

# Insurance Act 1902 No 49

[1902-49]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Life, Fire, and Marine Insurance Act 1902
- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Insurance Act 1902 No 49



New South Wales

An Act to consolidate the enactments relating to Life, Fire, and Marine insurance.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Insurance Act 1902*.

### 2 Repeals

The Acts mentioned in Schedule 1 are, to the extent therein expressed, hereby repealed.

## Part 2 Life insurance encouragement

For the encouragement and protection of life insurances and other like provident arrangements for the benefit of insurers, their wives, and families, be it enacted as follows:

### 3 Definitions

In this Part, unless the context or subject-matter otherwise indicates:

**Insurance company** extends and applies to any company, society, or body of persons incorporated or regulated, or enabled to sue and be sued, by any Charter or Act, and associated together with the object solely, or amongst others, of granting policies upon lives or entering into contracts for future endowments by way of annuity or otherwise.

**Policy** means a policy or contract effected with any insurance company.

**Spouse** means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*, in which the parties have cohabited for a period of not less than 2 years,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

**4 Policy and premiums protected on bankruptcy and against Court process**

The property and interest of every person who has effected, or shall hereafter effect, any policy for an insurance bona fide upon the life of the insured or any other person in whose life the insured is interested, or for any future endowment for the insured or any other such person, and the property and interest of the personal representatives of the insured or such other person in such policy, or in the moneys payable thereunder or in respect thereof, and in the contributions made towards the same, shall be exempt from any law now or hereafter in force relating to insolvency or bankruptcy, or from being seized or levied upon by or under the process of any Court whatever, and shall not on the death of such person be assets for the payment of the insured's debts, unless in the insured's will or in any codicil thereto the insured declares an intention to make such property and interest assets for the payment of the insured's debts by words expressly referring to the policy or policy moneys, or expressly referring to this Act and excluding the protection afforded thereby.

Where such a policy has been effected by an uncertificated bankrupt the policy and the moneys payable thereunder or in respect thereof shall to the extent mentioned in section 5 be the absolute property of the bankrupt, or of the persons claiming under or through the bankrupt, and shall not be deemed to be property of the bankrupt divisible among the bankrupt's creditors within the meaning of the [Bankruptcy Act 1898](#).

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

**5 Conditions of protection for life insurance and endowment**

A policy for life insurance or endowment or the contributions made towards the same shall not be protected under the last preceding section until such policy has endured for at least two years, after which period such protection shall be afforded to the extent of four hundred dollars of insurance or endowment, and after an endurance of five years to the extent of one thousand dollars, and after an endurance of seven years to the extent of two thousand dollars, and after an endurance of ten years to the extent of four thousand dollars.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

**6 Conditions of protection for annuities**

A policy for an annuity, or contributions made towards the same, shall not be protected under section 4 until the payments made on behalf of such annuity have extended over a period of at least six years, or unless such policy has been purchased at a date at least six

years prior to the commencement of the annuity, and such annuity does not exceed two hundred and eight dollars per annum.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **7 Protection under s 4 restricted to certain persons**

The protection afforded under section 4 shall, in the case of an annuity, accrue only to the benefit of the actual annuitant, and only to such part thereof as is payable after such annuitant has attained the age of fifty years, and in the case of an endowment for the benefit only of the nominee, and in the case of a life insurance for the benefit only of the personal representatives of the insured, and in no case for any assignee of the insured.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **8 In insurances for benefit of family, moneys payable not to form part of estate**

A policy of insurance by any man on his own life, effected before or after the passing of this Act, and expressed to be for the benefit of his spouse or of his children, or of his spouse and children, or any of them, and a policy of insurance effected by any woman on her own life, and expressed to be for the benefit of her spouse or of her children, or of her spouse and children, or any of them, shall create a trust in favour of the objects named therein, and the moneys payable under any such policy shall not, as long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts:

Provided that if it is proved that the policy was effected and the premiums paid, with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **9 Appointment of trustees**

A person insured under any policy referred to in the last preceding section may, by the policy or by any memorandum under his or her hand, or by will, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there is no trustee, or if it is expedient to appoint a new trustee or new trustees, a trustee or a new trustee, or trustees, may be appointed by any Court having

jurisdiction under the provisions of the *Trustee Act 1925* or any Act amending the same. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

**Editorial note—**

See *Life Insurance Act 1945* (Commonwealth).

## **10 Shares in insurance money, how settled**

Subject to any provisions expressed in any policy referred to in section 8, the person effecting such insurance shall have power to appoint by deed or will what shares or interests in the moneys secured thereby shall accrue to each of the persons for whose benefit the insurance was expressed to be made. In default of such appointment, or so far as the same does not extend, then, subject as aforesaid, children expressed in any such policy shall be entitled in equal shares; and when a spouse is expressed to be benefited together with a child or children, such spouse shall be entitled to the whole for life, and such child or children in equal shares shall be entitled to the remainder.

**Editorial note—**

See *Life Insurance Act 1945* (Commonwealth).

## **10A Suicide of insured**

A policy for an insurance upon the life of any person, whether issued before or after the commencement of the *Life, Fire and Marine Insurance (Amendment) Act 1938*, shall not be and shall be deemed never to have been void or voidable merely on the ground that such person died by the person's own hand or act, if, upon the true construction of the policy, the insurance company has thereby agreed to pay the sum assured in the events that have happened.

**Editorial note—**

See *Life Insurance Act 1945* (Commonwealth).

## **Part 3 Lost life insurance policies**

### **11 Issue of special policy in substitution of lost or destroyed policies**

- (1) In the event of a life insurance policy issued in New South Wales or recorded in the books of any life insurance office in New South Wales being lost or destroyed, the company which is liable upon such policy may, upon such evidence as to its loss or destruction as the company deems sufficient, issue to the person entitled thereto a special policy.
- (2) If the company fails to issue such a special policy within two months after being requested in writing so to do by such person, hereinafter called the applicant, a Judge of the Supreme Court or of the Metropolitan District Court may, after due notice to the

company, and upon such evidence as to the loss or destruction of the policy as the Judge deems sufficient, direct the company upon such terms and within such time as the Judge may determine to issue to the applicant a special policy.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **12 Intended issue of special policy to be advertised**

Before issuing such special policy the company shall give at least one month's notice of its intention so to do in at least one newspaper circulating in the city of Sydney, and in one newspaper circulating in the neighbourhood in which the applicant resides, or in one newspaper circulating in the district in which the policy is considered by the company to have been lost. The expenses of such advertisement and all other costs connected with the issue of such special policy shall be paid by the applicant, who shall not be entitled to such special policy until the said expenses and costs have been paid.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **13 Contents and effect of special policy**

- (1) Every such special policy shall be available for all purposes and uses for which the policy so lost or destroyed would have been available, and shall be equally valid therewith to all intents.
- (2) Every such special policy shall contain, so far as the same can be known or ascertained, the same or similar terms and conditions as were contained in the policy so lost or destroyed, and every memorandum or endorsement thereon so far as the same may be known to the company, and shall state why such special policy is issued.
- (3) The issue of such special policy with the reasons for such issue shall be entered in the books of the company, and after the issue of such special policy the company shall not be liable under the original policy if no notice of any assignment thereof has been received prior to such issue.

**Editorial note—**

See [Life Insurance Act 1945](#) (Commonwealth).

## **Part 4 Fire insurance policies assignment**

### **14 Assignment of fire policy**

- (1) It shall be lawful to make an assignment of a fire policy by endorsement on such policy with the consent in writing of the company or person issuing the same endorsed on such policy.



- (2) Such assignment shall be in the words or to the effect following, namely, "I, AB, of, etc, do hereby assign unto CD the within policy of insurance on [*here describe property insured, etc*] In witness whereof, etc".

### **15 Assignee may sue in his or her own name**

Whenever a fire policy has been assigned in such manner and with such consent as aforesaid so as to pass the beneficial interest in such policy to any person entitled to the property thereby insured the assignee of such policy shall be entitled to sue thereon in the assignee's own name. The defendant in any action shall be entitled to make any defence which the defendant would have been entitled to make if the said action had been brought before such assignment in the name of the person by whom or on whose account the policy sued upon was effected.

### **16 Definition**

For the purposes and in the construction of sections 14 and 15, the expression **fire policy** means any instrument by which the payment of money is assured or secured on the happening of any of the contingencies in the nature of loss or damage to property by fire named in such instrument.

## **Part 5 Re-Insurance—marine risks**

### **17 Re-insurance of marine risks may be made**

Notwithstanding anything contained in the Imperial Act passed in the nineteenth year of the reign of King George the Second, chapter thirty-seven, it shall be lawful to make re-insurance upon any ship or vessel, or upon any goods, merchandise, or other property on board any ship or vessel, or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured.

#### **Editorial note—**

See [Marine Insurance Act 1909](#) (Commonwealth).

## **Part 5A Procedural and evidentiary provisions**

### **17A Rights of insurer to challenge evidence where false claim alleged**

(1) If:

- (a) civil proceedings have been commenced against a person in respect of a claim (being a claim in respect of which the person is or may be indemnified under a contract of insurance), and
- (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,

the insurer may apply to the court to be joined as a party to the proceedings.

- (2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person (including a defendant) able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim.
- (3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to:
  - (a) any other claim in which the witness was involved, and
  - (b) the credibility of the witness.
- (4) If the court gives leave to do so, the insurer may:
  - (a) cross-examine the witness, and
  - (b) lead other evidence to refute the evidence given by the witness,as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).
- (5) Any right to examine or cross-examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.
- (6) This section applies despite section 53 of the *Evidence Act 1898*.
- (7) This section applies to an insurer as a defendant in relation to a claim (being a claim referred to in subsection (1)) in the same way as this section applies to an insurer who is granted leave to be joined as a party.
- (8) This section does not apply to proceedings in respect of a claim under the *Motor Accidents Act 1988* or under the *Motor Accidents Compensation Act 1999*.
- (9) This section applies to civil proceedings commenced before or after the commencement of this section.

## **Part 6 Miscellaneous**

### **18 Powers of court in relation to insurance contracts**

- (1) In any proceedings taken in a court in respect of a difference or dispute arising out of a contract of insurance, if it appears to the court that a failure by the insured to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.
- (2) Where an order of the nature referred to in subsection (1) has been made, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be

determined as if the failure the subject of the order had not occurred.

### **18A Misrepresentation and non-disclosure**

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.

### **18B Limitation on exclusion clauses**

- (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.

## **19 Insured not bound to arbitrate**

A provision in a contract of insurance or other contract or agreement, being a provision with respect to the submission to arbitration of any matter arising out of the contract of insurance, does not bind the insured except where the provision is contained in a contract or agreement, entered into after a difference or dispute has arisen between the insurer and the insured, providing for the submission to arbitration of that difference or dispute.

## **20 Repairs to motor vehicle carried out by insurer**

In any proceedings arising out of a difference or dispute with respect to:

- (a) the materials used in carrying out repairs, or
- (b) the manner of carrying out repairs,

to a motor vehicle, which repairs were carried out by the insurer under a policy of insurance relating to that motor vehicle or by a company that is a subsidiary or by a related body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth of the insurer, the onus lies upon the insurer of proving that the materials used were proper materials or that the repairs were properly carried out, as the case may be, notwithstanding any acknowledgment as to the materials or the manner of carrying out the repairs given by the insured.

## **21 Exemption**

- (1) The Governor may make regulations not inconsistent with this Act exempting, subject to such terms and conditions as are specified in the regulations:
  - (a) persons belonging to any class of persons, or
  - (b) contracts of insurance included in any class of contracts of insurance, specified in the regulations from all or any of the provisions of this Part as may be so specified in respect of that class of persons or that class of contracts of insurance.
- (2) Without limiting subsection (1), sections 18A and 18B do not apply to or in respect of:
  - (a) contracts of marine insurance,
  - (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 1987* or section 406 of the *Legal Profession Act 2004*, applies.

## 22 Savings and transitional provisions

Schedule 2 has effect.

### Schedule 1 Repeals

Reference to Act	Title or short title	Extent of repeal
26 Vic No 13	<i>Life Assurance Encouragement Act of 1862</i>	The whole Act
29 Vic No 19	An Act to repeal the prohibition on reinsurance of Marine Risks	The whole Act
51 Vic No 13	<i>Assignees of Fire Insurance Policies Enabling Act 1887</i>	The whole Act
56 Vic No 11	<i>Married Women's Property Act 1893</i>	The unrepealed portion of s 13 and s 14
59 Vic No 13	<i>Lost Policies Act of 1895</i>	The whole Act

### Schedule 2 Savings and transitional provisions

(Section 22)

## Part 1 Provisions consequent on enactment of Insurance (Amendment) Act 1983

### 1 Definition

In this Part, amending Act means the *Insurance (Amendment) Act 1983*.

### 2 Misrepresentation, non-disclosure and limitation on exclusion clauses

- (1) Sections 18A and 18B of this Act, as amended by the amending 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).
- (2) This clause is taken to have commenced on 1 April 1984 (the date of commencement of the amending Act).
- (3) Subclause (1) re-enacts (with minor modification) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

## **Part 2 Provisions consequent on enactment of [Property \(Relationships\) Legislation Amendment Act 1999](#)**

### **3 Life policies**

The amendments made to this Act by the [Property \(Relationships\) Legislation Amendment Act 1999](#) have no effect in relation to the estate of any person who died before those amendments took effect.