

INSURANCE (AMENDMENT) ACT, 1983, No. 97

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 97, 1983.

An Act to amend the Insurance Act, 1902, with respect to the enforceability of certain contracts of insurance. [Assented to, 9th November, 1983.]

Insurance (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Insurance (Amendment) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 49, 1902.

3. The Insurance Act, 1902, is amended in the manner set forth in Schedule 1.

Transitional provision.

4. Sections 18A and 18B of the Insurance Act, 1902, as amended by this Act, in their application to contracts of insurance entered into, reinstated or renewed after the commencement of those sections, have effect with respect to statements, omissions, events or circumstances referred to in those sections and made, occurring, happening or existing before that commencement (as well as with respect to those so referred to and made, occurring, happening or existing after that commencement).
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Insurance (Amendment).

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE INSURANCE ACT, 1902.

(1) Sections 18A, 18B—

After section 18, insert:—

Misrepresentation and non-disclosure.

18A. A contract of insurance that is entered into, reinstated or renewed after the commencement of this section is not void, voidable or otherwise rendered unenforceable—

- (a) by reason only of a false or misleading statement made in or in connection with the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the statement was material to the insurer in relation to the contract of insurance and—
 - (i) the statement was fraudulent; or
 - (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that the statement was material to the insurer in relation to the contract of insurance; or

- (b) by reason only of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and—
 - (i) the omission was deliberate; or
 - (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

Insurance (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.***Limitation on exclusion clauses.**

18B. (1) Where by or under the provisions of a contract of insurance entered into, reinstated or renewed after the commencement of this section—

- (a) the circumstances in which the insurer is bound to indemnify the insured are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of particular events or on the existence of particular circumstances; and
- (b) the liability of the insurer has been so defined 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,

the insured shall not be disentitled to be indemnified by the insurer by reason only of those provisions of the contract of insurance if, on the balance of probability, the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of those events or the existence of those circumstances, unless in all the circumstances it is not reasonable for the insurer to be bound to indemnify the insured.

(2) The onus of proving for the purposes of subsection (1) that, on the balance of probability, loss in respect of which an insured seeks to be indemnified was not caused or contributed to by the happening of particular events or the existence of particular circumstances is on the insured.

(2) Section 21 (2)—

At the end of section 21, insert:—

(2) Without limiting subsection (1), sections 18A and 18B do not apply to or in respect of—

- (a) contracts of marine insurance;

Insurance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.*

- (b) contracts of life insurance; or
 - (c) those provisions of contracts of insurance to or in respect of which the Motor Vehicles (Third Party Insurance) Act, 1942, the Workers' Compensation Act, 1926, or section 70A of the Legal Practitioners Act, 1898, applies.
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