# Contracts of Insurance Bill

Government Bill

## As reported from the committee of the whole House

This Bill was formerly part of the Contracts of Insurance Bill as reported from the Finance and Expenditure Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- this Bill comprising clauses 1 and 2, Parts 1 to 6, and Schedules 1 to 3
- Contracts of Insurance (Repeals and Amendments) Bill comprising Part 7 and Schedules 4 to 6.

# Key to symbols used in reprinted bill

## As reported from the committee of the whole House

text inserted

~~text deleted~~

*Hon Andrew Bayly*

# Contracts of Insurance Bill

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**The Parliament of New Zealand enacts as follows:**

## 1 Title

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

## 2 Commencement

(1) This Act comes into force on a date or dates set by Order in Council. 5

(2) Any part of the Act that has not come into force by the third anniversary of Royal assent comes into force then.

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

# Part 1
# Preliminary provisions

## 3 Purpose

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

(a) promote the confident and informed participation of insurers, policyholders, and other participants in the New Zealand insurance market; and

(b) ensure that the provisions included in contracts of insurance, and the practices of insurers in relation to those contracts, operate fairly.

## 4 Overview

In this Act,—

(a) this Part deals with preliminary matters, including interpretation and the application of this Act to the Crown:

(b) **Part 2**—

(i) requires a consumer to take reasonable care not to make a misrepresentation to the insurer before a consumer insurance contract is entered into or varied:

(ii) requires other policyholders to make to the insurer a fair presentation of the risk before a non-consumer insurance contract is entered into or varied:

(iii) provides fair remedies for a breach of those requirements:

(c) **Part 3**—

(i) relates to the terms of contracts of insurance, including restrictions on certain types of exclusions and other provisions:

(ii) requires life and health insurers to comply with regulations about genetic testing:

(iii) provides for third party claims against insurers:

(d) **Part 4** relates to insurance intermediaries (for example, brokers). The Part—

(i) provides that a payment by a policyholder to an intermediary discharges their liability to the insurer; and

(ii) imposes duties on brokers in relation to premiums; and

(iii) regulates insurance broking client accounts:

(e) **Part 5** relates to life policies, including providing for—

(i) interest on amounts payable under life policies; and

(ii) the assignment of life policies; and 5

(iii) life insurance for minors; and

(iv) life insurance for spouses, civil union partners, or de facto partners:

(f) **Part 6** contains miscellaneous provisions, including provisions relating to regulations. 10

## 5 Interpretation

(1) In this Act, unless the context otherwise requires,—

**arrange**, in relation to a contract of insurance, includes to negotiate, solicit, or procure the contract

**avoid**, in relation to a contract of insurance, means to avoid from its inception 15

**claims-made policy** has the meaning set out in **section 73**

**consent to access** has the meaning set out in **section 58**

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

**contract of insurance** has the meaning set out in **section 6**

**contract of marine insurance** has the same meaning as in section 3 of the Marine Insurance Act 1908 20

**court** means, in relation to any matter, the court by or before which the matter falls to be determined

**document** has the same meaning as in section 4(1) of the Evidence Act 2006

**duty of fair presentation** means the duty under **subpart 4 of Part 2** 25

**duty to take reasonable care not to make a misrepresentation** means the duty under **subpart 1 of Part 2**

**FMA** means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011

**FMCA** means the Financial Markets Conduct Act 2013 30

**health insurance** means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)

**incapable person** has the meaning set out in **section 153**

**insurer**— 35

(a) means a person by whom or on whose behalf the risk or part of the risk to which a contract of insurance relates is accepted; and

(b) includes, in relation to a proposed contract of insurance, the person who would be the insurer under **paragraph (a)** if the contract were entered into

**life insured**, in relation to a life policy, means the person upon whose death or survival benefits payable under that life policy are contingent

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

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

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

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

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

**policyholder**—

(a) means—

(i) the person who has entered into a contract of insurance with an insurer; or

(ii) if the rights of that person under the contract of insurance have been assigned, transferred by the operation of the contract, or transferred by operation of law, the person who has those rights; and

(b) includes, in relation to a proposed contract of insurance, the person who would be the policyholder under **paragraph (a)** if the contract were entered into

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

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

**regulations** means regulations in force under this Act

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

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

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

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

(a) A arranges the contract of insurance between the insurer and a person other than A; and

(b) A is paid or provided with a commission or other consideration in connection with arranging the contract; and

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

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

### 6 Meaning of contract of insurance

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

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

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

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

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

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

(aa) a contract of reinsurance:

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

### 7 Conflict of laws

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

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

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

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

(3) This section does not apply to **subpart 5 of Part 3** (*see* instead **sections 87(2) and (3), 89(2), and 98**).

### 8 Transitional, savings, and related provisions

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

### 9 Act binds the Crown

This Act binds the Crown.

# Part 2
# Disclosure duties

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

(1) In this Act, **consumer insurance contract**— 5

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

(b) includes a proposed contract that would be a contract of that kind if it were entered into. 10

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

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

(b) includes a proposed contract that would be a contract of that kind if it were entered into. 15

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

(a) includes a contract of insurance declared by the regulations to be a contract of that kind (and a proposed contract that would be a contract of that kind if it were entered into); but 20

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

### 12 Effect of certificate

(1) A contract of insurance is not a consumer insurance contract if— 25

(a) the policyholder (**P**) has given a certificate for the contract under section 446T(1) of the FMCA; and

(b) P's confirmation under section 446T(5)(b) of that Act includes a confirmation that P understands that P must make to the insurer a fair presentation of the risk before the contract is entered into or varied. 30

(2) Section 446T(2), (4), and (5) of that Act applies for the purposes of this section.

## Subpart 1—Disclosure duty for consumer insurance contracts

### 13 When this subpart applies

This subpart applies to consumer insurance contracts. 35

### 14 Policyholder must take reasonable care

(1) A policyholder must take reasonable care not to make a misrepresentation to the insurer before the consumer insurance contract is entered into or varied.

(2) Whether the policyholder has taken reasonable care must be determined with regard to all the relevant circumstances. 5

(2A) A misrepresentation made dishonestly must always be taken as showing lack of reasonable care.

(3) A failure by the policyholder to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this subpart (whether or not it could be apart from this subsection). 10

**Guidance note**

*See* **section 63**, which provides that the policyholder's duty replaces any duty relating to disclosure or representations by a policyholder to an insurer that existed in the same circumstances before this subpart came into force. 15

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

### 15 Matters that may be taken into account

(1) The following matters may be taken into account in determining whether the policyholder has taken reasonable care not to make a misrepresentation:

(a) the type of consumer insurance contract in question, and its target market: 20

(b) explanatory material or publicity produced or authorised by the insurer:

(c) how clear, and how specific, any questions the insurer asked the policyholder were:

(ca) if the policyholder failed to answer a question or gave an obviously incomplete or irrelevant answer to a question, what steps the insurer took in response to that failure or answer: 25

(d) how clearly the insurer communicated to the policyholder the importance of answering those questions and the possible consequences of failing to do so: 30

(e) whether the insurer has otherwise complied with **subpart 6** (which requires the insurer to inform the policyholder of certain matters):

(f) whether the policyholder received assistance or guidance in connection with a representation from a person referred to in **subsection (2)** (whether or not the person is an agent of the policyholder or the insurer): 35

(g) whether the duty applies in relation to—

(i) a new contract that has the effect of operating as a renewal of a preceding contract; or

(ii) a new contract that does not have that effect; or

(iii) a variation of an existing contract; or

(iv) a reinstatement of a previous contract of insurance.

(2) For the purposes of **subsection (1)(f)**, the persons are—

(a) a financial advice provider (within the meaning of section 6 of the FMCA); or

(b) a non-financial not-for-profit organisation (within the meaning of clause 13 of Schedule 5 of the FMCA); or

(c) a lawyer (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006).

(3) This section does not limit **section 14(2)**.

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

### 16 Standard of care required

(1) The standard of care required under this subpart is that of a reasonable policyholder who enters into a consumer insurance contract.

(2) If the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the actual policyholder, those must be taken into account.

(3) **Subsection (1)** is subject to **subsection (2)** and **section 14(2A)**.

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

### 20 Representations to specified intermediaries

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

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

(1) This section applies to a consumer insurance contract that is—

(a) a life policy on the life of an individual (**B**) who is not a party to the contract; or

(b) a contract of health insurance relating to the health of an individual (**B**) who is not a party to the contract.

(2) If this section applies,—

(a) specified information must be treated for the purposes of this Act as if it were provided by the person who is the party to the contract; but

(b) in relation to the specified information, if anything depends on the state of mind, knowledge, circumstances, or characteristics of the individual providing the information, it is to be determined by reference to B and not the party to the contract.

(3) This section applies regardless of whether or not the life policy or contract of health insurance also provides insurance cover relating to the life or health of a person other than B.

(4) In this section, **specified information** means information provided to the insurer by B about the insurance cover relating to B's life or B's health. 5

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

## Subpart 2—Group insurance

### 22 When this subpart applies

(1) This subpart applies if—

(a) a contract of insurance is entered into by a person (**A**) in order to provide insurance cover for another person (**B**) or it is varied in order to provide insurance cover for B; and 10

(b) B is not a party to the contract; and

(c) so far as the insurance cover for B is concerned, the contract would have been a consumer insurance contract if entered into by B rather than by A; and 15

(d) B provides information directly or indirectly to the insurer before the contract was entered into, or before it was varied to provide insurance cover for B.

(2) However, this subpart does not apply if **section 21** applies. 20

Compare: Consumer Insurance (Disclosure and Representations) Act 2012 s 7(1) (UK)

### 23 Person who has benefit of contract also has duty

(1) B must take reasonable care not to make a misrepresentation to the insurer before the contract of insurance is entered into or it is varied in order to provide insurance cover for B. 25

(2) So far as the cover for B is concerned, **sections 14(2) to (3) and 15 to 20**, **subpart 3**, and **Part 1 of Schedule 2** apply—

(a) with all necessary modifications to that duty as if B were the policyholder who entered into a consumer insurance contract for that cover with the insurer; and 30

(b) with the modifications set out in **Part 3 of Schedule 2**.

(3) In addition,—

(a) **section 27(1)(a)** applies as if it referred to a breach of the duty set out in this section; and

(b) **section 27(1)(b)** applies as if it required the insurer to prove that without the misrepresentation, the insurer would not have agreed to provide 35

insurance cover for B at all, or would have done so only on different terms.

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

**24 Breach by 1 member of group does not affect others**

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

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

**25 Policyholder's duties not limited**

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

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

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

**26 This subpart applies to consumer insurance contracts**

(1) This subpart applies to consumer insurance contracts.

(2) This section does not limit **section 23**.

**27 When insurer has remedy**

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

(a) A made the misrepresentation in breach of the duty set out in **subpart 1**; and

(b) the insurer proves that without the misrepresentation, the insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms.

(2) In this Act, a misrepresentation for which the insurer has a remedy against the consumer is a **qualifying misrepresentation**.

(3) The only such remedies available are set out in **Schedule 2**.

(4) *See* **sections 35(3) and 37(4)** of the Contract and Commercial Law Act 2017, which prevent an insurer from obtaining a remedy for a misrepresentation under that Act.

**28 Classification of qualifying misrepresentations**

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

(a) deliberate or reckless; or

(b) neither deliberate nor reckless.

### 29 When misrepresentation is deliberate or reckless

A qualifying misrepresentation is deliberate or reckless if the policyholder—

(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading; and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

### 30 Burden of proof and presumptions

(1) The insurer has the burden of proving that a qualifying misrepresentation was deliberate or reckless.

(2) However, it is presumed, unless the contrary is proved,—

(a) that the policyholder had the knowledge of a reasonable policyholder; and

(b) that the policyholder knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.

### 31 Life policy for 2 or more life insureds

If a life policy provides insurance cover in relation to 2 or more life insureds, this subpart and **Schedule 2** apply as if the insurance cover provided in relation to each life insured were provided by a separate contract of life insurance.

## Subpart 4—Disclosure duty for non-consumer insurance contracts

### 32 When this subpart applies

This subpart applies to non-consumer insurance contracts.

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

### 33 Policyholder has duty of fair presentation

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

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

### 34 What is fair presentation of risk

(1) A fair presentation of the risk is one—

(a) that makes the disclosure required by **section 35**; and

(b) that makes that disclosure in a manner that would be reasonably clear and accessible to a prudent insurer; and

(c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

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

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

### 35 What must be disclosed

(1) The policyholder is required to provide—

(a) disclosure of every material circumstance that the policyholder knows or ought to know; or

(b) failing that, disclosure that gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further inquiries for the purpose of revealing those material circumstances.

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

(a) it diminishes the risk; or

(b) the insurer knows it; or

(c) the insurer ought to know it; or

(d) the insurer is presumed to know it; or

(e) it is something as to which the insurer waives information.

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

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

### 36 What is material

(1) A circumstance or representation is **material** if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.

(2) The following are examples of things that may be material circumstances:

(a) special or unusual facts relating to the risk:

(b) any particular concerns that led the policyholder to seek insurance cover for the risk:

(c) anything that those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.

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

### 37 What is substantially correct

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

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

### 38 Representation may be withdrawn or corrected

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

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

### 39 Variations

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

(a) references to the risk are to be read as references to changes in the risk relevant to the proposed variation; and

(b) references to the contract of insurance are to the variation.

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

*Knowledge of policyholder*

### 40 Knowledge of policyholder

(1) **Sections 41 to 44** provide for what a policyholder knows or ought to know for the purposes of this subpart.

(2) For the purposes of this section and those sections,—

(a) **employee**, in relation to the policyholder's agent, includes an individual working for the agent, whatever the capacity in which the individual acts; and

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

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

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

### 41 What individual knows

A policyholder who is an individual knows only—

(a) what is known to the individual; and

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

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

### 42 What other policyholders know

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

(a) part of the policyholder's senior management; or

(b) responsible for the policyholder's insurance.

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

### 43 When confidential information is not known

(1) A policyholder is not by virtue of **section 41(b) or 42(b)** taken to know confidential information known to an individual if— 5

(a) the individual is, or is an employee of, the policyholder's agent; and

(b) the information was acquired by the policyholder's agent (or by an employee of that agent) through a business relationship with a person who is not connected with the contract of insurance. 10

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

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

### 44 What policyholder ought to know

(1) A policyholder ought to know what should reasonably have been revealed by a reasonable search of information available to the policyholder (whether the search is conducted by making inquiries or by any other means). 15

(2) This section applies whether or not the policyholder is an individual.

(3) In this section, **information** includes information held within the policyholder's organisation or by any other person (such as the policyholder's agent or a person for whom insurance cover is provided by the contract of insurance). 20

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

*Knowledge of insurer*

### 45 Knowledge of insurer

**Sections 46 to 48** provide for what an insurer knows, ought to know, or is presumed to know for the purposes of this subpart. 25

### 46 What insurer knows

(1) An insurer knows something only if it is known to 1 or more of the following:

(a) any individual who participates on behalf of the insurer in the decision whether to take the risk and, if so, on what terms (whether the individual does so as the insurer's employee or agent, as an employee of the insurer's agent, or in any other capacity): 30

(b) any individual who—

(i) is a person referred to in **subsection (2)**; or

(ii) works for a person referred to in **subsection (2)** in relation to the contract of insurance. 35

(2) The person is a specified intermediary in relation to the contract of insurance.

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

**47 What insurer ought to know**

An insurer ought to know something only if—

(a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in **section 46**; or

(b) the relevant information is held by the insurer and is readily available to an individual mentioned in that section.

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

**48 What insurer is presumed to know**

An insurer is presumed to know—

(a) things that are common knowledge; and

(b) things that an insurer offering insurance of the class in question to policyholders in the field of activity in question would reasonably be expected to know in the ordinary course of business.

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

*Other provisions relating to knowledge*

**49 Knowledge when individual deliberately refrains from confirming or inquiring about suspected matters**

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

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

**50 Knowledge of fraud**

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

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

(b) if the fraud is on the insurer, A is any of the individuals mentioned in **section 46**.

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

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

### 51 This subpart applies to non-consumer insurance contracts

This subpart applies to non-consumer insurance contracts.

### 52 When insurer has remedy

(1) An insurer has a remedy against a policyholder (**A**) for a breach of the duty of fair presentation only if the insurer proves that, but for the breach, the insurer—

(a) would not have entered into the contract of insurance (or agreed to the variation) at all; or

(b) would have done so only on different terms.

(2) In this Act, a breach of the duty of fair presentation for which the insurer has a remedy against A is a **qualifying breach**.

(3) The only remedies available are set out in **Schedule 2**.

(4) This section is subject to **section 62**, which provides that an insurer that breaches **section 56** may not have a remedy under **Schedule 2**.

(5) *See* **sections 35(3) and 37(4)** of the Contract and Commercial Law Act 2017, which prevent an insurer from obtaining a remedy for a misrepresentation under that Act.

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

### 53 Classification of qualifying breach

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

(a) deliberate or reckless; or

(b) neither deliberate nor reckless.

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

### 54 When breach is deliberate or reckless

A qualifying breach is deliberate or reckless if the policyholder—

(a) knew that it was in breach of the duty of fair presentation; or

(b) did not care whether or not it was in breach of that duty.

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

### 55 Burden of proof

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

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

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

### 56 Insurer must inform policyholder of duty

Before a contract of insurance is entered into or varied, the insurer must take reasonable steps to ensure that the policyholder is clearly informed of the following: 5

(a) the general nature and effect of the policyholder's duty under **subpart 1 or 4**; and

(b) the potential consequences of a failure to comply with that duty.

### 57 Application to variations

Despite **section 56**, that section applies to a variation only if— 10

(a) the variation—

(i) will provide a kind of insurance cover that was not provided by the contract of insurance immediately before the variation; or

(ii) will increase a sum insured under the contract of insurance; and

(b) the variation is not an automatic variation but is required to be expressly agreed between the insurer and the policyholder before the contract is varied. 15

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

(1) This section applies if,— 20

(a) under a proposed consumer insurance contract, a policyholder will give a consent to access information; or

(b) the policyholder gives a consent to access information before that contract is entered into.

(2) Before the contract is entered into, the insurer must take reasonable steps to ensure that the policyholder is clearly informed of the following: 25

(a) whether or not the insurer intends to access and take into account the information to which the consent relates when deciding whether to enter into the contract or when deciding on the terms on which the insurer will do so: 30

(b) if the insurer does intend to access and take into account the information,—

(i) the nature of the information that the insurer intends to access and take into account; and

(ii) whether and, if so, how the insurer accessing and taking into account the information affects the importance that the policyholder answer questions asked by the insurer. 35

(3) In this Act, a policyholder gives a **consent to access** information if they consent to the insurer accessing information about the policyholder from a third party (for example, medical records).

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

(1) This section applies if,—

(a) in connection with a proposed variation of a consumer insurance contract, a policyholder gives a consent to access information; and

(b) the policyholder has not previously given a consent to access that information.

(2) Before the contract is varied, the insurer must take reasonable steps to ensure that the policyholder is clearly informed of the following:

(a) whether or not the insurer intends to access and take into account the information referred to in **subsection (1)(a)** when deciding whether to agree to the variation or when deciding on the terms on which the insurer will do so:

(b) if the insurer does intend to access and take into account the information,—

(i) the nature of the information that the insurer intends to access and take into account; and

(ii) whether and, if so, how the insurer accessing and taking into account the information affects the importance that the policyholder answer questions asked by the insurer.

### 60 Policyholder may be informed orally or in writing

The policyholder may be informed under this subpart orally or in writing.

### 61 Requirement treated as complied with if complied with in prescribed manner

(1) A requirement under this subpart to take reasonable steps to ensure that the policyholder is clearly informed of certain information must be treated as having been complied with if—

(a) the information is given in writing in the manner prescribed by the regulations; and

(b) the requirements prescribed by the regulations for the purposes of this section (if any) are complied with.

(2) This section does not limit the means by which the requirement may be satisfied.

### 62 Consequences of breach

(1) If an insurer breaches **section 56** in relation to a non-consumer insurance contract, the insurer has a remedy under **Schedule 2** only if the policyholder knew that, or was reckless as to whether, the qualifying breach was a breach of the duty of fair presentation. 5

(2) **Subsection (1)** applies regardless of whether the insurer's breach caused or otherwise contributed to the breach of the duty of fair presentation.

(3) *See also*—

(a) **section 15**, which provides for the insurer's compliance with this subpart to be a matter that may be taken into account in determining 10 whether the policyholder has taken reasonable care not to make a misrepresentation:

(b) the FMCA, which provides for **sections 56, 58, and 59** of this Act to be market services licensee obligations and to give rise to civil liability under section 449 of that Act. 15

## Subpart 7—Effect on utmost good faith rule of law

### 63 Effect of Part on utmost good faith rule of law

(1) The duties set out in **subparts 1 and 4** replace any duty relating to disclosure or representations by a policyholder to an insurer that existed in the same circumstances before those subparts came into force. 20

(2) Accordingly, the utmost good faith rule does not have the effect of imposing on a policyholder, in connection with the disclosure of a matter to the insurer or a representation before a contract of insurance is entered into or varied, a duty other than—

(a) the duty to take reasonable care not to make a misrepresentation (in the 25 case of a consumer insurance contract); or

(b) the duty of fair presentation of risk (in the case of a non-consumer insurance contract).

(3) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the 30 other party is abolished.

(4) The utmost good faith rule is modified to the extent required by this section.

(5) The **utmost good faith rule** means the rule of law to the effect that a contract of insurance is a contract based on the utmost good faith.

**Guidance note** 35

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

This Act replaces duties (and associated remedies) in connection with the disclosure of information by policyholders before a contract of insurance is entered into

or varied. The utmost good faith rule is modified to that extent but otherwise continues as a rule of law.

## Subpart 8—Miscellaneous provisions

### 64 Effect of warranties

(1) This Part has effect despite any warranty by the policyholder that the policyholder's obligations under this Part have been complied with.

(2) A representation made by the policyholder in connection with a proposed contract of insurance or variation is not capable of being converted into a warranty by means of any provision of the contract or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise).

### 65 Certain provisions of no effect

(1) A term of a contract of insurance, or of any other agreement, that would put the policyholder in a worse position in relation to the matters set out in **subsection (2)** than the policyholder would be in under this Act is to that extent of no effect.

(2) The matters are—

(a) disclosure and representations by the policyholder to the insurer before the contract is entered into or varied; and

(b) any remedies for qualifying misrepresentations or breaches.

(3) This section does not apply in relation to a contract for the settlement of a claim arising under a contract of insurance.

### 66 Duty for specified intermediary in relation to consumer insurance contract

(1) This section applies if—

(a) a person (**A**) is a specified intermediary in relation to a consumer insurance contract; and

(b) before the contract is entered into or varied, the policyholder makes a representation to an individual—

(i) who is A; or

(ii) who works for A in relation to the contract of insurance; and

(c) A knows, or ought to know, that the representation is relevant to a question asked by the insurer of the policyholder.

(2) A must take reasonable steps to pass on the representation to the insurer before the insurer enters into the consumer insurance contract or agrees to the variation.

(4) Compliance with this section does not place any person in breach of any contract, or make any person liable for a civil wrong.

(5) This section is subject to anything to the contrary expressed or implied in an agreement between A and the insurer.

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

(1) This section applies if a person (**A**) is a specified intermediary in relation to a non-consumer insurance contract.

(2) A must, before the insurer enters into the contract of insurance or agrees to a variation, take reasonable steps to disclose to the insurer every material circumstance that is known by any individual—

(a) who is A; or

(b) who works for A in relation to the contract of insurance.

(3) Compliance with this section does not place any person in breach of any contract, or make any person liable for a civil wrong.

(4) This section is subject to anything to the contrary expressed or implied in an agreement between A and the insurer.

### 68 Court may order specified intermediary to pay compensation

(1) This section applies if the court, on application by an insurer, is satisfied that—

(a) a specified intermediary (**A**) has contravened **section 66 or 67**; and

(b) the insurer has suffered loss or damage because of the contravention.

(2) The court may order A to pay to the insurer the amount of the loss or damage (in whole or in part).

(3) **Subsection (2)** is subject to a contract between A and the insurer that expressly or impliedly provides for any matter in connection with a remedy for a contravention of **section 66 or 67** (for example, a contract that provides a cap on liability).

### 69 Indemnity for specified intermediary is void

(1) A term of any contract between a policyholder and a specified intermediary (**A**) is of no effect to the extent that it makes the policyholder liable to indemnify A in connection with—

(a) any liability for a contravention of **section 66 or 67** (whether the liability is imposed under **section 68** or otherwise); or

(b) any costs incurred by A in defending a proceeding relating to that liability (whether a proceeding under **section 68** or otherwise).

(2) In this section, **indemnify** includes relieve or excuse from liability, whether before or after the liability arises.

# Part 3
# Contracts of insurance

## Subpart 1—Implied term about payment of claims

### 70 Implied term about payment of claims

(1) It is an implied term of every contract of insurance that if the policyholder makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.

(2) A reasonable time includes a reasonable time to investigate and assess the claim (including to gather information for those purposes).

(3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things that may need to be taken into account:

(a) the type of insurance:

(b) the size and complexity of the claim:

(c) compliance with any relevant legislation or guidance:

(d) factors outside the insurer's control:

(e) whether a sum due in respect of a part of the claim that is not in dispute has been paid:

(f) whether the insurer has reasonable grounds for disputing the claim.

(4) Remedies (for example, damages) available for breach of the term implied by **subsection (1)** are in addition to and distinct from—

(a) any right to enforce payment of the sums due; and

(b) any right to interest on those sums (whether under the contract, under any legislation, or otherwise).

Compare: Insurance Act 2015 s 13A (UK)

## Subpart 2—Restrictions on terms

*Arbitration*

### 71 Arbitration provisions not binding

(1) A provision of a consumer insurance contract does not bind the policyholder if the provision has the effect of—

(a) requiring, authorising, or otherwise providing for differences or disputes in connection with the contract to be referred to arbitration; or

(b) limiting the rights otherwise conferred by the contract on the policyholder by reference to an agreement to submit a difference or dispute to arbitration.

(2) This section does not affect an agreement to submit a difference or dispute to arbitration if the agreement was entered into after the difference or dispute arose.

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

*Manner of, or time for, making claims or commencing proceedings* 5

**72 Provisions specifying manner or time of claims or proceedings not binding**

(1) This section applies to the following kinds of provisions in a contract of insurance:

(a) provisions that specify the manner in which notice of a claim by the policyholder must be given: 10

(b) provisions that specify a time limit within which notice of a claim by the policyholder must be given:

(c) provisions that specify a time limit within which a proceeding by the policyholder must be commenced.

(2) A provision to which this section applies in a life policy does not bind the policyholder if the claim or proceeding relates to the ~~death of the policyholder~~ death of the life insured. 15

(3) A provision to which this section applies in any other contract of insurance does not bind the policyholder unless the court or arbitrator determining the matter considers that, in the particular circumstances,— 20

(a) the insurer has been prejudiced by the policyholder's failure to comply with the provision; and

(b) as a result of that prejudice, it would be inequitable if the provision did not bind the policyholder.

Compare: 1977 No 14 s 9(1) 25

**73 Claims-made policies**

(1) Despite **section 72(3)**, a provision of a claims-made policy is binding on the policyholder in respect of a claim (**claim A**) if—

(a) the provision defines the period within which claims made against the policyholder or claims arising out of circumstances notified to the insurer are within the risk accepted by the insurer under the contract; and 30

(b) the policyholder did not notify the insurer of claim A, or of circumstances that may give rise to claim A, before the date that is 90 days after the end of the relevant period.

(2) In this Act, **claims-made policy** means a contract of insurance in which the period during which liability for claims against the policyholder is within the risk accepted by the insurer (the **relevant period**) is defined by reference to the time when— 35

(a) those claims are made; or

(b) claims or circumstances that may give rise to a claim are notified to the insurer.

### 74 Insurer not liable to pay greater cost

(1) This section applies if— 5

(a) the policyholder under a contract of insurance fails to give notice of a claim in the manner, or within the time, that is specified by the contract; and

(b) the cost of repairing, replacing, or reinstating any property when it falls to be met is greater than the cost that would have applied if the notice had been given in the manner, or within the time, that is specified by the contract. 10

(2) The greater cost is not prejudice to the insurer for the purposes of **section 72(3)**.

(3) However, an insurer is not liable to apply or pay in repairing, replacing, or reinstating any property a greater sum than that for which the insurer would have been liable if the notice of claim had been given in the manner, or within the time, that is specified by the contract of insurance. 15

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

Compare: 1977 No 14 s 9(2) 20

*Increased risk exclusions*

### 75 Increased risk exclusions

(1) A policyholder is not bound by an increased risk exclusion if the policyholder proves that the loss for which the policyholder seeks to be indemnified was not caused, or contributed to, by the happening of the event or the existence of the circumstance referred to in the increased risk exclusion. 25

(2) In this section, an **increased risk exclusion** is a provision in a contract of insurance that—

(a) defines the circumstances in which the insurer is bound to indemnify the policyholder against loss so as to exclude or limit the liability of the insurer to indemnify the policyholder on the happening of certain events or on the existence of certain circumstances; and 30

(b) defines the liability of the insurer in that manner, in the view of the court or arbitrator determining the matter, because the happening of those events or the existence of those circumstances was, in the view of the insurer, likely to increase the risk of loss occurring. 35

(3) However, this section does not apply to an increased risk exclusion that—

(a) defines the age, identity, qualifications, or experience of a driver of a vehicle, a pilot of an aircraft, an operator of goods, or a master, pilot, or crew member of a ship; or

(b) defines the geographical area in which the loss must or must not occur; or

(c) excludes loss that occurs while a vehicle, an aircraft, a ship, or any goods is or are being used for commercial purposes other than those permitted by the contract of insurance.

Compare: 1977 No 14 s 11

*Pro rata conditions of average*

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

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

**Guidance note**

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

(2) A provision of a contract of insurance that breaches **subsection (1)** is of no effect.

(3) In this section, **home**—

(a) means a building or a part of a building occupied or intended to be occupied as a separate dwelling; and

(b) includes any outbuildings used primarily for domestic or residential purposes.

(4) The application of this section to a contract of insurance relating to a home is not excluded by reason only that part of the premises is used—

(a) as a shop or an office; or

(b) for business, trade, or professional purposes.

Compare: 1985 No 117 s 15

**77 Disclosure of pro rata condition of average in other cases**

(1) This section applies to a contract of insurance other than—

(a) a contract of insurance to which **section 76** applies; or

(b) a contract of marine insurance.

(2) If a contract of insurance to which this section applies contains a pro rata condition of average, the condition has no effect unless, before the contract is entered into, the insurer clearly informs the policyholder in writing of the nature and effect of the condition.

(3) However, if it is not reasonably practicable for the information to be given to the policyholder in writing before the contract is entered into, **subsection (2)** must be treated as having been complied with if the insurer—

(a) gives the information orally before the contract is entered into; and

(b) gives the information in writing as soon as it is reasonably practicable to do so.

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

**78 Requirement treated as complied with if particular form is used**

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

"**The meaning of subject to average**

1 Your contract of insurance contains a provision making it "subject to average".

2 The provision will have effect only if the property insured under the contract is underinsured at the time of loss.

3 If the property insured under the contract is underinsured at the time of loss, the following rules apply:

(a) if you suffer a total loss, the provision will have no effect:

(b) if you suffer a partial loss, the maximum amount that you may recover will bear the same proportion to your actual loss as the amount for which the property is insured bears to the full value of the property:

**Example**

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

(c) whatever your loss, in no case will you be entitled to recover more than the amount for which the property is insured."

(2) This section does not limit the means by which **section 77** may be satisfied.

Compare: 1985 No 117 s 16(3)

## Subpart 3—Insurable interest

**79 Insurable interest not required**

(1) A person for whose use or benefit or on whose account a contract of insurance is entered into is not required to have an interest in any event for the purposes of—

(a) a contract of indemnity against loss; or

(b) a life policy.

(2) This section does not limit the Marine Insurance Act 1908.

Compare: 1985 No 117 s 7

**80 Insurable interest in life of life insured not required**

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

Compare: 1985 No 117 s 6

## Subpart 4—Insurance relating to contracts for sale of land

**81 Interpretation in this subpart**

In this subpart,—

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

**relevant period** means the period—

(a) that starts when the contract of sale is entered into; and

(b) ends on the earlier of the following:

(i) the purchaser taking possession of the land and fixtures:

(ii) final settlement under the contract of sale

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

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

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

(1) During the relevant period, the vendor's insurance in respect of the land and fixtures agreed to be sold under a contract of sale has effect for the benefit of the purchaser as well as for the vendor.

(2) In particular, the purchaser is entitled to be indemnified by the insurer or to require the insurer to reinstate that land and those fixtures in the same manner and to the same extent as the vendor would have been so entitled under the vendor's insurance if there had been no contract of sale.

(3) This section—

(a) does not apply to the extent that the purchaser is entitled to be indemnified, or to require reinstatement of the land and fixtures, under any other contract of insurance; and

(b) does not require the insurer to pay or expend more in total under the vendor's insurance than it would have had to pay or expend if there had been no contract of sale.

Compare: 1985 No 117 s 13(1A)–(1C)

### 83 Certain defences or answers invalid

(1) It is not a defence or an answer to a claim by a purchaser against an insurer under **section 82** that the vendor otherwise would not be entitled to be indemnified by the insurer or to require reinstatement because the vendor has suffered no loss or has suffered diminished loss because the vendor is or was entitled to be paid all, or the balance of, the purchase price by the purchaser.

(2) It is not a defence or an answer to a claim by a purchaser against an insurer under **section 82**, in relation to the land or fixtures sold, that the purchaser's entitlement under the contract to which the claim relates is affected, or defeated, by the existence or terms of another contract of insurance.

(3) It is not a defence or an answer to a claim by a purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the contract of insurance to which the claim relates is affected, or defeated, by a claim under **section 82**.

Compare: 1985 No 117 s 13(2)

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

(1) This section applies if, in respect of a contract of sale,—

(a) any part of the land or fixtures agreed to be sold is damaged or destroyed during the relevant period; and

(b) the whole or a part of the amount payable for the damage or destruction under the vendor's insurance is payable to a mortgagee of, or any person claiming through, the vendor.

(2) The purchase price payable under the contract of sale must be reduced by the amount that is payable to the mortgagee or person claiming through the vendor.

Compare: 1985 No 117 s 13(3)

### 85 Application of this subpart

(1) This subpart—

(a) has effect despite any provision to the contrary in any legislation, rule of law, contract of insurance, deed, or other contract; and

(b) applies, with all necessary modifications, to a sale or exchange of land and fixtures by order of a court as if the order were a contract of sale.

(2) However, this subpart does not apply to the extent that the purchaser and vendor under the contract of sale expressly agree at any time.

Compare: 1985 No 117 s 13(5), (6)

### 86 Double insurance relating to contract for sale of land

If there is a contract of sale, it is not a defence or an answer to a claim by the purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the contract of insurance to which the claim relates is affected or defeated by the existence or terms of any contract of insurance held by, or on behalf of, the vendor.

Compare: 1985 No 117 s 14

## Subpart 4A—Genetic testing

### 86A Insurer must comply with regulations about genetic testing

An insurer must comply with the requirements prescribed by the regulations made under **section 86B**.

**Guidance note**

*See* the FMCA, which provides for this section to be a market services licensee obligation and to give rise to civil liability under section 449 of that Act.

### 86B Regulations may prohibit or regulate conduct concerning genetic testing

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for prohibiting or regulating any conduct of insurers in connection with genetic testing.

(2) The power under **subsection (1)** includes prohibiting or regulating any conduct of insurers that involves any of the following:

(a) requiring a person (**A**) or a relative of A to undergo, or consent to, any genetic test as a condition of—

(i) entering into, varying, or continuing a relevant contract with A or providing insurance cover for A under a relevant contract; or

(ii) offering or continuing specific terms or conditions in a relevant contract with A or for that insurance cover:

(b) requiring A, a relative of A, or any other person to disclose the results of any genetic test as a condition of engaging in an activity described in **paragraph (a)(i) or (ii)**:

(c) requiring A, a relative of A, or any other person to answer a question about whether A or a relative of A has undergone any genetic test as a condition of engaging in an activity described in **paragraph (a)(i) or (ii)**:

(d) refusing to engage in an activity described in **paragraph (a)(i) or (ii)** in respect of A on the grounds that A, a relative of A, or any other person has refused to undergo, consent to, or disclose the results of any genetic test or to answer a question referred to in **paragraph (c)**:

(e) taking into account any of the following:

(i) the results of any genetic test that have been disclosed to the insurer by, or in connection with, A or a relative of A:

(ii) the answer to a question referred to in **paragraph (c)**:

(iii) a failure or refusal to answer a question referred to in **paragraph (c)**.

(3) **Subsection (2)** does not limit **subsection (1)**.

(4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(5) In this subpart,—

**conduct**, in relation to an insurer, includes any practice or activity

~~**genetic test** means a test that analyses DNA, RNA, or chromosomes for any purpose including the prediction of disease or vertical transmission risks, or monitoring, diagnosis, or prognosis (regardless of the source of the DNA, RNA, or chromosomes)~~

**genetic test** means—

(a) a test that analyses any DNA, RNA, or chromosome for any purpose including the prediction of disease or vertical transmission risks, or monitoring, diagnosis, or prognosis (regardless of the source of the DNA, RNA, or chromosome); or

(b) a test that analyses any component of gene expression (for example, a protein) or any metabolite for the purpose of detecting or predicting genotypes, phenotypes, or genetic variants (whether or not there are other purposes for the test)

**relevant contract** means a life policy or contract of health insurance (including a proposed life policy or contract of that kind).

### 86C Procedural requirements

(1) The Minister may make a recommendation under **section 86B** only if the Minister—

(a) has consulted the FMA; and

(b) has consulted the persons or representatives of the persons that the Minister considers will be substantially affected by the regulations; and

(c) is satisfied that the regulations are necessary or desirable to avoid or mitigate any adverse effect of conduct on the health benefits (or other benefits) associated with genetic testing, including avoiding or mitigating any inefficiency or restriction on innovation in the health sector; and

(d) is satisfied that the regulations are not likely to unduly prevent insurers from considering information in relation to genetic tests that is highly significant to insurance underwriting; and

(e) has had regard to—

(i) the purpose of this Act set out in **section 3**; and

(ii) the overseas law and practices that the Minister considers are relevant.

(2) For the purposes of **subsection (1)(d)**, the Minister may have regard to either or both of the following:

(a) genetic tests generally:

(b) any 1 or more kinds of genetic tests that the Minister thinks fit.

(3) If the Minister decides to have regard to a particular kind of genetic test, the Minister may also have regard to 1 or more of the following:

(a) whether the information from the genetic test is a significant predictor of individual risk:

(b) the extent to which insurers may obtain information from the genetic test from another source of information:

(c) whether the regulations are likely to avoid significant disadvantages for all policyholders when viewed as a group (for example, a significant increase in premiums, significantly less favourable terms, or a significant reduction in the availability of cover):

(d) how common the condition to which the genetic test relates is within the New Zealand population.

(4) A failure to comply with **subsection (1)(b)** does not affect the validity of the regulations.

## Subpart 5—Third party claims against insurers

### 87 Interpretation in this subpart

(1) In this subpart,—

**claimant** has the meaning set out in **section 88**

**insured liability** means a liability in respect of which a policyholder is entitled to be indemnified by the insurer

**Example**

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

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

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

**policyholder**—

(a) means a person who is, in respect of a liability to a third party, entitled to indemnity under a contract of insurance; and

(b) includes a person who is not a party to the contract of insurance referred to in **paragraph (a)** but is specified or referred to in the contract, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends

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

(2) A policyholder (**A**) is a **specified policyholder** if—

~~(a) A—~~

~~(i) is in liquidation under the Companies Act 1993; and~~

~~(ii) is not a body corporate that is incorporated outside New Zealand; or~~

(a) A is in liquidation under the Companies Act 1993; or

(b) A is an undischarged bankrupt under the Insolvency Act 2006, is subject to an approved proposal or a debt repayment order under subpart 2 or 3 of Part 5 of that Act, or is participating in a no asset procedure under subpart 4 of Part 5 of that Act; or

(c) A is a deceased person whose estate is being administered under Part 6 of the Insolvency Act 2006; or

(d) A has been deceased for not less than 60 days, A was ordinarily resident in New Zealand immediately before their death, and no administrator of their estate has been appointed in New Zealand; or

(e) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of A and the Receiverships Act 1993 applies to the receivership; or

(f) A is otherwise subject to a New Zealand insolvency proceeding within the meaning of paragraph (i) of Article 2 of Schedule 1 of the Insolvency (Cross-border) Act 2006; or

(g) A is a company that has been removed from the New Zealand register under section 317 of the Companies Act 1993; or

(h) A is a body corporate that—

(i) was incorporated in New Zealand by or under an Act; and

(ii) has been dissolved or has ceased to exist in accordance with a process under that Act.

(3) In this subpart, a person is **ordinarily resident in New Zealand** if the person—

(a) is domiciled in New Zealand; or

(b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New

Zealand, whether or not that person has on occasions been away from New Zealand during that period.

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

### 88 Claimant may recover from insurer

(1) If a specified policyholder has an insured liability to a person (the **claimant**), the claimant may recover the amount of the insured liability from the insurer in a proceeding before a court.

(2) **Subsection (1)** applies regardless of whether or not the liability has been established in any earlier proceeding before a court.

(3) The amount of the insured liability is the amount of indemnity (if any) payable under the contract of insurance in respect of the specified policyholder's liability to the claimant.

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

### 89 Claimant must have leave of court

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

(2) The court may refuse to give leave if it considers that New Zealand is not the appropriate forum for the proceeding.

(3) **Subsection (2)** does not limit the court's power to refuse leave for any other reason.

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

### 90 Insurer stands in policyholder's place

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

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

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

### 91 Defences generally

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

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

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

(2) Despite **subsection (1) and section 90**, the insurer is not entitled to rely on any of the following: 5

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

(b) a defence arising from the specified policyholder failing to pay a premium that became due after the policyholder became a specified policyholder: 10

(c) a defence arising from the specified policyholder failing to notify the insurer of a claim, or circumstances that may give rise to a claim, within a certain period, if the claimant notifies the insurer of that matter within that period. 15

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

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

### 92 Limitation defence does not apply in certain cases

(1) This section applies if— 20

(a) a claimant has commenced a proceeding in respect of the insured liability against the specified policyholder; and

(b) the specified policyholder does not have a defence under the Limitation Act 2010 in respect of that proceeding; and

(c) the claimant subsequently commences a proceeding against the insurer under this subpart in respect of the same matter. 25

(2) Despite **sections 90 and 91**, the insurer is not entitled to rely on a defence under the Limitation Act 2010.

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

### 93 Judgment against specified policyholder no bar to claim against insurer 30

A judgment or an order for damages, compensation, or costs in favour of the claimant against the specified policyholder in respect of an insured liability does not prevent the claimant from recovering an amount for the damages, compensation, or costs under this subpart, except to the extent that the judgment or order has been satisfied. 35

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

### 94 Discharge of insurer's liability

A payment made by the insurer to the claimant under this subpart in respect of an insured liability discharges, to the extent of the payment, the liability of the

insurer to make a payment to the specified policyholder under the contract of insurance in respect of the insured liability.

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

### 95 Effect of payments made by insurer to specified policyholder

(1) An insurer's liability to a claimant under this subpart is not reduced, discharged, or otherwise affected by—

(a) a compromise or settlement between the insurer and the specified policyholder in respect of the insured liability; or

(b) a payment by the insurer to the specified policyholder in respect of the insured liability unless and to the extent that the amount of the payment is or has been paid by the specified policyholder to the claimant in respect of the insured liability.

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

(a) the insurer enters into in good faith; and

(b) is on terms that would be reasonable in the circumstances if the parties were each acting independently.

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

### 96 Claimant may not recover from reinsurer

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

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

### 97 Claimant may obtain information

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

### 98 Cases with overseas element

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

(a) whether or not the insured liability was incurred in, or under the law of, New Zealand:

(b) where any of the parties are domiciled or living:

(c) whether or not the contract of insurance (or a part of it) is governed by the law of New Zealand:

(d) the place where sums due under the contract of insurance are payable.

(2) However, this section does not prevent a court from having regard to a matter referred to in **subsection (1)** when it is deciding whether to give or refuse leave under **section 89**.

## Subpart 6—Miscellaneous

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

(1) A company must not issue a form of proposal for insurance that contains, or purports to be, an application for shares in the company. 5

(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 $50,000; and 10

(b) every director (**A**) of the company commits an offence and is liable on conviction to a fine not exceeding $10,000 if it is proved—

(i) that the act that constituted the offence under **paragraph (a)** took place with A's authority, permission, or consent; or 15

(ii) that A knew, or could reasonably be expected to have known, that the offence under **paragraph (a)** was to be or was being committed and A failed to take reasonable steps to prevent or stop it.

(4) Nothing in this section affects the validity of a contract of insurance or of an allotment of shares of a company. 20

(5) In this section, **company** has the same meaning as in section 2 of the Companies Act 1993.

Compare: 1977 No 14 s 12A

# Part 4 Intermediaries 25

### 100 Interpretation

(1) In this Part, unless the context otherwise requires,—

**broker**, in relation to an insurer, means a person—

(a) who carries on the business of arranging contracts of insurance (whether or not the business is the person's principal business or is carried on in connection with any other business); and 30

(b) who is not the employee of the insurer; and

(c) who is not appointed under a signed agreement as the agent for the insurer for the purposes of receiving— 35

(i) money due to the insurer from the policyholder; and

(ii) money due to the policyholder from the insurer

**insurance broking client account** means an account established and maintained in accordance with **section 110**

**insurance intermediary**—

(a) means a person—

(i) who for reward arranges contracts of insurance in New Zealand or elsewhere; and 5

(ii) who does so as the employee of or agent for 1 or more insurers or as the agent for the policyholder; and

(b) includes a broker

**premium** includes an instalment of a premium. 10

(2) For the purposes of this Part, a person who is appointed under a signed agreement as an agent of the insurer must be treated, unless the agreement states otherwise, as being appointed under the agreement as an agent of the insurer for the purposes of receiving—

(a) money due to the insurer from the policyholder; and 15

(b) money due to the policyholder from the insurer.

## Subpart 1—Payments to insurance intermediaries

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

(1) Money paid by or on behalf of a policyholder to an insurance intermediary is a discharge, as between the policyholder and the insurer, of the liability of the policyholder to pay the money to the insurer if— 20

(a) the money is paid under or in relation to a contract of insurance; and

(b) the insurance intermediary arranged or effected the contract or will arrange or effect the contract. 25

(2) This section applies whether the money is paid for a premium or otherwise.

Compare: 1994 No 41 s 4

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

(1) Money paid by or on behalf of an insurer to an insurance intermediary under or in relation to a contract of insurance does not discharge the liability of the insurer to pay the money to the policyholder. 30

(2) This section applies whether the money is paid for a claim, to return a premium, or otherwise.

Compare: 1994 No 41 s 5 35

### 103 Prohibition on contracting out

(1) An agreement is void to the extent that it purports to modify, restrict, or exclude the operation of **section 101 or 102**.

(2) This section does not render void an agreement between an insurance intermediary and a policyholder to the extent that the agreement allows the intermediary to set off, against money payable to the policyholder, money payable by the policyholder to the intermediary for a premium.

Compare: 1994 No 41 s 6

## Subpart 2—Duties of brokers in relation to premiums

### 104 Duties of broker in relation to premiums

(1) This section applies if—

(a) a broker receives money by way of premium in connection with a contract of insurance; and

(b) the risk, or a part of the risk, to which the contract relates is accepted by or on behalf of an insurer.

(2) The broker must pay to the insurer within the relevant period—

(a) the amount that has been received if the amount received is equal to or less than the amount of the premium to be paid; or

(b) the amount of the premium to be paid if the amount received is more than the amount of the premium to be paid; or

(c) if the broker has not been informed of, and has not otherwise ascertained, the amount of the premium to be paid, the lesser of the following:

(i) the money that has been received:

(ii) 75% of the amount fairly estimated by the broker to be the premium that is to be paid or, if the premium is payable for a renewal of a contract of insurance, 75% of the previous year's premium for the risk or of the last instalment of the year's premium, as the case may be.

(2A) The insurer may recover in any court of competent jurisdiction as a debt due any amount that is payable under **subsection (2)**.

(3) In this subpart, **relevant period** means—

(a) the period of 50 days after the end of the month in which the insurance cover provided by the insurer under the contract starts to have effect; or

(b) if the sum of money is an instalment of a premium, the period of 50 days after the end of the first month to which the instalment relates.

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

### 105 Duty does not prevent certain matters

**Section 104** does not prevent any of the following:

(a) an insurer from making a contract or an arrangement with a broker providing for a variation of the relevant period:

(b) an insurer from authorising a broker in writing to pay on behalf of the insurer, out of the money received by the broker as a premium in respect of a contract of insurance arranged with the insurer, any charges required by law to be paid by the insurer in respect of the contract:

(c) a broker from exercising a legal right available to the broker to deduct from any money payable by the broker to the insurer any remuneration payable by the insurer to the broker in relation to a contract of insurance.

Compare: 1994 No 41 s 8(3)

### 106 Broker may pay another insurance intermediary

(1) This section applies if—

(a) a broker receives money by way of premium in connection with a contract of insurance from or on behalf of a policyholder; and

(b) another insurance intermediary accepts (as agent for an insurer) the risk, or a part of the risk, to which the contract relates.

(2) For the purpose of **section 104**, payment of the premium, or part of the premium, by the broker to the intermediary must be treated as payment of the premium or part by the broker to the insurer.

Compare: 1994 No 41 s 9

### 107 Lloyd's brokers

(1) If a broker is required by this subpart to pay an amount to an insurer and, under the contract of insurance, the insurer is a Lloyd's underwriter, it is sufficient compliance with this subpart if the broker pays the amount to the Lloyd's broker concerned.

(2) In this section,—

**Lloyd's** means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871

**Lloyd's underwriter** means an underwriting member of Lloyd's.

Compare: 1994 No 41 s 12

## Subpart 3—Duties of brokers in relation to payments due to policyholder

### 108 Duties of broker in relation to payments due to policyholder

If a broker receives money from or on behalf of an insurer for payment to or on behalf of a policyholder, the broker must pay the money to, or on behalf of, the policyholder—

(a) within 7 days after the broker receives the money, in the case of a payment in connection with a consumer insurance contract; or

(b) as soon as is reasonably practicable after the broker receives the money, in the case of a payment in connection with a non-consumer insurance contract. 5

**Guidance note**

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

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

### 109 This subpart does not prevent certain matters 10

This subpart does not prevent—

(a) a policyholder from making a contract or an arrangement with a broker providing for the broker to pay an amount to or on behalf of the policyholder before being required to do so by **section 108**; or

(b) a broker from exercising a legal right available to the broker to deduct from any money payable by the broker to the policyholder any money payable by the policyholder to the broker in connection with a contract of insurance. 15

Compare: 1994 No 41 s 13(3)

## Subpart 4—Insurance broking client accounts 20

### 110 Broker must establish and maintain insurance broking client account

(1) A broker must establish and maintain 1 or more insurance broking client accounts with a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023).

(2) A broker may establish and maintain 1 or more insurance broking client accounts outside New Zealand with 1 or more overseas banks. 25

(3) An insurance broking client account must be a current account.

**Guidance note**

*See* section 449 of the FMCA, which provides for a contravention of this subpart to give rise to civil liability under that Act. 30

Compare: 1994 No 41 s 14(1)–(3)

### 111 Payments into insurance broking client account

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

(a) all money received from or on behalf of a policyholder for or on account of an insurer in connection with a contract of insurance arranged or to be arranged by the broker: 35

(b) all money received from or on behalf of an insurer for or on account of a policyholder:

(c) any money by way of realising an investment that must be paid into the account under **section 114**:

(d) any other money that is required by the regulations to be paid into the account.

Compare: 1994 No 41 s 14(4)

**112 Payments out of insurance broking client account**

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

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

(b) for making an investment in accordance with this Part; or

(c) for withdrawing money paid into the account in error; or

(d) otherwise in accordance with the regulations.

Compare: 1994 No 41 s 14(5)

**113 Investment of broking money**

(1) Money in an insurance broking client account may be invested in accordance with the Trusts Act 2019.

(2) However,—

(a) no money may be invested in equity securities (within the meaning of section 8 of the FMCA); and

(b) no money paid by or on behalf of a policyholder by way of premium in connection with a contract of insurance that is to be arranged or effected may be invested until the risk to which the contract relates is accepted by or on behalf of the insurer.

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

**114 Realisation of investment**

(1) A broker must pay money received from realising any investment under **section 113** into an insurance broking client account.

(2) If, on the realisation of any investment, the amount received in respect of the realisation is—

(a) less than the amount invested, the broker must pay into the account from which the money was withdrawn for investment an amount equal to the difference between the amount invested and the amount received; or

(b) more than the amount invested, the broker may retain for the broker's own benefit the amount by which the amount received exceeds the

amount invested and need not pay it into, or retain it in, an insurance broking client account.

Compare: 1994 No 41 s 15(3)–(5)

**115 Broker may retain interest or other income on insurance broking client account** 5

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

Compare: 1994 No 41 s 15(6)

**116 Broking money not capable of being attached, etc** 10

(1) This section applies to—

(a) money that is payable, or that has been paid, into an insurance broking client account in accordance with this subpart; and

(b) property in which that money has been invested.

(2) The money and property are not liable to be— 15

(a) attached; or

(b) taken in execution; or

(c) made subject to a set-off, charge, security interest, or charging order; or

(d) made subject to any process of a similar nature to a process referred to in **paragraphs (a) to (c)**. 20

(3) **Subsection (2)** does not apply in connection with a proceeding taken by a person entitled to the money or property under this Part.

Compare: 1994 No 41 s 16

## Subpart 5—Distribution of insurance broking client account money on insolvency 25

**117 When this subpart applies**

(1) This subpart applies if a broker—

(a) has been adjudged bankrupt; or

(b) is a company to which section 385(1) of the Companies Act 1993 applies; or 30

(c) is deceased and their estate is being administered under Part 6 of the Insolvency Act 2006; or

(d) is in statutory management under the Corporations (Investigation and Management) Act 1989 or in resolution under the Deposit Takers Act 2023. 35

(2) This subpart applies despite anything to the contrary in the Insolvency Act 2006 or the Companies Act 1993.

Compare: 1994 No 41 s 17(1), (2)

### 118 Money treated as on trust

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

Compare: 1994 No 41 s 17(3)

### 119 Payments from insurance broking client account

(1) Money from the insurance broking client account of the broker must be paid as follows:

(a) first, money that has been paid into the account in error must be withdrawn from the account:

(b) second, policyholders must be paid the amounts they are entitled to receive from the money in the account in respect of claims made under contracts of insurance:

(c) third, policyholders must be paid the amounts (other than the amounts under **paragraph (b)**) that they are entitled to receive from the money in the account:

(d) fourth, after all payments have been made under **paragraphs (b) and (c)**, insurers must be paid the amounts they are entitled to receive from the money in the account.

(2) If the money in the account that is available to make payments required under a particular paragraph of **subsection (1)** (other than **subsection (1)(a)**) is not sufficient to meet those payments in full, the payments required under the paragraph must be made proportionally.

(3) All money remaining after all payments have been made under this section is money payable to the broker.

Compare: 1994 No 41 s 17(4)–(6)

### 120 Investment of money

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

Compare: 1994 No 41 s 17(7)

## Subpart 6—Miscellaneous

### 121 Broker must comply with regulations

(1) A broker must comply with the requirements prescribed by the regulations made under **section 166**.

(2) *See* section 449 of the FMCA, which provides for a contravention of the regulations to give rise to civil liability under that Act. 5

# Part 5
# Contracts of life insurance

*Interest payable under life policies*

### 123 Interest payable beginning on 31st day after date of notification of death 10

(1) This section applies if—

(a) any money becomes payable by a life insurer under a life policy as a result of the death of the life insured; and

(b) the money is not paid to the person entitled to the money within 30 days after the date of notification. 15

(2) The life insurer must pay to the person, at the same time as the money is paid, interest on the money for the period beginning on the 31st day after the date of notification and ending with the close of the day on which the money is paid.

(3) In this section, **date of notification** means the date on which the insurer first receives written or oral notice of the death. 20

Compare: 1908 No 105 s 41A(1)

### 124 Interest payable in respect of assets-related money

(1) **Section 123** does not require the life insurer to pay interest on assets-related money.

(2) In this section, **assets-related money** means the whole or any part of the money that becomes payable by a life insurer under a life policy as a result of the death of the life insured that— 25

(a) is related to the value of identifiable assets of a fund named in the life policy; and

(b) is required by the life policy to be calculated as at a date later than the date of death. 30

(3) However, **subsection (4)** applies if—

(a) the claim requirements have been satisfied; and

(b) the assets-related money is not paid within 14 days after the earliest possible date on which it could have been paid (the **earliest date**). 35

(4) The life insurer must pay to the person entitled to the assets-related money, at the same time as the money is paid, interest on the money for the period beginning on the 15th day after the earliest date and ending with the close of the day on which the money is paid.

Compare: 1908 No 105 s 41A(2)

**125 Basis of calculating interest payable**

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

(a) interest at the rate and calculated in the manner specified in the life policy:

(b) interest at the rate and calculated in the manner prescribed in the regulations.

Compare: 1908 No 105 s 41A(3)

*Assignments of policies*

**126 Assignment of life policy by way of ordinary transfer**

(1) A life policy is assigned by way of ordinary transfer if—

(a) the transferor or transferee provides a transfer instrument to the life insurer in the manner—

(i) prescribed by the regulations (if any); or

(ii) reasonably required by the insurer (if no manner is prescribed by the regulations); and

(b) the transfer instrument contains a statement to the effect that the transferor agrees to the assignment; and

(c) the life insurer registers the transfer instrument in the manner prescribed by this Part and by the regulations (if any).

(2) An assignment under **subsection (1)** has the following effects:

(a) the life policy vests absolutely in the transferee:

(b) the transferee becomes the policyholder:

(c) the transferee may sue in the transferee's own name on the life policy:

(d) the receipt of the transferee is a valid discharge both at law and in equity for all money payable under the life policy.

Compare: 1908 No 105 s 43(1)

**127 Registration of assignment**

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

Compare: 1908 No 105 s 43(3)

*Other rights may be registered*

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

(1) This section applies if a person (**A**) acquires the right to a life policy—

(a) by bankruptcy; or

(b) under a will or intestacy; or

(c) under a writ of execution issued out of any court.

(2) A's title to the life policy may be registered by providing an instrument to the life insurer in the manner—

(a) prescribed by the regulations (if any); or

(b) reasonably required by the insurer (if no manner is prescribed by the regulations).

(3) The life insurer must register the instrument in the manner prescribed by this Part and by the regulations (if any).

(4) However, the life insurer may require A to provide any further reasonable evidence that the insurer thinks fit to establish the right.

(5) The registration of the instrument has the following effects:

(a) the life policy vests absolutely in A:

(b) A becomes the policyholder:

(c) A may sue in A's own name on the life policy:

(d) A's receipt is a valid discharge both at law and in equity for all money payable under the life policy.

Compare: 1908 No 105 s 52

*Other provisions relating to registration*

**129 Registration procedure**

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

(a) record in a register kept by the insurer for the purpose the particulars set out in the instrument and the time at which those particulars are recorded; and

(b) give the person who presented the instrument for registration confirmation that the instrument has been registered; and

(c) retain a record of the instrument.

**130 Defective instruments**

(1) This section applies if the life insurer reasonably considers that an instrument provided to the insurer has not been provided in the manner required under this

Act (for example, because it does not contain any information required by the regulations).

(2) The life insurer must, as soon as is reasonably practicable after receiving the instrument, notify the person who presented the instrument for registration of that matter (and of the insurer's reasons). 5

(3) The life insurer is not required to register the instrument if it acts under **subsection (2)**.

### 131 Life insurer may require reasonable evidence of matters affecting validity

A life insurer may, before it registers an instrument under this Part, require any reasonable evidence that it thinks fit about any matter that might, in its opinion, affect the validity of the instrument. 10

Compare: 1908 No 105 s 54

### 132 High Court may order registration

(1) The High Court may, on the application of any person, order that an assignment by way of ordinary transfer or a title to a life policy must be registered in accordance with this Part. 15

(2) If an application is made,—

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

(b) the life insurer may appear and be heard in relation to the application. 20

(3) The High Court may—

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

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

(c) make an order as to costs. 25

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

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

Compare: 1908 No 105 s 55 30

### 133 Time of registration

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

Compare: 1908 No 105 s 56 35

### 134 Life insurer must keep record of registrations

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

Compare: 1908 No 105 s 57

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

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

(2) No registered dealings with the duly registered assignee of a life policy are capable of being set aside or affected in any manner by notice of an unregistered interest in the life policy.

(3) **Subsections (1) and (2)** do not apply in the case of fraud.

(4) In this section, **unregistered interest**, in relation to a life policy, means an interest that may be registered under this Part but is not registered.

Compare: 1908 No 105 s 58

### 136 Provision for lost or destroyed instruments

(1) The life insurer may register an instrument on any reasonable terms and conditions that it thinks fit, despite the loss or destruction of—

(a) an instrument required or permitted to be registered under this Part; or

(b) an instrument that needs to be provided for the purposes of a registration under this Part.

(2) Before acting under **subsection (1)**, the life insurer must be satisfied that it has received reasonable evidence relating to—

(a) the loss or destruction of the instrument; and

(b) the relevant particulars set out in the instrument.

Compare: 1908 No 105 s 59

### 137 Courts may enforce equities

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

(a) a life policy:

(b) an interest in a life policy:

(c) an interest in any money payable under a life policy.

Compare: 1908 No 105 s 60

### 138 Life insurer not affected by notice of trust

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

Compare: 1908 No 105 s 42

### 139 Life insurer may not charge fee

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

Compare: 1908 No 105 s 61

### 140 Offence for non-compliance with various requirements

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

Compare: 1908 No 105 s 80

*Surrender values*

### 141 Applying surrender value to keep life policy in force

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

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

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

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

(3) This section is subject to—

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

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

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

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

Compare: 1908 No 105 s 63

### 142 Life policies kept in force by surrender value

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

Compare: 1908 No 105 s 64

*Life insurance by minors*

**143 Insurance by minor under 10 years**

A minor who is under the age of 10 years may enter into a life policy on the minor's own life only if the life policy is approved under sections 98 to 101 of the Contract and Commercial Law Act 2017. 5

Compare: 1908 No 105 s 66A

**144 Insurance by minor who has turned 10 years**

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

(2) However, **subsection (1)** is subject to— 10

(a) sections 86 to 91 of the Contract and Commercial Law Act 2017 if the minor is under the age of 16 years; and

(b) section 93 of that Act if the minor has reached the age of 16 years.

(3) **Subsection (1)** is also subject to **sections 148 and 150 to 152**.

Compare: 1908 No 105 s 66B 15

**145 Dealings by minor with life policy**

(1) If a life policy entered into on the life of a minor is owned by the minor, the minor—

(a) may do any of the following if they are of or over the age of 16 years:

(i) surrender the life policy: 20

(ii) give discharges for the money payable under the life policy:

(iii) dispose of the life policy by will in accordance with section 9 or 10 of the Wills Act 2007 or section 2 of the Wills Amendment Act 1969 or section 6 of the Wills Amendment Act 1955:

(iv) dispose of, or deal with, the life policy or an interest in the life policy in any manner authorised under this Act; and 25

(b) may, if they are under the age of 16 years, do any of the things mentioned in **paragraph (a)(i), (ii), and (iv)** if those matters are done with the approval of the District Court.

(2) **Subsection (1)** applies whether or not the life policy was entered into in the first place by the minor. 30

(3) **Subsection (1)(a)** applies whether the life policy was entered into before or after the minor reached the age of 16 years.

(4) If a minor of or over the age of 16 years—

(a) exercises a power referred to in **subsection (1)(a)(i) or (ii)**, section 93 of the Contract and Commercial Law Act 2017 applies to the surrender or discharge: 35

(b) enters into a contract in relation to a life policy to which **subsection (1)** applies, section 93 of that Act applies to the contract.

Compare: 1908 No 105 s 66C

### 146 Presumption for policies entered into and dispositions made

(1) This section applies so far as concerns—

(a) the life insurer (**A**) that enters into a life policy; and

(b) a person (**B**) claiming under a disposition of a life policy made in good faith and for valuable consideration.

(2) It is conclusively presumed—

(a) that the person who entered into the life policy was of or over the age of 10 years at the time when the person entered into the life policy; and

(b) that the person who disposed of the life policy was of or over the age of 16 years at the time when the person disposed of the life policy.

(3) However, the presumption does not apply if A or B had,—

(a) at the time that the life policy was entered into, actual knowledge that the person purporting to enter into the life policy was under the age of 10 years; or

(b) at the time of the disposition, actual knowledge that the person purporting to dispose of the life policy was under the age of 16 years.

(4) This section does not apply to a life policy that is approved under sections 98 to 101 of the Contract and Commercial Law Act 2017.

Compare: 1908 No 105 s 66D

### 147 Insurance on life of minor who is under 16 years

(1) A life policy on the life of a minor who is under the age of 16 years may be entered into by any of the following persons:

(a) any 1 or more of the parents or guardians of the minor:

(b) a parent or guardian of the minor and the spouse, civil union partner, or de facto partner of that parent or guardian, jointly:

(c) any person who has obtained the consent of the District Court to do so.

(2) A person may not enter into a life policy on the life of a minor who is under the age of 16 years except as provided in—

(a) **subsection (1)**; or

(b) **section 143, 144, or 148**; or

(c) sections 98 to 101 of the Contract and Commercial Law Act 2017.

(3) **Subsection (1)** is subject to **sections 149 to 152**.

Compare: 1908 No 105 s 67

### 148 Endowment insurance on life of minor

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

(a) when a certain period expires; or

(b) when the minor reaches a specified age. 5

Compare: 1908 No 105 s 67A

*Limits on payments on death of minor*

### 149 Limit on total amount of payments if deceased minor under 10 years

(1) A life insurer must not pay under a life policy, on the death of a minor who is under the age of 10 years, a sum that is more than the total of the following: 10

(a) the total amount of premiums paid under the life policy, together with interest on the total amount of premiums calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016; and

(b) the amount that, when added to any other sum permitted by this paragraph to be paid by any other life insurer, equals $15,000. 15

(2) **Subsection (1)** does not limit **sections 123 to 125**. Interest under those sections may be paid in addition to the amounts required to be aggregated for the purposes of **subsection (1)** and irrespective of the limit imposed by that subsection.

Compare: 1908 No 105 s 67B 20

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

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

(a) a person specified in **section 147(1)**; or 25

(b) an executor or administrator of a person specified in **section 147(1)**; or

(c) a person to whom payment may be made under section 65(2) of the Administration Act 1969; or

(d) a person who is entitled to the sum because of an assignment approved under **section 145(1)(b)**. 30

Compare: 1908 No 105 s 67C

### 151 Life insurer must give information about limits

(1) A life insurer must not enter into a life policy on the life of a minor who is under the age of 16 years unless,—

(a) before the life policy is entered into, the life insurer has clearly informed the policyholder in writing of the effect of **sections 149 and 150**; and 35

(b) the policyholder has signed an acknowledgment that they are aware of the limits imposed by those sections.

(2) A life policy that is entered into in breach of **subsection (1)** does not make the life policy illegal, unenforceable, or of no effect.

Compare: 1908 No 105 s 67D

**152 Offences relating to breach of limits**

(1) A life insurer commits an offence and is liable on conviction to a fine not exceeding $50,000 if the life insurer knowingly breaches **section 149, 150, or 151(1)**.

(2) A person commits an offence and is liable on conviction to a fine not exceeding $20,000 if the person,—

(a) under a life policy, claims money on the death of a minor under the age of 16 years; and

(b) knowingly does either or both of the following:

(i) produces to the life insurer a false certificate of death or one fraudulently obtained; or

(ii) in any way attempts to defeat the provisions of this Act concerning payments on the death of minors.

Compare: 1908 No 105 s 67E

*Money payable for benefit of minor or incapable person*

**153 When sections 154 and 155 apply**

(1) **Sections 154 and 155** apply if—

(a) any money becomes payable under a life policy to, or for the benefit of, a minor or an incapable person; and

(b) there is no trustee or other person capable in law of giving a valid discharge for the money on behalf of the minor or incapable person.

(2) In this Act, **incapable person** means a person who is incapable of exercising their rights.

Compare: 1908 No 105 s 69(1)

**154 Money may be paid to Public Trust**

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

Compare: 1908 No 105 s 69(1)

### 155 High Court may appoint trustee

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

Compare: 1908 No 105 s 69(2)

### 156 Powers of Public Trust receiving money

(1) If any money is paid to Public Trust under **section 154**, Public Trust may act as trustee of the money as effectively and with the same powers as if it had been duly appointed as trustee under **section 155** or by any person entitled to appoint a trustee.

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

Compare: 1908 No 105 s 70

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

(1) This section applies to—

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

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

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

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

Compare: 1908 No 105 s 71

### 158 Payment to trustee is valid discharge

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

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

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

Compare: 1908 No 105 s 72

### 159 Investment of insurance money

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

(2) Public Trust or any other trustee must—

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

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

Compare: 1908 No 105 ss 73, 74 5

*Life insurance for spouse, partner, or children*

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

(1) This section applies if—

(a) a person (**A**) enters into a life policy on A's own life; and

(b) the life policy is expressed to be for the benefit of— 10

(i) A's spouse, civil union partner, or de facto partner; or

(ii) A's children; or

(iii) A's spouse, civil union partner, or de facto partner and A's children; or

(iv) any 1 or more of those persons. 15

(2) The life policy creates a trust in favour of the objects named in the life policy.

(3) The money payable under the life policy, as long as any object of the trust remains unperformed,—

(a) does not form part of A's estate; and

(b) is not subject to A's debts. 20

(4) However, if it is proved that the life policy was entered into and the premiums paid with intent to defraud A's creditors, the creditors are entitled to receive, out of the money payable under the life policy, a sum equal to the premiums that are paid.

Compare: 1908 No 105 s 75A(2) 25

**161 Appointment of trustees and investment of money**

(1) This section applies to a life policy referred to in **section 160**.

(2) In relation to the money payable under the life policy, the policyholder may, by the life policy or by an instrument signed by the policyholder, do 1 or more of the following: 30

(a) appoint a trustee:

(b) appoint a new trustee:

(c) provide for the appointment of a new trustee:

(d) provide for the investment of the money payable under the life policy.

(3) If a trustee is not appointed under **subsection (2)**, the life policy, when it is entered into, vests in the policyholder or their legal personal representatives in trust for the objects referred to in **section 160**.

(4) The High Court may appoint a trustee or a new trustee if, at the time of the policyholder's death or at any time afterwards, there is no trustee or it is desirable to appoint a new trustee or new trustees.

(5) A receipt given by the following is a discharge to the life insurer for the money payable under the life policy, or for the value of the policy, in whole or in part:

(a) a person who has been appointed as trustee:

(b) the policyholder's legal personal representatives if—

(i) a trustee has not been appointed; or

(ii) the life insurer has not received notice of the appointment of a trustee.

Compare: 1908 No 105 s 75A(3)–(6)

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

(1) This section applies if—

(a) a policyholder (**A**) has assigned a life policy on A's own life to A's spouse, civil union partner, or de facto partner (**B**); and

(b) B has died in A's lifetime without having disposed of the life policy by will; and

(c) either or both of the following apply:

(i) the premiums actually paid on the life policy do not, at the date of B's death, exceed the amount prescribed by the regulations for the purposes of this subparagraph:

(ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed by the regulations for the purposes of this subparagraph.

(2) The life policy, with all bonus additions to the life policy, reverts to and vests in A.

(3) The life policy remains subject to all outstanding interests and equities that affect the life policy.

Compare: 1920 No 84 s 2(1)

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

(1) This section applies if—

(a) a policyholder (**A**) has assigned a life policy on A's own life to A's spouse, civil union partner, or de facto partner (**B**); and

(b) B has died in A's lifetime having made a will under which B has disposed of the life policy; and

(c) either or both of the following apply:

(i) the premiums actually paid on the life policy do not, at the date of B's death, exceed the amount prescribed by the regulations for the purposes of this subparagraph:

(ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed by the regulations for the purposes of this subparagraph.

(2) The life insurer may, without requiring probate of the will, declare that the executor of the will, or any person who may be entitled under the will to the life policy, is the policyholder.

(3) If a declaration is made, the life insurer must—

(a) record in a register kept by the insurer for the purpose the particulars of the declaration and the time at which the particulars are recorded; and

(b) issue a certificate of those particulars and forward it to the person who is declared to be the policyholder; and

(c) retain a record of the declaration.

(4) The executor or other person becomes the policyholder on the record being made, subject to all outstanding interests and equities that affect the life policy.

(5) The life insurer may, in its discretion, require probate of the will to be taken out.

Compare: 1920 No 84 s 2(2)

*Vesting life policy without requiring probate or letters of administration*

**164 Vesting life policy without requiring probate or letters of administration**

(1) This section applies if—

(a) the policyholder of a life policy (**A**) is not the life insured; and

(b) A dies in the lifetime of the life insured.

(2) The life insurer may, without requiring probate or letters of administration, declare that a person is the policyholder if—

(a) that person proves to the satisfaction of the life insurer either or both of the following:

(i) that the person is entitled to the benefit of the rights conferred by the life policy (whether under A's will or on A's intestacy):

(ii) that the person is entitled to obtain probate of A's will or letters of administration of A's estate; and

(b) either or both of the following apply:

(i) the premiums actually paid on the life policy do not, at the date of A's death, exceed the amount that is prescribed by regulations

made for the purposes of section 65(5) of the Administration Act 1969:

(ii) the sum insured by the life policy does not, exclusive of bonuses, exceed the amount prescribed under those regulations.

(3) If a declaration is made, the life insurer must— 5

(a) record in a register kept by the insurer for the purpose the particulars of the declaration and the time at which the particulars are recorded; and

(b) issue a certificate of those particulars and forward it to the person who is declared to be the policyholder; and

(c) retain a record of the declaration. 10

(4) The person becomes the policyholder on the record being made, subject to all outstanding interests or equities affecting the life policy.

(5) This section does not apply to any life policy to which **section 162 or 163** applies.

Compare: 1925 No 25 ss 2, 5 15

# Part 6
# Regulations and miscellaneous provisions

*Regulations*

## 165 General regulations

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 20

(a) providing for anything this Act says may or must be provided for by regulations:

(b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing— 25

(i) by whom, when, where, and how the thing must be done:

(ii) the form that must be used in connection with doing the thing:

(iii) what information or other evidence or documents must be provided in connection with the thing: 30

(iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:

(c) declaring matters for the purposes of **section 10(3)** (which relates to declarations concerning consumer insurance contracts and non-consumer insurance contracts): 35

(d) prescribing matters for the purposes of **section 125(b)**:

(e) amending the amount in **section 149(1)(b)**:

(f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.

(2) Regulations made under **subsection (1)(c) to (e)** may be made only on the recommendation of the Minister.

(3) The Minister must, before recommending that regulations be made under **subsection (1)(c)**,—

(a) consult the FMA; and

(b) have regard to the economic substance of the contracts of insurance to which the declaration will relate; and

(c) be satisfied that the declaration is necessary or desirable in order to promote either or both of the matters in **section 3(a) or (b)**.

(4) The Minister must, before recommending that regulations be made under **subsection (1)(d)**, be satisfied that the rate and manner of calculation that will apply under **section 125(b)** are consistent with the following objectives:

(a) simple, accessible, and predictable law:

(b) commercially realistic, and fair, compensation for persons who are entitled to be paid money under life policies.

(5) The Minister must, before recommending that regulations amend the amount in **section 149(1)(b)**, be satisfied that the amendment is necessary or desirable to take into account any increase in the Consumers Price Index (All Groups) published by Statistics New Zealand.

(6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### 166 Regulations for purpose of Part 4

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) specifying the duties and obligations of brokers in relation to insurance broking client accounts, including obligations to make payments into those accounts:

(b) providing for the protection of money deposited in insurance broking client accounts or invested from claims by persons other than the person for whom, or on whose behalf, the money is held:

(c) restricting the combining of any insurance broking client account with any other account or the combining of any property in which money from such an account is invested with any other property:

(d) providing for the audit, review, and inspection of the accounts and records kept by brokers:

(e) stating which provisions of regulations made under this section (if any) are Part 6 services provisions for the purposes of the FMCA (*see* section 449(4) and Part 8 of that Act, in which Part 6 services provisions are specified to be civil liability provisions).

(2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5

Compare: 1994 No 41 s 18

*Miscellaneous*

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

The Marine Insurance Act 1908 does not limit any provision of this Act, and the provisions of this Act prevail in any case where they are in conflict with any provision of that Act. 10

**168 No contracting out**

(1) The provisions of this Act have effect despite any provision to the contrary in any contract of insurance or other agreement. 15

(2) **Subsection (1)** does not limit **sections 64, 65, 66(5), and 67(4)**.

. . . . .

# Schedule 1
# Transitional, savings, and related provisions

**s 8**

## Part 1
## Provisions relating to this Act as enacted

### 1 New disclosure duties apply to new contracts and variations

**Part 2** of this Act applies to—

(a) any contract entered into on or after the commencement of this clause (including any new contract that has the effect of operating as a renewal of a contract of insurance entered into before that commencement); and

(b) any variation of a contract of insurance that is made on or after the commencement of this clause (whether the contract of insurance was entered into before or after that commencement).

### 2 Charges on insurance moneys under Law Reform Act 1936

(1) If a charge exists immediately before the commencement of this clause, the charge ceases to exist on that commencement.

(2) However,—

(a) **subclause (1)** does not apply to a charge that is the subject of an existing proceeding; and

(b) nothing in this Act affects the completion of the existing proceeding.

(3) Section 9 of the Law Reform Act 1936 continues to have effect for the purposes stated in **subclause (2)** as if it had not been repealed.

(4) In this clause,—

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

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

### 3 Third party claims against insurers

(1) **Subpart 5 of Part 3** of this Act may apply regardless of whether—

(a) the event or conduct that gives rise to an insured liability occurred before or after the commencement of that subpart; or

(b) the policyholder became a specified policyholder before or after the commencement of that subpart.

(2) However, **subpart 5 of Part 3** of this Act does not apply if the event or conduct that gives rise to an insured liability is the subject of an existing proceeding (as defined in **clause 2(4)**).

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

### 3A Contract or arrangement between insurer and broker about premiums

(1) This clause applies to a contract or an arrangement that, immediately before the commencement of **section 105** of this Act, is in effect for the purposes of section 8(3)(a) of the Insurance Intermediaries Act 1994.

(2) The contract or arrangement continues in effect for the purposes of **section 105(a)**.

(3) This clause does not prevent the termination or variation of the contract or arrangement.

### 4 References relating to banks and other deposit takers

(1) Until section 10 of the Deposit Takers Act 2023 comes into force, the reference to a licensed deposit taker in **section 110(1)** includes—

(a) a registered bank within the meaning of section 2(1) of the Banking (Prudential Supervision) Act 1989; and

(b) a licensed NBDT within the meaning of section 4(1) of the Non-bank Deposit Takers Act 2013.

(2) The reference in **section 117(1)(d)** to resolution under the Deposit Takers Act 2023 includes statutory management under the Banking (Prudential Supervision) Act 1989.

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

(1) This clause applies to—

(a) an assignment otherwise than by way of ordinary transfer of an existing policy that is made before the commencement of this clause; and

(b) a mortgage of an existing policy that is given before the commencement of this clause.

(2) Part 2 of the 1908 Act continues to apply to the assignment or mortgage as if that Part had not been repealed.

(3) In relation to an assignment or a mortgage to which this clause applies, the definition of registered in section 4 of the Property Law Act 2007 must be treated as meaning registered under Part 2 of the 1908 Act.

(4) Section 111(6) of the Property Law Act 2007 (as in force immediately before the commencement of this clause) must be treated as continuing to apply to a mortgage to which this clause applies.

(5) In this clause,—

**1908 Act** means the Life Insurance Act 1908

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

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

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

# Schedule 2
# Insurer's remedies for qualifying misrepresentation or breach

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## Part 1
## Remedies for contracts (other than variations)

### 1 When this Part applies

This Part—

(a) applies to qualifying misrepresentations and qualifying breaches in relation to contracts of insurance that are entered into; but

(b) does not apply to qualifying misrepresentations and qualifying breaches in relation to variations of contracts of insurance (*see* instead **Part 2**).

**2 Deliberate or reckless misrepresentation or breach** 5

If a qualifying misrepresentation or breach was deliberate or reckless, the insurer—

(a) may avoid the contract and refuse all claims; and

(b) need not return any of the premiums paid.

**3 Neither deliberate nor reckless misrepresentation or breach** 10

(1) **Clauses 4 and 5** apply if a qualifying misrepresentation or breach was neither deliberate nor reckless.

(2) The insurer's remedies under those clauses are based on what it would have done if the qualifying misrepresentation or breach had not occurred, and those clauses are to be read accordingly. 15

**4 Insurer would not have entered into contract**

(1) If the insurer would not have entered into the contract on any terms, the insurer—

(a) may avoid the contract and refuse all claims; but

(b) must in that event return the premiums paid. 20

(2) However, in the case of a life policy within the meaning of section 84(1)(a) to (c) of the Insurance (Prudential Supervision) Act 2010,—

(a) **subclause (1)** applies only if the qualifying misrepresentation or breach occurred within the 3-year period immediately preceding the earlier of the following: 25

(i) the date on which the contract is sought to be avoided:

(ii) the date of the death of the life insured; and

(b) if **subclause (1)** does not apply, the insurer may, by notice to the policyholder, vary the life policy in a way that places the insurer in the position in which the insurer would have been if the qualifying 30 misrepresentation or breach had not occurred.

(3) The following applies for the purposes of **subclause (2)(b)**:

(a) the position of the insurer under a life policy (**policy A**) that is varied must not be inconsistent with the position in which other reasonable and prudent insurers would have been if— 35

(i) they had entered into similar life policies to policy A; and

(ii) there had been no qualifying misrepresentation or breach in relation to the similar life policies:

(b) a life policy (**policy B**) is **similar** to another life policy (policy A) if—

(i) policy B provides insurance cover that is the same as, or similar to, the kind of insurance cover provided by policy A; and

(ii) the similar policy was entered into at, or close to, the time policy A was entered into.

**5 Insurer would have entered into contract on different terms**

(1) If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract must be treated as if it had been entered into on those different terms if the insurer so requires.

(2) In addition, if the insurer would have entered into the contract, but would have charged a higher premium, the insurer may do either or both of the following:

(a) by notice to the policyholder, increase the premium for the remainder of the term of the contract:

(b) reduce proportionately the amount to be paid on a claim.

(2A) The increased premium under **subclause (2)(a)** must be no more than the higher premium that the insurer would have charged.

(2B) If the insurer acts under **subclause (2)(a)**, **subclause (2)(b)** does not apply to—

(a) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the increased premium takes effect:

(b) a claim under any other contract of insurance if the claim arises out of events that occur after the increased premium takes effect.

(3) In **subclause (2)**, **reduce proportionately** means that the insurer need pay on the claim only the percentage of the amount otherwise payable on a claim that is determined in accordance with the following formula:

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

where—

y is the percentage

$p_1$ is the premium actually charged (before any increase under **subclause (2)(a)**)

$p_2$ is the higher premium.

**Example**

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

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

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

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

(4) **Subclause (2)** applies whether the terms relating to matters other than the premium would have been the same or different.

(5) In this clause, **amount otherwise payable on a claim** means the amount the insurer would otherwise have been under an obligation to pay under the terms of the contract of insurance (or, if applicable, under the different terms provided for by virtue of **subclause (1)**).

## Part 2
## Remedies for variations

### 6 When this Part applies

This Part applies to qualifying misrepresentations or qualifying breaches in relation to variations to contracts of insurance.

### 7 Deliberate or reckless misrepresentation or breach

If a qualifying misrepresentation or breach was deliberate or reckless, the insurer—

(a) may, by notice to the policyholder, treat the contract as having been terminated with effect from the time when the variation was made; and

(b) need not return any of the premiums paid.

### 8 Neither deliberate nor reckless misrepresentation or breach and premium increased or unchanged

(1) **Clauses 9 and 10** apply if—

(a) a qualifying misrepresentation or breach was neither deliberate nor reckless; and

(b) the total premium was increased or not changed as a result of the variation.

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

### 9 Insurer would not have agreed to variation

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

(a) may treat the contract as if the variation was never made; but

(b) must, if it acts under **paragraph (a)**, return any extra premium paid.

**10 Insurer would have agreed to variation**

(1) This clause applies if **clause 9** does not apply.

(2) If the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires.

(3) **Clause 14** also applies if (in the case of an increased premium) the insurer would have increased the premium by more than it did, or (in the case of an unchanged premium) the insurer would have increased the premium.

**11 Neither deliberate nor reckless misrepresentation or breach and premium decreased**

(1) **Clauses 12 and 13** apply if—

(a) a qualifying misrepresentation or breach was neither deliberate nor reckless; and

(b) the total premium was reduced as a result of the variation.

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

**12 Insurer would not have agreed to variation**

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

**13 Insurer would have agreed to variation**

(1) This clause applies if **clause 12** does not apply.

(2) If the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation must be treated as if it had been entered into on those different terms if the insurer so requires.

(3) **Clause 14** also applies if the insurer would have increased the premium, would not have reduced the premium, or would have reduced it by less than it did.

**14 Insurer may increase premium and reduce proportionately amount to be paid on claim**

(1) If this clause applies, the insurer may do either or both of the following:

(a) by notice to the policyholder, increase the premium for the remainder of the term of the contract:

(b) reduce proportionately the amount to be paid on—

(i) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the variation:

(ii) a claim under any other contract of insurance if the claim arises out of events after the variation.

(1A) The increased premium under **subclause (1)(a)** must be no more than,—

(a) in the case of **clause 10(3)**, the premium that the insurer would have charged:

(b) in the case of **clause 12**, the original premium:

(c) in the case of **clause 13(3)**, the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced premium the insurer would have charged.

(1B) If the insurer acts under **subclause (1)(a)**, **subclause (1)(b)** does not apply to—

(a) a claim under a claims-made policy if the policyholder notifies the insurer of a claim against the policyholder, or of circumstances that may give rise to a claim against the policyholder, after the increased premium takes effect:

(b) a claim under any other contract of insurance if the claim arises out of events that occur after the increased premium takes effect.

(2) In **subclause (1)**, **reduce proportionately** means that the insurer need pay on the claim only the percentage of the amount otherwise payable on a claim that is determined in accordance with the following formula:

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

where—

y is the percentage

$p_1$ is the premium actually charged (before any increase under **subclause (1)(a)**)

$p_2$ in the case of—

(a) **clause 10(3)**, is the premium the insurer would have charged:

(b) **clause 12**, is the original premium:

(c) **clause 13(3)**, is the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced premium the insurer would have charged.

(3) **Subclause (1)** applies whether the terms relating to matters other than the premium would have been the same or different.

(4) In this clause,—

**amount otherwise payable on a claim** means the amount the insurer would otherwise have been under an obligation to pay under the terms of the contract of insurance (whether on the original terms, or as varied, or under the different terms provided for by virtue of **clause 10(2) or 13(2)**, as the case may be)

**original premium** means the premium in effect immediately before the variation.

## Part 3
## Modifications for group insurance

### 15 Modifications for group insurance

(1) **Part 1** applies subject to the modifications set out in this Part in relation to insurance cover provided for B under a contract of insurance mentioned in **section 22**.

(2) In this Part, **B** has the meaning set out in **section 22**.

(3) References to the contract of insurance (however described) are to that part of the contract that provides for insurance cover for B.

(4) References to claims and premiums are to claims and premiums in relation to that cover.

## Part 4
## Miscellaneous provision

### 16 Marine Insurance Act 1908 subject to this schedule

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

# Schedule 3
# Information and disclosure for third party claimants

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### 1 Interpretation

Any term or expression that is defined in **section 87** and used, but not defined, in this schedule has the same meaning as in **section 87**.

### 2 Third party claimant may request information from specified policyholder

(1) This clause applies if a person (**A**) reasonably believes that—

(a) another person (**B**) has incurred an insured liability to A; and

(b) B is a specified policyholder.

(2) A may, by notice in writing, request from B the information of a kind referred to in **clause 4** that is specified in the notice.

(3) A must include in the notice particulars of the facts A relies on as enabling them to give the notice.

### 3 Third party claimant may request information from other persons

(1) This clause applies if a person (**A**) reasonably believes that—

(a) an insured liability has been incurred to A; and

(b) A may be able to recover the amount of the insured liability from the insurer under **subpart 5 of Part 3**; and

(c) there is a person (**C**) who is able to provide information of the kind referred to in **clause 4**.

(2) A may, by notice in writing, request from C the information of a kind referred to in **clause 4** that is specified in the notice.

(3) A must include in the notice particulars of the facts A relies on as enabling them to give the notice.

**4 Information that may be requested** 5

(1) The following is the information that may be requested:

(a) whether there is a contract of insurance that covers the supposed liability or might reasonably be regarded as covering it:

(b) if there is such a contract, any of the following:

(i) who the insurer is: 10

(ii) what the terms of the contract are:

(iii) whether the policyholder has been informed that the insurer has claimed not to be liable under the contract in respect of the supposed liability:

(iv) whether there is or has been any proceeding between the insurer and the policyholder in respect of the supposed liability and, if so, relevant details of the proceeding: 15

(v) if the contract sets a limit on the fund available to meet claims in respect of the supposed liability and other liabilities, how much of it (if any) has been paid out in respect of other liabilities: 20

(vi) whether there is a security interest to which any sums paid out under the contract in respect of the supposed liability would be subject.

(2) For the purpose of **subclause (1)(b)(iv)**, **relevant details of the proceeding** are,— 25

(a) in the case of a court proceeding, the following:

(i) the name of the court and the registry of the court:

(ii) the number of the proceeding:

(iii) the contents of all documents served in the proceeding in accordance with rules of court or orders made in the proceeding, and the contents of any such orders; or 30

(b) in the case of an arbitration, the following:

(i) the name of the arbitrator:

(ii) information corresponding with that referred to in **paragraph (a)(iii)**. 35

**5 Person to whom notice is given must provide information**

(1) A person (**R**) who receives a notice under **clause 2 or 3** must, within 28 days after receiving the notice,—

(a) provide to the person who gave the notice the information specified in it that R is able to provide; and

(b) in relation to any information specified in the notice that R is not able to provide, notify that person why R is not able to provide it.

(2) **Subclause (3)** applies if— 5

(a) a person (**R**) receives a notice under **clause 2 or 3**; and

(b) there is information specified in the notice that R is not able to provide because it is contained in a document that is not in R's control; and

(c) the document was at one time in R's control; and

(d) R knows or believes that it is now in another person's control. 10

(3) R must, within 28 days after receiving the notice, provide the person who gave the notice with all particulars R can as to the nature of the information and the identity of that other person.

(4) If R fails to comply with a duty imposed on R by this clause, the person who gave R the notice may apply to the High Court for an order requiring R to comply with the duty. 15

(5) R does not have a duty under this clause in respect of information to which a claim of legal professional privilege could be maintained in a proceeding.

**6 Person to whom notice is given may require payment of reasonable charge**

(1) A person (**R**) who receives a notice under **clause 3** may require the person (**A**) who gave the notice to pay a reasonable charge to R to meet the cost of providing the information if— 20

(a) R gives A written notice that a charge will be imposed for providing the information; and

(b) the notice specifies and explains the charge; and 25

(c) the notice is given within 21 days after R receives the notice under **clause 3**.

(2) R may refuse to comply with a notice under **clause 3** until the charge is paid.

(3) A charge payable to R is recoverable by R in any court of competent jurisdiction as a debt due to R. 30

**7 Contract of insurance must not prohibit, prevent, or restrict person from providing information or giving disclosure**

A provision of a contract of insurance is of no effect to the extent that it purports, whether directly or indirectly,—

(a) to avoid or terminate the contract or alter the rights of the parties under it in the event of a person providing information, or giving disclosure, that the person is required to provide or give under a notice under this schedule; or 35

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

### 8 Other rights to information

A right to information that a person has under this schedule is in addition to any such rights that the person has apart from this schedule. 5

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

For the purposes of this schedule,—

(a) a person is **able to provide** information only if—

(i) the person can obtain it without undue difficulty from a document that is in that person's control, or 10

(ii) if the person is an individual, the information is within that person's knowledge; and

(b) a document is in a person's **control** if it is in that person's possession or if the person has a right to possession of it or to inspect or take copies of it. 15

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## Legislative history

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|---|---|
| 29 April 2024 | Introduction (Bill 41–1) |
| 2 May 2024 | First reading and referral to Finance and Expenditure Committee |
| 3 September 2024 | Reported from Finance and Expenditure Committee (Bill 41–2) |
| 17 October 2024 | Second reading<br>Committee of the whole House (Divided from Bill 41–2 as Bill 41–3) |

Wellington, New Zealand:
Published under the authority of the House of Representatives—2024