be similar to other contracts the insurer would have offered, or that another prudent insurer would have offered.

Provides details of when a variation of the contract will take effect from, being the time the contract was entered into.

Insurer may avoid contract

4) If the failure has not avoided the contract, whether under subsection (2) or (3) or otherwise, the insurer may, by notice in writing given to the insured, vary the contract by substituting for the sum insured (including any bonuses) a sum that is not less than the sum ascertained in accordance with the formula

$$\frac{SP}{Q}$$

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

Where:

S is the number of dollars that is equal to the sum insured (including any bonuses)

P is the number of dollars that is equal to the premium that has, or to the sum of the premiums that have, become payable under the contract; and

Q is the number of dollars that is equal to the premium, or to the sum of the premiums, that the insurer would have been likely to have charged if the duty of disclosure had been complied with or the misrepresentation had not been made.

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

	<p>5) In the application of subsection (4) in relation to a contract that provides for periodic payments, the sum insured means each such payment (including any bonuses).</p> <p>6) <i>If the insurer has not avoided the contract or has not varied the contract under subsection (4), the insurer may, by notice in writing give to the insured, vary the contract in such a way as to place the insured in the position (subject to subsection (7)) in which the insurer would have been if the duty of disclosure had been complied with or the misrepresentation had not been made.</i></p> <p><i>Note: This subsection does not apply in relation to a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured (see subsection (10)).</i></p> <p>7) <i>The position of the insurer under a contract (the relevant contract) that is carried under subsection (6) must not be inconsistent with the position in which other reasonable and prudent insurers would have been if:</i></p> <p><i>(a) They had entered into similar contracts of life insurance to the relevant contract; and</i></p> <p><i>(b) There had been no failure to comply with the duty of disclosure, and no misrepresentation, by the insureds under the similar contracts before they were entered into.</i></p> <p>8) <i>For the purpose of subsection (7), a contract of life insurance (the similar contract) is similar to another contract of life insurance (the relevant contract) if:</i></p>	
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	<p>(a) <i>The similar contract provides insurance cover that is the same as, or similar to, the kind of insurance cover provided by the relevant contract; and</i></p> <p>(b) <i>The similar contract was entered into at, or close to, the time the relevant contract was entered into</i></p> <p><i>Date of effect of variation of contract</i></p> <p>9) <i>A variation of a contract under subsection (4) or (6) has effect from the time when the contract was entered into</i></p> <p><i>Exception for contracts with a surrender value or that provide cover on death</i></p> <p>10) <i>If the contract is a contract with a surrender value, or a contract that provides insurance cover in respect of the death of a life insured:</i></p> <p>(a) <i>The insurer may vary the contract under subsection (4) before the expiration of 3 years after the contract was entered into, but not after that period; and</i></p> <p>(b) <i>Subsection (6), (7) and (8) do not apply in relation to the contract</i></p>	
<p>NON-DISLOSURE AND MISREPRESNETATION BY MEMBERS OF LIFE INSURANCE SCHEMES</p> <p>Current Position</p> <p>Section 32 of the IC Act provides that non-disclosures or misrepresentations made in respect of scheme members of superannuation and retirement schemes are treated as though the life policy were an individual policy that was entered into at the time when the proposed member</p>	<p>32 Non-disclosure or misrepresentation by life insured covered under group life contract (whole section substituted)</p> <p>1) <i>This Division extends to the case were there was a failure to comply with the duty of disclosure, or misrepresentation was made to the insurer, in respect of a proposed life insured under a group life contract, as if:</i></p>	<p>Timing</p> <p>Same as for section 48A</p> <p>To do</p> <p>The changes require insurers to consider whether existing procedures and documentation are affected and if so, make</p>

<p>joined the scheme. There was a concern that section 32 will deny an insurer a remedy if non-disclosure or misrepresentation occurred between joining of the scheme and obtaining the life cover.</p> <p>Changes Section 31 is amended to provide:</p> <ul style="list-style-type: none"> • That where there is a delay from the time of joining the scheme until the time that cover is actually effected, the relevant life policy is taken to be entered into at the time the proposed life insured became a life insured under the scheme (i.e. at the time the life insurance cover under the scheme took effect in relation to the member concerned); and • For a broader term ‘group life contract’ which is defined to mean a life policy that is maintained for the purpose of a superannuation or retirement scheme, or another scheme (including one not related to employment). <p>The term ‘blanket superannuation contract’ in subsection 4(2) be replaced with the expression ‘superannuation contract (other than an individual superannuation contract)’.</p> <p>Given the changes are effectively “fine tuning” the legislation it is not surprising that most are non-contentious (especially with the removal of the changes in relation to s54 for claims made and claims made and notified policies) but it is questionable whether the proposed duty of disclosure changes are appropriate.</p>	<p>(a) <i>The insurance cover provided by the group life insured were provided by an individual contract of life insurance between the insurer and the insured; and</i></p> <p>(b) <i>That group life contract had been entered into the time when the proposed life insured became a life insured under the group life contract.</i></p> <p>2) <i>For the purpose of this Division, if the failure to comply with the duty of disclosure, or the misrepresentation, occurred after the proposed life insured because a member of the relevant superannuation, retirement or other group life scheme but before the insurance cover was provided by the group life contract in respect of the life insured, then the failure or misrepresentation is taken to have occurred before the proposed life insured became a life insured under the group life contract.</i></p> <p>32A Non-disclosure or misrepresentation by holder of RSA</p> <p>This Division extends to the case where there was a failure to comply with the duty of disclosure, or a misrepresentation was made to the insurer in relation to a holder, or a person applying to become a holder, of an RSA as though:</p> <p>(a) The insurance cover provided in relation to that RSA in respect of that person were provided by a contract between the insurer as insurer and the RSA provider as the insured; and</p> <p>(b) That contract has been entered into at the time</p>	<p>amendments to take them into account.</p> <p>Insurance brokers acting for insureds will need to ensure they understand the new rights and obligations and the impact on insureds and third party beneficiaries so they can properly advise their clients.</p>
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<p><i>No significant change from 2010 Bill proposals</i></p>	<p>when the holder became the holder, or the person applying to become the holder, became the holder’.</p>	
<p>NON-DISCLOSURE BY LIFE INSURED</p> <p>Current position Life policies are often entered into by a person to cover the life of another person (life insured). Currently, a life insured (where such a person is not the contracting insured under the life policy) will not be subject to the duty of disclosure obligations.</p> <p>Change The proposed section 31A effectively applies the duty of disclosure to a life insured and provides that any non-disclosure by a life insured is imputed to the insured.</p> <p>The exceptions for non-disclosure of matters that currently apply to section 21 will also now apply to the new section 31A (e.g. matters known to the insurer or which the insurer waives the duty in relation to).</p> <p><i>Change from 2010 Bill proposals</i></p> <p>The words in 31A(2)(b)(ii) “the class of persons who would ordinarily be expected to apply for insurance cover of that kind” is an additional factor included since the 2010 Bill.</p> <p>Change made to timing regarding life insurance contracts to take account of automatic variation issues.</p>	<p>31A No- disclosure by life insured</p> <p>1) <i>This section applies in relation to a contract of life insurance under which a person (other than the insured) would become a life insured.</i></p> <p>2) <i>If, during the negotiations for the contract but before it was entered into, the person (the life insured) failed to disclose to the insurer a matter that was known to the life insured, being a matter that:</i></p> <p>(a) <i>The life insured knew to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or</i></p> <p>(b) <i>A reasonable person in the circumstances could have been expected to know to be a matter so relevant having regard to factors including but not limited to:</i></p> <p>(i) <i>The nature and extent of the insurance cover to be provided under the relevant contract of insurance; and</i></p> <p>(ii) <i>The class of persons who would ordinarily be expected to apply for insurance cover of that kind;</i></p> <p><i>This Act has effect as if the failure to disclose the matter had been a failure by the insured to comply with the duty of disclosure in relation to the matter</i></p> <p>3) <i>Subsection (2) does not apply in relation to a failure</i></p>	<p>Timing</p> <p>The amendment commences the day after the expiry of the period of 30 months from Royal Assent. 28 December 2015</p> <p>The amendment made by this Part applies to a contract of life insurance that is originally entered into after the commencement of this item.</p> <p>If:</p> <ul style="list-style-type: none"> • a contract of life insurance that was originally entered into before the commencement of this item is varied after that commencement to: <ul style="list-style-type: none"> ○ increase a sum insured under the contract in respect of one or more life insureds; or ○ provide one or more additional kinds of insurance cover; and • the variation was not an automatic variation but was required to be expressly agreed between the insurer and the

	<p>by the life insured to disclose a matter:</p> <p>(a) That diminishes the risk; or</p> <p>(b) That is of common knowledge; or</p> <p>(c) That the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know; or</p> <p>(d) As to which compliance with the duty of disclosure is waived by the insurer</p> <p>Associated changes: 11(1)</p> <p><i>Insert:</i> Life insured includes a proposed life insured.</p>	<p>insured before the contract was varied;</p> <p>then:</p> <ul style="list-style-type: none"> the contract is treated, to the extent of the variation, as if it had been originally entered into after the commencement of this item; and the amendments made by this Part apply to the contract to the extent of the variation. <p>To do Insurers will need to make changes to their policies to reflect the above.</p> <p>Insurance brokers need to ensure they advise their clients about these changes.</p>
<p>OTHER MINOR AMENDMENTS TO THE ACT</p> <p>Amendments to update sections for changes to terminology used for superannuation and group life contracts.</p> <p><i>Change from 2010 Bill proposals</i></p> <p>Minor amendments to the definition of proposal form made. All other changes are the same as the 2010 Bill.</p>	<p>Related amendments</p> <p>4 Previous contracts</p> <ol style="list-style-type: none"> Subject to subsection (2), this Act does not apply to or in relation to a contract of insurance that was entered into before the date of commencement if this Act, The application of sections 32, 54 and 56 extends to and in relation to a <i>superannuation contract</i> (other than an individual superannuation contract) that was 	<p>Insurers and insurance brokers need to be aware of the changes to terminology throughout these clauses.</p>

entered into before the date of commencement of this Act is so far as a person who becomes, on or after that date, a member of the relevant superannuation or retirement scheme is concerned.

11(1)

Insert:

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

- a) A superannuation or, retirement scheme under which there can be more than one life insured; or
- b) Another kind of group life scheme (including a scheme that is not related to employment) under which there can be more than one life insured.

Proposal form includes:

- a) A document containing questions to which a person is asked to give answers (whether in the document or not), where the answers are intended (whether by the person who answered them, by the insurer or by some other person) to be used in connection with a proposed contract of insurance; and
- b) A form relating to the proposed membership of a person of a superannuation, *retirement or other group life scheme*.

11(4)

1) For the purpose of this Act:

- (a) A superannuation contract is a contract of life insurance that is being maintained for the purposes of a superannuation or retirement scheme, where the insured is a trustee for the

	<p>purposes of the scheme; and</p> <p>(b) An individual superannuation contract is a superannuation contract as referred to in paragraph (a) under which there can be one life insured <i>only</i></p> <p>(c) <i>Repealed</i></p> <p>23 Ambiguous questions</p> <p>Where:</p> <p>(a) A statement is made in answer to a question asked in relation to a proposed contract of insurance or the provision of insurance cover in respect of a person who is seeking to become a member of a superannuation, <i>retirement or other group life scheme</i>; and</p> <p>(b) A reasonable person in the circumstances would have understood the question to have the meaning that the person answering the question apparently understood it to have;</p> <p>that meaning shall, in relation to the person who made the statement, be deemed to be the meaning of the questions.</p> <p>26 Certain statements not misrepresentations</p> <p>1) Where a statement that was made by a person in connection with a proposed contract of insurance was in fact untrue but as made on the basis of a belief that the person held, being a belief that a reasonable person in the circumstances would have held, the statement shall not be taken to be a misrepresentation.</p>	
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