

**Reprint  
as at 1 July 2013**



## **Insurance Law Reform Act 1977**

Public Act      1977 No 14  
Date of assent    29 July 1977  
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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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## **An Act to effect certain reforms in the law governing contracts of insurance**

### **1 Short Title**

This Act may be cited as the Insurance Law Reform Act 1977.

### **2 Interpretation**

In this Act, unless the context otherwise requires,—

**company** has the meaning ascribed to that term by section 41 of the Life Insurance Act 1908

**continuous disability insurance contract** means a contract of insurance (which is by its terms to be of more than 1 year's duration and is incorporated in a life policy) whereby any person is to be entitled to a benefit in the event of the occurrence, within the duration of the contract, of death by accident or by some other cause specified in the contract, or of injury or disability caused by accident or sickness

**life policy** means a policy insuring payment of money on death (not being death by accident or specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract); and includes an instrument evidencing a contract which is subject to the payment of premiums for a term dependent on the termination or continuance of human life and an instrument securing the grant of an annuity for a term dependent upon human life.

Compare: Life Insurance Act 1945–1973 s 4(1) (Aust)

### **3 Act to bind the Crown**

This Act shall bind the Crown.

### **4 Misstatements in contracts of life insurance**

(1) A life policy shall not be avoided by reason only of any statement (other than a statement as to the age of the life insured) made in any proposal or other document on the faith of which the policy was issued, reinstated, or renewed by the company unless the statement—

- (a) was substantially incorrect; and
- (b) was material; and
- (c) was made either—
  - (i) fraudulently; or

- (ii) within the period of 3 years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.
- (2) For the purposes of subparagraph (i) of paragraph (c) of subsection (1), a statement is made fraudulently if the person making it makes it—
  - (a) knowing it is incorrect; or
  - (b) without belief in its correctness; or
  - (c) recklessly, without caring whether it is correct or not.

Compare: Life Insurance Act 1945–1973 ss 4(1), 84 (Aust)

## **5 Misstatements in other contracts of insurance**

- (1) A contract of insurance shall not be avoided by reason only of any statement made in any proposal or other document on the faith of which the contract was entered into, reinstated, or renewed by the insurer unless the statement—
  - (a) was substantially incorrect; and
  - (b) was material.
- (2) Nothing in this section shall—
  - (a) apply in respect of any contract of insurance embodied in a life policy; or
  - (b) limit the provisions of sections 4 and 7.

Compare: Instruments Act 1958 s 25 (Vic)

## **6 Incorrectness and materiality defined**

- (1) For the purposes of sections 4 and 5, and notwithstanding any admission, term, condition, stipulation, warranty, or proviso in the application or proposal for insurance or in the life policy or contract of insurance, a statement is substantially incorrect only if the difference between what is stated and what is actually correct would have been considered material by a prudent insurer.
- (2) For the purposes of sections 4 and 5, and notwithstanding any admission, term, condition, stipulation, warranty, or proviso in the application or proposal for insurance or in the life policy or contract of insurance, a statement is material only if that statement would have influenced the judgment of a prudent insurer in fixing the premium or in determining whether he would have taken or continued the risk upon substantially the same terms.

Compare: 1908 No 112 s 20(2), (4)

## **7 Misstatement of age**

- (1) A life policy is not avoided by reason only of a misstatement of the age of the life insured.
- (2) Where the true age as shown by the proofs is greater than that on which the policy was based, the company may vary the sum insured by, and the bonuses

(if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age.

- (3) Where the true age as shown by the proofs is less than that on which the policy was based, the company shall either—
- (a) vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
  - (b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay to the policy owner the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

Compare: Life Insurance Act 1945–1973 s 83 (Aust)

## **8 Arbitration clauses not binding**

- (1) Subject to subsection (2), a provision of a contract of insurance entered into by an insured otherwise than in trade—
- (a) requiring differences or disputes arising out of or in relation to the contract to be referred to arbitration; or
  - (b) providing that no action or suit shall be maintainable upon the contract or against the insurer in respect of any claim under or difference or dispute arising out of or in relation to the contract unless the issue, claim, difference, or dispute has first been referred to arbitration or an award in arbitration proceedings has been first obtained; or
  - (c) providing that arbitration or an award in arbitration proceedings is a condition precedent to any right of action or suit upon or in relation to the contract; or
  - (d) imposing by reference to arbitration or to an award in arbitration proceedings any limitation on the right of any person to bring or maintain an action or suit upon or in relation to the contract,—
- shall not bind the insured.
- (2) An agreement made by the parties to a contract of insurance entered into by an insured otherwise than in trade after a difference or dispute has arisen out of or

in relation to the contract to submit the difference or dispute to arbitration shall have effect as if subsection (1) had not been enacted.

Compare: Insurance Amendment Act 1968 s 7 (Qld)

Section 8(1): amended, on 1 July 1997, by section 17 of the Arbitration Act 1996 (1996 No 99).

Section 8(2): amended, on 1 July 1997, by section 17 of the Arbitration Act 1996 (1996 No 99).

## **9 Time limits on claims under contracts of insurance**

(1) A provision of a contract of insurance prescribing any manner in which or any limit of time within which notice of any claim by the insured under such contract must be given or prescribing any limit of time within which any suit or action by the insured must be brought shall—

- (a) if that contract of insurance is embodied in a life policy and the claim, suit, or action relates to the death of the insured, not bind the insured; and
- (b) in any other case, bind the insured only if in the opinion of the arbitrator or court determining the claim the insurer has in the particular circumstances been so prejudiced by the failure of the insured to comply with such provision that it would be inequitable if such provision were not to bind the insured.

(2) Where—

- (a) the insured under any contract of insurance to which subsection (1)(b) applies fails to give notice of any claim in any manner or within any limit of time prescribed by the contract; and
- (b) the cost of repairing, replacing, or reinstating any property when it fails to be met is greater than that which would have applied if the notice had been given in the manner or within the time so prescribed,—

that greater cost shall not constitute prejudice to the insurer for the purposes of subsection (1)(b), but the insurer shall not be obliged to apply or pay in repairing, replacing, or reinstating the property a greater sum than that for which he would have been liable if the notice of claim had been given in the manner or within the time so prescribed.

Compare: Instruments Act 1958 s 27 (Vic)

## **10 Salesman, etc, to be agents of insurer**

- (1) A representative of the insurer who acts for the insurer during the negotiation of any contract of insurance, and so acts within the scope of his actual or apparent authority, shall be deemed, as between the insured and the insurer and at all times during the negotiations until the contract comes into being, to be the agent of the insurer.
- (2) An insurer shall be deemed to have notice of all matters material to a contract of insurance known to a representative of the insurer concerned in the negoti-

ation of the contract before the proposal of the insured is accepted by the insurer.

- (3) In this section the term **representative of the insurer** includes any servant or employee of the insurer and any person entitled to receive from the insurer commission or other valuable consideration in consideration for such person's arranging, negotiating, soliciting, or procuring the contract of insurance between a person other than himself and such insurer.

## 11 Certain exclusions forbidden

Where—

- (a) by the provisions of a contract of insurance the circumstances in which the insurer is bound to indemnify the insured against loss are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances; and
- (b) in the view of the court or arbitrator determining the claim of the insured the liability of the insurer has been so defined because the happening of such events or the existence of such circumstances was in the view of the insurer likely to increase the risk of such loss occurring,—

the insured shall not be disentitled to be indemnified by the insurer by reason only of such provisions of the contract of insurance if the insured proves on the balance of probability that the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of such events or the existence of such circumstances.

## 12 Actions on or in relation to contracts of insurance to be tried before a Judge alone

- (1) Notwithstanding anything in section 2 or section 3 of the Judicature Amendment Act (No 2) 1955, but subject to subsection (2), every action maintained upon any contract of insurance or against any insurer in respect of any claim under or difference or dispute arising out of or in relation to any contract of insurance shall, if tried in the High Court, be tried before a Judge without a jury.
- (2) The service of a third-party notice making an insurer a party to an action shall not affect the manner in which the issues between the plaintiff and the defendant are to be tried but any insurer who is so made a party to an action may, if he agrees to be bound by the issues arising between the plaintiff and the defendant, require the issues arising between the insurer and the party who served the third-party notice to be determined by a Judge without a jury if the insurer, within the time limited for filing his statement of defence, files a notice to that effect in the court and serves copies of it on the other parties to the action.

Section 12(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **12A Application for shares in company not to be contained in proposal for insurance**

- (1) A form of proposal for insurance that contains or purports to be an application for shares in a company must not be issued by or on behalf of the company.
- (2) If any person makes a proposal for insurance to a company, the company must not allot shares to that person without first receiving an application for shares that is contained in a document separate from the proposal for insurance.
- (3) If a company contravenes this section,—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$10,000:
  - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding \$10,000 if it is proved—
    - (i) that the act that constituted the offence under paragraph (a) took place with his or her authority, permission, or consent; or
    - (ii) that he or she—
      - (A) knew, or could reasonably be expected to have known, that the offence under paragraph (a) was to be or was being committed; and
      - (B) failed to take reasonable steps to prevent or stop it.
- (4) Nothing in this section affects the validity of a policy of insurance or of an allotment of shares of a company.
- (5) In this section, **company** has the same meaning as in section 2 of the Companies Act 1993.

Compare: 1994 No 117 s 33

Section 12A: inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 12A(3)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 12A(3)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **13 Application of Act**

- (1) This Act shall apply in relation to life policies whether issued, reinstated, or renewed before or after the commencement of this Act:  
provided that nothing in this subsection shall affect—
  - (a) the rights of any claimant under a life policy if the event giving rise to the claim occurred before the commencement of this Act; or
  - (b) the rights of the parties under any judgment given in any court before the commencement of this Act, or under any judgment given on any appeal from any such judgment, whether the appeal is commenced before or after the commencement of this Act; or

- (c) the rights of the parties to any award made—
    - (i) before the commencement of this Act following the reference of any matter to arbitration; or
    - (ii) after the commencement of this Act following the setting aside of an award made before the commencement of this Act; or
  - (d) in the case of an award to which paragraph (c) applies, the rights of the parties to any proceedings by way of appeal against the making of any such award or for the setting aside of any such award.
- (2) This Act shall apply in relation to contracts of insurance (other than life policies) entered into, reinstated, or renewed after the commencement of this Act.

**14 Marine Insurance Act 1908 to be subject to this Act**

Nothing in the Marine Insurance Act 1908 shall limit any provision of this Act and the provisions of this Act shall prevail in any case where they are in conflict with any provision of that Act.

**15 No contracting out**

The provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement or in any contract of insurance (whether embodied in a policy or not).

**16 Repeal**

*Amendment(s) incorporated in the Act(s).*

## Contents

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- 2 Status of reprints
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- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

## Notes

### **1** *General*

This is a reprint of the Insurance Law Reform Act 1977. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2** *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3** *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

### **4** *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Criminal Procedure Act 2011 (2011 No 81): section 413

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)

Arbitration Act 1996 (1996 No 99): section 17

Judicature Amendment Act 1979 (1979 No 124): section 12