

# Insurance Act 1902 No 49

[1902-49]



New South Wales

## Status Information

### Currency of version

Current version for 1 December 2017 to date (accessed 30 June 2024 at 5:27)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 December 2017

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The Acts mentioned in Schedule 1 are, to the extent therein expressed, hereby repealed.

## Parts 2, 3

### 3-13 (Repealed)

## 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*, the *Motor Accidents Compensation Act 1999* or the *Motor Accident Injuries Act 2017*.
- (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*, Part 4.4 of the *Legal Profession Uniform Law (NSW)* or Part 8 of the *Legal Profession Uniform Law Application Act 2014*, 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 | <a href="#">Assignees of Fire Insurance Policies Enabling Act 1887</a> | The whole Act                           |
| 56 Vic No 11 | <a href="#">Married Women's Property Act 1893</a>                      | The unrepealed portion of s 13 and s 14 |
| 59 Vic No 13 | <a href="#">Lost Policies Act of 1895</a>                              | 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.