

DRAFT FOR CONSULTATION

Insurance Contracts Bill

Government Bill

Explanatory note

General policy statement

[To come.]

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 13 November 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/7480-impact-statement-insurance-contract-law-reforms-proactiverelase-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

[To come]

Part 1
Preliminary provisions

[To come]

Part 2
Disclosure duties and duty of utmost good faith

[To come]

Part 3
Contracts of insurance

[To come]

Part 4
Intermediaries

[To come]

Part 5
Contracts of life insurance

[To come]

Hon Dr David Clark

Insurance Contracts Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance Contracts Act **2022**.

2 Commencement

- (1) This Act commences on a date or dates set by Order in Council.

- (2) Any part of the Act that has not commenced by the 3rd anniversary of Royal assent commences then.

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:
 - (iv) provides for a contract of insurance to be a contract based on the utmost good faith:
- (c) **Part 3** contains provisions relating to the terms of contracts of insurance, including restrictions on certain types of exclusions and other provisions:
- (d) **Part 4** contains provisions relating 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** contains provisions relating to life policies, including—

- (i) interest on amounts payable under life policies; and
 - (ii) the assignment of life policies; and
 - (iii) life insurance by minors; and
 - (iv) life insurance for spouses or partners:
- (f) **Part 6** contains miscellaneous provisions, including provisions relating to regulations.

5 Interpretation

In this Act, unless the context otherwise requires,—

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

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

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

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

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

FMCA means the Financial Markets Conduct Act 2013

incapable person has the meaning set out in **section 150**

insurer—

- (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 34**

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**

partner, in the phrase “spouse or partner” and in related contexts, means, in relation to a person (**P**),—

- (a) P’s civil union partner; or
- (b) P’s de facto partner

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 51**

qualifying misrepresentation has the meaning set out in **section 26**

registered bank has the same meaning as in the Banking (Prudential Supervision) Act 1989

regulations means regulations in force under this Act

specified intermediary, in relation to a contract of insurance,—

- (a) means a person entitled to receive from the insurer commission or other valuable consideration in consideration for the person’s arranging, negotiating, soliciting, or procuring the contract of insurance between a person other than that person and the insurer; but
- (b) does not include an employee of the insurer

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

6 Meaning of contract of insurance

- (1) For the purposes of this Act, unless the context otherwise requires, **contract of insurance**—
 - (a) 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; and
 - (b) includes a contract of reinsurance.
- (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, 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 is not a contract of insurance for the purposes of this Act.

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 contract of reinsurance.

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 and duty of utmost good faith

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

- (1) In this Act, **consumer insurance contract**—
- (a) means a contract of insurance 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.
- (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.

11 Presumption relating to consumer insurance contract

In any proceeding under this Act in which a party claims that an insurance contract is a consumer insurance contract, it is presumed that the contract is a consumer insurance contract unless the contrary is established.

12 Effect of certificate

- (1) An insurance contract is not a consumer insurance contract if—
 - (a) the policyholder (**P**) has given a certificate for the contract under **section 446V** of the FMCA; and
 - (b) P's confirmation under **section 446V(4)(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.
- (2) **Section 446V(1A), (3), and (4)** of that Act apply for the purposes of this section.

Subpart 1—Disclosure duty for consumer insurance contracts

13 When subpart applies

This subpart applies to consumer insurance contracts.

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.

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:
 - (b) explanatory material or publicity produced or authorised by the insurer:
 - (c) how clear, and how specific, any questions asked by the insurer of the policyholder were:
 - (d) how clearly the insurer communicated to the policyholder the importance of answering those questions and the possible consequences of failing to do so:
 - (e) 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):
 - (f) 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 or extension of an existing contract; or

- (iv) a reinstatement of a previous contract of insurance.
- (2) For the purposes of **subsection (1)(e)**, 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)**.

16 Particular characteristics or circumstances of policyholder

Any particular characteristics or circumstances of the policyholder of which the insurer was aware, or ought reasonably to have been aware, must be had regard to in determining whether a policyholder has taken reasonable care not to make a misrepresentation.

17 Failure to answer or obviously incomplete or irrelevant answer is not misrepresentation

The policyholder must not be taken to have made a misrepresentation merely because the policyholder—

- (a) failed to answer a question; or
- (b) gave an obviously incomplete or irrelevant answer to a question.

18 Fraudulent misrepresentation is breach of duty

A misrepresentation made fraudulently is made in breach of the duty under this subpart.

19 Duty replaces previous duties

- (1) The duty set out in this subpart 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.
- (2) *See also section 60*, which provides that the effect of a consumer insurance contract being one of the utmost good faith does not impose any other duty relating to disclosure of a matter or representations.

20 Representations to specified intermediaries

- (1) 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.
- (2) **Subsection (1)** does not apply to a misrepresentation that a specified intermediary does not pass on under **section 63(3)**.

Subpart 2—Group insurance

21 When subpart applies

This subpart applies if—

- (a) a contract of insurance is entered into by a person (A) in order to provide cover for another person (B) or it is varied in order to provide cover for B; and
- (b) B is not a party to the contract; and
- (c) B has the benefit of the insurance cover wholly or predominantly for personal, domestic, or household purposes; and
- (d) B provides information directly or indirectly to the insurer before the contract was entered into, or before it was varied or extended to provide cover for B.

22 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 cover for B.
- (2) **Sections 14(2), 15 to 18, and 20, subpart 3, and Part 1 of Schedule 2** apply—
 - (a) with all necessary modifications to that duty as if B were the policyholder; and
 - (b) with the modifications set out in **Part 3 of Schedule 2**.
- (3) In addition, **section 26(1)(b)** applies as if it required the insurer to prove that without the misrepresentation, the insurer would not have agreed to provide cover for B at all, or would have done so only on different terms.

23 Breach by 1 member of group does not affect others

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

24 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.

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

25 Subpart applies to consumer insurance contracts

This subpart applies to consumer insurance contracts.

26 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.

27 Classification of qualifying misrepresentations

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

- (a) deliberate or reckless; or
- (b) neither deliberate nor reckless.

28 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.

29 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.

Subpart 4—Disclosure duty for non-consumer insurance contracts

30 When subpart applies

This subpart applies to non-consumer insurance contracts.

31 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.

32 What is fair presentation of risk

- (1) A fair presentation of the risk is one—
 - (a) that makes the disclosure required by **section 33**; 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.

33 What must be disclosed

- (1) The disclosure required is as follows:
 - (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 enquiries for the purpose of revealing those material circumstances.
- (2) However, in the absence of enquiry, **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.

34 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.

35 What is substantially correct

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

36 Representation may be withdrawn or corrected

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

37 Duty replaces previous duties

- (1) The duty set out in this subpart 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.
- (2) *See also section 60*, which provides that the effect of a non-consumer insurance contract being one of the utmost good faith does not impose any other duty relating to disclosure or representations.

38 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.

*Knowledge of policyholder***39 Knowledge of policyholder**

- (1) **Sections 40 to 43** 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.

40 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.

41 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.

42 When confidential information is not known

- (1) A policyholder is not by virtue of **section 40(b) or 41(b)** taken to know confidential information known to an individual if—

- (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.

- (2) The persons **connected** with a contract of insurance are—

- (a) the policyholder and any other persons for whom cover is provided by the contract; and
- (b) if the contract reinsures risks covered by another contract, the persons who are (by virtue of this subsection) connected with that other contract.

43 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 enquiries or by any other means).

- (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 cover is provided by the contract of insurance).

Knowledge of insurer

44 Knowledge of insurer

Sections 45 to 47 provide for what an insurer knows, ought to know, or is presumed to know for the purposes of this subpart.

45 What insurer knows

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

- (a) any individuals who participate 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);
- (b) any individual who is, or works for, a specified intermediary in relation to the contract of insurance.

46 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 45**; or
- (b) the relevant information is held by the insurer and is readily available to an individual mentioned in that section.

47 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.

Other provisions relating to knowledge

48 Knowledge: wilful blindness

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 enquiring about them.

49 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 40(b) or 41**; or
- (b) if the fraud is on the insurer, A is any of the individuals mentioned in **section 45**.

Subpart 5—Remedies for breach of duty of fair presentation**50 Subpart applies to non-consumer insurance contracts**

This subpart applies to non-consumer insurance contracts.

51 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 without 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) *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.

52 Classification of qualifying breach

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

- (a) deliberate or reckless; or
- (b) neither deliberate nor reckless.

53 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.

54 Burden of proof

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

Subpart 6—Insurer’s duties**55 Insurer must inform policyholder of duty**

The insurer must, before a contract of insurance is entered into or varied, clearly inform the policyholder orally or in writing of the following:

- (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.

56 Application to variations

Despite **section 55**, that section applies to a variation only if—

- (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 insured before the contract is varied.

57 Insurer must inform policyholder of extent to which insurer may rely on third party information

- (1) **Subsection (2)** applies if,—
 - (a) under a proposed contract of insurance, a policyholder will give a consent to access; or
 - (b) the policyholder gives a consent to access before that contract is entered into.
- (2) The insurer must, before the contract of insurance is entered into, clearly inform the policyholder orally or in writing of whether (and, if so, the extent to which) the insurer may access and take into account the information to which the consent relates when deciding whether to enter into the contract (and when deciding on the terms on which the insurer will do so).
- (3) **Subsection (4)** applies if,—
 - (a) in connection with a proposed variation of a contract of insurance, a policyholder gives a consent to access particular information; and
 - (b) the policyholder has not previously given a consent to access that information.

- (4) The insurer must, before the contract of insurance is varied, clearly inform the policyholder orally or in writing of whether (and, if so, the extent to which) the insurer may access and take into account the information referred to in **subsection (3)(a)** when deciding whether to agree to the variation (and when deciding on the terms on which the insurer will do so).
- (5) In this section, a policyholder gives **consent to access** if they consent to the insurer accessing information about the policyholder from a third party (for example, medical records).

58 Consequences of breach

- (1) If an insurer breaches this subpart, the insurer has a remedy under **Schedule 2** only if,—
 - (a) in the case of a consumer insurance contract, the policyholder knew that the qualifying misrepresentation was untrue or misleading; or
 - (b) in the case of a non-consumer insurance contract, the policyholder knew that the qualifying breach was in breach of the duty of fair presentation.
- (2) **Subsection (1)** applies regardless of whether the insurer's breach caused or otherwise contributed to the qualifying misrepresentation or breach.
- (3) *See also* the FMCA, which provides for **sections 55 and 57** of this Act to be market services licensee obligations and to give rise to civil liability under section 449 of that Act.

Subpart 7—Duty of utmost good faith

59 Duty of utmost good faith

A contract of insurance is a contract based on the utmost good faith.

60 Effect of section 59 on other law

- (1) The effect of **section 59** is not limited or restricted in any way by any other law, including the other Parts of this Act.
- (2) However, **section 59** does not have the effect of imposing on a policyholder, in relation to the disclosure of a matter to the insurer or a representation, a duty other than—
 - (a) the duty to take reasonable care not to make a misrepresentation (in the case of a consumer insurance contract); or
 - (b) the duty of fair presentation of risk (in the case of a non-consumer insurance contract).

Subpart 8—Miscellaneous provisions

61 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).

62 Certain provisions of no effect

- (1) A term of an insurance contract, or of any other contract, 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 an insurance contract.

63 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) the policyholder makes a representation to A before the contract is entered into or varied; and
 - (c) A knows, or ought reasonably to know, that the representation is material (*see* **section 34**).
- (2) A must take all reasonable steps to pass on the representation to the insurer before the insurer enters into the consumer insurance contract or agrees to the variation.
- (3) However, if A believes on reasonable grounds that a representation is a misrepresentation, A is not required to pass on the representation.

64 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 take all reasonable steps to disclose to the insurer every material circumstance that A knows before the insurer enters into the insurance contract or agrees to a variation.

65 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 63 or 64**; 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).

66 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 63 or 64** (whether the liability is imposed under **section 65** or otherwise); or
 - (b) any costs incurred by A in defending a proceeding relating to that liability (whether a proceeding under **section 65** 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—Restrictions on terms

Arbitration

67 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

68 Provisions prescribing 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 prescribe the manner in which notice of a claim by the policyholder must be given;
 - (b) provisions that prescribe a time limit within which notice of a claim by the policyholder must be given;
 - (c) provisions that prescribe 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.
- (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,—
 - (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)

69 Claims-made policies

- (1) Despite **section 68(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
 - (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 [60 days] after the end of the relevant period; and
 - (c) the insurer, in accordance with **subsection (2)**, clearly informed the policyholder in writing of the effect of failing to notify the insurer of a claim or of circumstances that may give rise to a claim before the date referred to in **paragraph (b)**.
- (2) The insurer must give the information under **subsection (1)(c)** no later than 14 days after the end of the relevant period.
- (3) In this section, **claims-made policy** means a contract of insurance in which the period (the **relevant period**) during which liability for claims against the pol-

policyholder is within the risk accepted by the insurer is defined by reference to the time when—

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

70 Insurer not liable to pay greater cost

- (1) This section applies if—
 - (a) the policyholder under a contract of insurance fails to give notice of a claim in the manner, or within the time, that is prescribed by the contract; and
 - (b) the cost of repairing, replacing, or reinstating any property when it falls to be met is greater than that which would have applied if the notice had been given in the manner, or within the time, that is prescribed by the contract.
- (2) The greater cost is not prejudice to the insurer for the purposes of **section 68(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 prescribed by the contract of insurance.
- (4) This section does not apply to a life policy.

Compare: 1977 No 14 s 9(2)

Increased risk exclusions

71 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.
- (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
 - (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.

- (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 or pilot of a ship; or
 - (b) defines the geographical area in which the loss must occur; or
 - (c) excludes loss that occurs while a vehicle, an aircraft, any goods, or a ship 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

72 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.
- (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 office; or
 - (b) for business, trade, or professional purposes.

Compare: 1985 No 117 s 15

73 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 72** 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)

74 Requirement treated as complied with if particular form is used

- (1) The requirement under **section 73** 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 73** may be satisfied.

Compare: 1985 No 117 s 16(3)

Subpart 2—Insurable interest

75 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

76 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 3—Insurance relating to contracts for sale of land

77 Definitions for purposes of 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.

78 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 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)

79 Certain defences or answers invalid

- (1) It is not a defence or answer to a claim by a purchaser against an insurer under **section 78** 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 answer to a claim by a purchaser against an insurer under **section 78**, 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 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 78**.

Compare: 1985 No 117 s 13(2)

80 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)

81 Application of 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, those sections do 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)

82 Double insurance relating to contract for sale of land

If there is a contract of sale, it is not a defence or 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 4—Third party claims against insurers

83 Interpretation in this subpart

(1) In this subpart,—

claimant has the meaning set out in **section 84**

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 policy holder** if—

- (a) **A** is insolvent (*see* **subsection (3)**); or
- (b) **A** is a deceased person whose estate is being administered under Part 6 of the Insolvency Act 2006; or
- (c) **A** has been deceased for not less than 60 days and no administrator of **A**'s estate has been appointed in New Zealand; or
- (d) **A** is a company that has been removed from the New Zealand register under section 317 of the Companies Act 1993; or
- (e) **A** is an overseas company that has been removed from the overseas register under section 341 of the Companies Act 1993; or

- (f) A is a body corporate (other than a company) that has been dissolved or has ceased to exist.
- (3) A is **insolvent** if A—
- (a) has become subject to an insolvency event (within the meaning of section 6(4) of the FMCA); or
 - (b) is subject to a compromise with its creditors under Part 14 of the Companies Act 1993; or
 - (c) is an undischarged bankrupt under the Insolvency Act 2006; or
 - (d) is subject to an approved proposal or a debt repayment order under subpart 2 or 3 of Part 5 of the Insolvency Act 2006 or is participating in a no asset procedure under subpart 4 of Part 5 of that Act; or
 - (e) is otherwise subject to a statutory or contractual regime under which A's assets have been, or are to be, realised for the benefit of secured or unsecured creditors; or
 - (f) is unable to pay A's debts that would be provable in bankruptcy or on a liquidation as they fall due and from A's own money.

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

84 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) 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 (NSW) s 4(1), (2)

85 Claimant must have leave of court

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

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

86 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 (NSW) s 4(3)

87 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 86**, the insurer is not entitled to rely on a defence arising from an act or omission by the specified policyholder that occurred after the event that gave rise to the liability (for example, a defence based on the specified policyholder failing to comply with a condition to provide information or assistance to the insurer).

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

88 Limitation defence does not apply in certain cases

- (1) This section applies if—
 - (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.
- (2) Despite **subsection (1) and section 86**, 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 (NSW) s 6(2)

89 Judgment against specified policyholder no bar to claim against insurer

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 subpart, except to the extent that the judgment or order has been satisfied.

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

90 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 (NSW) s 9

91 Effect of payments made by insurer to specified policyholder

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.

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

92 Claimant may not recover from reinsurer

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

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

93 Claimant may obtain information

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

Subpart 5—Miscellaneous**94 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.
- (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;
 - (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
 - (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.

- (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

95 Interpretation

- (1) In this Part, unless the context otherwise requires,—
- arrange**, in relation to a contract of insurance, includes negotiating, soliciting, or procuring the contract
- 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
 - (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—
 - (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 108**
- insurance intermediary**—
- (a) means a person—
 - (i) who for reward arranges contracts of insurance in New Zealand or elsewhere; and
 - (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.
- (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, to be 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
 - (b) money due to the policyholder from the insurer.

Subpart 1—Payments to insurance intermediaries

96 Payment by policyholder to intermediary discharges their 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—
 - (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.
- (2) This section applies whether the money is paid for a premium or otherwise.

Compare: 1994 No 41 s 4

97 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.
- (2) This section applies whether the money is paid for a claim, to return a premium, or otherwise.

Compare: 1994 No 41 s 5

98 Prohibition on contracting out

- (1) An agreement is void to the extent that it purports to modify, restrict, or exclude the operation of **section 96 or 97**.
- (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

99 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—
 - (i) the money that has been received; or
 - (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.
- (3) In this subpart, **relevant period** means—
- (a) the period of 50 days after the end of the month in which the 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.
- (4) *See also* 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 8(1), (2)

100 Duty does not prevent certain matters

Section 99 does not prevent any of the following:

- (a) an insurer from making a contract or an arrangement with a broker providing for the 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)

101 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 99**, 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

102 [Broker must notify insurer if premium not paid]

- (1) If the amount of the premium payable for a contract of insurance has not been received by the broker at the expiry of the relevant period, the broker must notify the insurer that the premium has not been received.
- (2) The notification must be made—
- (a) in writing; and
 - (b) within 7 days after the expiry of the relevant period.
- (3) This section does not apply if the amount of the premium is received by the broker before the broker notifies the insurer in accordance with this section.

Compare: 1994 No 41 s 10]

103 [Broker must pay interest if broker fails to notify insurer]

- (1) If a broker breaches **section 102**, the broker must pay to the insurer interest on the amount of the premium that has not been received.
- (2) The interest must be calculated under Schedule 2 of the Interest on Money Claims Act 2016, and for that purpose—
- (a) the start date referred to in clause 3(2)(a) of that schedule is the date that is 8 days after the expiry of the relevant period; and
 - (b) the last day referred to in clause 3(2)(a) of that schedule is the earlier of the following:
 - (i) the day before the insurer claims the interest;
 - (ii) the day on which the broker notifies the insurer in writing that the premium has not been received or was received after the expiry of the relevant period.
- (3) The broker must pay the interest within 20 working days after the insurer notifies the broker that it is claiming interest (or any longer period determined by the insurer and notified to the broker).
- (4) The insurer may recover an amount of unpaid interest as a debt due in a court of competent jurisdiction.]

104 Broker may notify another insurance intermediary]

- (1) This section applies if—
- (a) a broker is required to notify an insurer under **section 102**; and
 - (b) another insurance intermediary accepts as agent for the insurer the risk, or a part of the risk, to which the contract of insurance relates.

- (2) For the purpose of **section 102**, notification by the broker to the intermediary must be treated as notification by the broker to the insurer.

Compare: 1994 No 41 s 11

105 Lloyd's brokers

- (1) If a broker is required by this subpart to pay an amount to, or to notify, 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, or notifies, 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

106 Duties of broker in relation to payments due to policyholder

- (1) 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 within 7 days after the broker received the money.
- (2) *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)

107 Subpart does not prevent certain matters

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 106**; 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.

Compare: 1994 No 41 s 13(3)

Subpart 4—Insurance broking client accounts

108 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 registered bank.

- (2) A broker may establish and maintain 1 or more insurance broking client accounts outside New Zealand with 1 or more overseas banks.
- (3) An insurance broking client account must be a current account.
- (4) *See* section 449 of the FMCA, which provides for a contravention of this subpart to give rise to civil liability under that Act.

Compare: 1994 No 41 s 14(1) to (3)

109 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:
- (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 112**:
- (d) any other money that is required by the regulations to be paid into the account.

Compare: 1994 No 41 s 14(4)

110 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)

111 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)

112 Realisation of investment

- (1) A broker must pay money received from realising any investment under **section 111** 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) to (5)

113 Broker may retain interest or other income on insurance broking client account

Interest or other income received by a broker from an insurance broking client account may be retained by the broker for the broker's own benefit and need not be paid into an insurance broking client account.

Compare: 1994 No 41 s 15(6)

114 Broking money not capable of being attached, etc

- (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—
 - (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)**.
- (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

115 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
 - (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 the Reserve Bank of New Zealand Act 1989.
- (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)

116 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 was subject to a trust in favour of the persons entitled to the money or property.

Compare: 1994 No 41 s 17(3)

117 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) secondly, 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) thirdly, 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) fourthly, 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)

118 Investment of money

Nothing in this section prevents money in the insurance broking client account of the broker 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

119 Part not to apply to contracts of reinsurance

This Part does not apply in relation to contracts of reinsurance or proposed contracts of reinsurance.

Compare: 1994 No 41 s 19

Part 5 Contracts of life insurance

Interest payable under life policies

120 Interest payable from 91st day after date of death

- (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, within 90 days after the date of death, to the person entitled to the money.
- (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 91st day after the date of death and ending with the close of the day on which the money is paid.

Compare: 1908 No 105 s 41A(1)

121 Interest payable in respect of assets related money

- (1) **Section 120** 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—
- (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.
- (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 that it could have been paid (the **earliest date**).
- (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)

122 **[Basis of calculating interest payable]**

The interest payable under **section 120 or 121** must be paid at the greater of the following:

- (a) at the rate specified in the life policy;
- (b) on the basis applicable under Schedule 2 of the Interest on Money Claims Act 2016.]

Compare: 1908 No 105 s 41A(3)

Assignments of policies

123 **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 (A) 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)

124 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 123(1)(c)**.

Compare: 1908 No 105 s 43(3)

Other rights to life policy may be registered

125 How right to life policy 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

126 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 the particulars are so 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.

127 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).
- (3) The life insurer is not required to register the instrument if it acts under **subsection (2)**.

128 Life insurer may require reasonable evidence of matters affecting validity

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

Compare: 1908 No 105 s 54

129 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.
- (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.
- (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.
- (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 of and from any responsibility or liability for the consequences of the registration.

Compare: 1908 No 105 s 55

130 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

131 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

132 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

133 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

134 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 as 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

135 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

136 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

*Surrender values***137 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 138**, **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

138 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

*Offence for non-compliance with various requirements***139 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 120 to 136**.

Compare: 1908 No 105 s 80

*Life insurance of minors***140 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.

Compare: 1908 No 105 s 66A

141 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—
 - (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 145 and 147 to 149**.

Compare: 1908 No 105 s 66B

142 Dealings by minor with life policy

- (1) If a life policy entered into on the life of a minor (**A**) 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;
 - (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 by this Act; and
 - (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.
- (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:

- (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

143 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

144 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 or 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 140, 141, or 145**; or
 - (c) sections 98 to 101 of the Contract and Commercial Law Act 2017.
- (3) **Subsection (1)** is subject to **sections 146 to 149**.

Compare: 1908 No 105 s 67

145 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) on the expiry of a certain period; or
- (b) on the minor reaching a specified age.

Compare: 1908 No 105 s 67A

*Limits on payments on death of minor***146 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:
 - (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 \$10,000.
- (2) **Subsection (1)** does not limit **sections 120 to 122**. 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

147 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 144(1)**; or
- (b) an executor or administrator of a person specified in **section 144(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 142(1)(b)**.

Compare: 1908 No 105 s 67C

148 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 146 and 147**; and

- (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

149 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 146, 147, or 148(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

150 Money payable to Public Trust

- (1) Any money payable under a life policy to, or for the benefit of, a minor or an incapable person may be paid to Public Trust if there is no trustee or other person capable in law of giving a valid discharge for the money on behalf of the minor or the 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)

151 High Court may appoint trustee

If **section 150** applies, 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)

152 Powers of Public Trust receiving money

- (1) If any money is paid to Public Trust under **section 150**, it 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 151** 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

153 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 150** 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 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

154 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

155 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

Life insurance for spouse, partner, or children

156 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—
 - (i) A's spouse or partner; or
 - (ii) A's children; or
 - (iii) A's spouse or partner and A's children; or
 - (iv) any 1 or more of those persons.
- (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.
- (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)

157 Appointment of trustees and investment of money

- (1) This section applies to a life policy referred to in **section 156**.
- (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:
 - (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 (1)**, the life policy, when it is entered into, vests in the policyholder or their legal personal representatives in trust for the purposes referred to in **section 156**.
- (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)

158 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 or 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)

159 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 or 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 as to 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)

160 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); or
 - (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—
- (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 as to 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 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 158 or 159** applies.

Compare: 1925 No 25 ss 2, 5

Part 6 Regulations and miscellaneous provisions

Regulations

161 General regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) 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—
 - (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:
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:
 - (b) providing for anything this Act says may or must be provided for by regulations:
 - (c) amending the amount in **section 146(1)(b)**:
 - (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations under **subsection (1)(c)** may be made only on the recommendation of the Minister.
- (3) The Minister must, before recommending that regulations amend the amount in **section 146(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.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

162 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) exempting any broker, or class of broker, from any requirements relating to any such audit, review, or inspection:
 - (f) 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).

Compare: 1994 No 41 s 18

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

*Miscellaneous***163 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.

164 No contracting out

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

- (2) **Subsection (1)** does not limit **sections 61 and 62**.

Part 7

Repeals and amendments to other Acts

Repeals

165 Repeals

The following legislation is repealed:

- (a) the Insurance Intermediaries Act 1994 (1994 No 41):
- (b) the Insurance Law Reform Act 1977 (1977 No 14):
- (c) the Insurance Law Reform Act 1985 (1985 No 117):
- (d) the Life Insurance Act 1908 (1908 No 105):
- (e) Part 3 of the Law Reform Act 1936.

Amendments to Marine Insurance Act 1908

166 Principal Act

Sections 167 to 169 amend the Marine Insurance Act 1908.

167 Heading above section 18

Replace the heading above section 18 with:

When contract is deemed to be concluded

168 Repeals

Repeal sections 18 to 20, 34 to 39, and 42.

169 Section 40 amended (Warranty of seaworthiness of ship)

After section 40(5), insert:

- (6) An insurer may not rely on a warranty under this section if the assured proves that the loss for which the assured seeks to be indemnified was not caused, or contributed to, by the matters that gave rise to the breach of the warranty.

Amendments to Fair Trading Act 1986

170 Principal Act

Sections 171 to 174 amend the Fair Trading Act 1986.

Option A starts

171 New section 46KA inserted (Other matters relating to insurance contracts)

After section 46K, insert:

46KA Other matters relating to insurance contracts

- (1) This section applies to contracts of insurance within the meaning of **section 6** of the Insurance Contracts Act **2022**.
- (2) For the purposes of section 46K(1)(a), a term of a contract of insurance defines the main subject matter of the contract only to the extent that the term describes what is being insured.
- (3) A court may not declare a term in a standard form consumer contract or standard form small trade contract to be an unfair contract term to the extent that the term is a transparent term that—
 - (a) is disclosed at or before the time the contract is entered into; and
 - (b) specifies—
 - (i) the sum or sums insured or assured; or
 - (ii) any contributory sum due from, or amount to be borne by, a policyholder in the event of a claim under the contract of insurance.
- (4) **Subsection (3)** does not limit section 46K(1).

Option A ends**Option B starts****172 New section 46KA inserted (Other matters relating to insurance contracts)**

After section 46K, insert:

46KA Other matters relating to insurance contracts

- (1) This section applies to contracts of insurance within the meaning of **section 6** of the Insurance Contracts Act **2022**.
- (2) For the purposes of section 46K(1)(a), a term of a contract of insurance defines the main subject matter of the contract only to the extent that the term—
 - (a) identifies the uncertain event or otherwise specifies the subject matter insured or the risk insured against; or
 - (b) specifies the sum or sums insured or assured; or
 - (c) specifies any contributory sum due from, or amount to be borne by, a policyholder in the event of a claim under the contract of insurance; or
 - (d) excludes or limits the liability of the insurer to indemnify the policyholder on the happening of certain events or on the existence of certain circumstances.
- (3) **Subsection (2)** does not limit section 46K(1).
- (4) In this section, **uncertain event** has the meaning given in **section 6** of the Insurance Contracts Act **2022**.

Option B ends

173 Section 46L amended (When term in consumer contract is unfair)

Repeal section 46L(4) and (5).

174 Schedule 1AA amended

In **Schedule 1AA**,—

- (a) insert the Part set out in **Schedule 4** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Amendments to Financial Markets Conduct Act 2013

175 Principal Act

Sections 176 to 184 amend the Financial Markets Conduct Act 2013.

176 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **market services licensee obligation**, after paragraph (d), insert:

(da) **sections 55 and 57** and **Part 4** of the Insurance Contracts Act **2022**:

- (2) In section 6(1), insert in their appropriate alphabetical order:

consumer insurance contract has the meaning set out in section 446S(1)

contract of insurance has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010 (but does not include a contract of reinsurance within the meaning of that Act)

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)

life insurance means insurance of the kind described in section 84(1)(a) to (f) of the Insurance (Prudential Supervision) Act 2010

177 Section 431Z amended (Application of conduct obligations)

Replace section 431Z(2)(d) with:

- (d) do not apply to a broker within the meaning of **section 95** of the Insurance Contracts Act **2022** in relation to any money to which **subpart 4 of Part 4** of that Act applies.

178 Section 446S amended (Other definitions used in subpart)

In section 446S(1), repeal the definitions of **contract of insurance**, **health insurance**, and **life insurance**.

179 New subpart 6B of Part 6 inserted

After section 446X, insert:

Subpart 6B—Duties to assist policyholders to understand insurance contracts

447 When subpart applies

This subpart applies to—

- (a) a consumer insurance contract that is entered into by a licensed insurer; and
- (b) a contract of insurance that—
 - (i) is entered into by a licensed insurer; and
 - (ii) provides for life insurance or health insurance (or both).

447A Insurer must ensure contract is worded and presented in clear, concise, and effective manner

- (1) An insurer under a contract of insurance to which this subpart applies must ensure that the contract is worded and presented in a clear, concise, and effective manner.
- (2) An insurer must, when performing the duty under **subsection (1)**, have regard to whether the wording and presentation of the contract assists consumers to understand their rights and obligations under the contract.
- (3) All other information that the insurer has or will provide to policyholders to ensure that they are reasonably aware of the implications of entering into contracts of insurance with the insurer may be taken into account in determining whether the insurer has complied with this section.
- (4) In this section, **concise** refers to the wording and presentation of particular terms of the contract, rather than the overall length of the contract.
- (5) This section is not a civil liability provision for the purposes of subpart 3 of Part 8 (but *see* subpart 1 of Part 8, which allows the FMA to make a stop order if an insurer does not comply with this section).

447B Contract of insurance must comply with prescribed requirements relating to form and presentation

An insurer under a contract of insurance to which this subpart applies must ensure that the contract complies with all requirements of the regulations relating to the form and presentation of the contract.

447C Insurers must make information publicly available

- (1) This section has following purposes (in addition to those set out in sections 3 and 4):
 - (a) to assist consumers to make decisions relating to the provision of insurance:

- (b) to promote and facilitate transparency in connection with an insurer's insurance business.
- (2) **Subsection (1)** does not limit section 3 or 4.
- (3) Every insurer under a contract of insurance to which this subpart applies must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the information that is required to be made publicly available by the regulations.
- (4) The regulations may require disclosure of any information in connection with either or both of the following:
 - (a) contracts of insurance entered into by the insurer:
 - (b) the business, operation, or management of the insurer as an insurer.

Example

The regulations may require an insurer to disclose information about claim acceptance rates, the length of time to settle claims, contract cancellations, complaints made against the insurer, and disputes the insurer is or has been involved in.

180 Section 447 replaced (Application of regulations made under this subpart)

Replace section 447 with:

447D Application of regulations made under this subpart

Regulations made under this subpart may apply to a derivatives issuer (whether or not it is licensed and whether or not it makes any regulated offer).

181 Section 449 amended (Part 6 services provisions)

- (1) After section 449(4)(k), insert:
 - (kaa) **section 447B** (contract of insurance must comply with prescribed requirements relating to form and presentation):
 - (kab) **section 447C** (insurers must make information publicly available):
- (2) After section 449(4)(m), insert:
 - (n) **sections 55, 57, 99, and 106** and **subpart 4 of Part 4** of the Insurance Contracts Act **2022**:
 - (o) those provisions of the regulations made under **section 162** of the Insurance Contracts Act **2022** that are stated by those regulations to be Part 6 services provisions.

182 Section 462 amended (When FMA may make stop orders)

In section 462(1)(h), replace “or 431X” with “, 431X, **447A**, **447B**, or **447C**”.

183 Section 463 amended (Terms of stop order)

After section 463(d), insert:

(da) prohibit an insurer from entering into contracts of insurance of the kind specified in the order while the order is in force:

184 Section 546 amended (Regulations for purposes of Part 6 (market services))

After section 546(1)(og), insert:

(oga) regulating the form and presentation of contracts of insurance, including—

- (i) prescribing explanatory material or guidance that must, or must not, be contained in a contract of insurance; and
- (ii) prescribing requirements as to the layout or method of presentation of contracts of insurance (including the length of a contract and of parts of a contract, the size of type used, and when information may be incorporated by reference); and
- (iii) prescribing the documents that must, or must not, accompany a contract of insurance; and

(ogb) prescribing the information that must be made available under **section 447C**, the times or events referred to in that section, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared):

Amendment to Personal Property Securities Act 1999

185 Principal Act

Sections 186 and 187 amends the Personal Property Securities Act 1999.

186 Section 16 amended (Interpretation)

In section 16(1), insert in its appropriate alphabetical order:

non-life contract of insurance means a contract of insurance (within the meaning of **section 6** of the Insurance Contracts Act **2022**) other than a life policy (with the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010)

187 Section 23 amended (When Act does not apply)

In section 23(e)(vi) replace “policy of insurance” with “non-life contract of insurance”.

Other legislation amended

188 Other legislation amended

- (1) Amend the Acts specified in **Part 1 of Schedule 5** as set out in that schedule.
- (2) Amend the secondary legislation specified in **Part 2 of Schedule 5** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 8

Part 1

Provisions relating to this Act as enacted

1 Interpretation

In this Part,—

1908 Act means the Life Insurance Act 1908

existing policy means a policy to which the 1908 Act applies that was entered into before the repeal of the 1908 Act.

2 New disclosure duties apply to new contracts and variations

Part 2 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).

3 Insurer's calculation of reduction does not take into account pre-commencement contracts

For the purposes of **clause 5(6) of Schedule 2**, a series of contracts of insurance does not include any contract entered into before the commencement of this clause.

4 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 this Act had not been repealed.

5 Personal Property Securities Act 1999 amendment does not apply to existing mortgages of life policies

The amendment made by **section 187** does not apply to a mortgage referred to in **clause 4(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 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

- (1) 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.
- (2) However, in the case of a life policy,—
 - (a) **subclause (1)** applies only if the qualifying misrepresentation or breach is fraudulent or occurred within the 3-year period immediately preceding the earlier of the following:
 - (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, [*for a comment on the remedy in this context, see MBIE's consultation paper*]

3 Neither deliberate nor reckless misrepresentation or breach

Clauses 4 and 5 apply if a qualifying misrepresentation or breach was neither deliberate nor reckless.

4 Insurer would not have entered into contract

- (1) If, in the absence of the qualifying misrepresentation or breach, the insurer would not have entered into the contract on any terms, the insurer may—
 - (a) avoid the contract and refuse all claims; but
 - (b) must in that event return the premiums paid.
- (2) However, in the case of a life policy,—
 - (a) **subclause (1)** applies only if the qualifying misrepresentation or breach occurred within the 3-year period immediately preceding the earlier of the following:
 - (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, [*for a comment on the remedy in this context, see MBIE's consultation paper*]

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) If the insurer would have entered into the contract, but on different terms relating to the premium, the insurer may reduce the amount otherwise payable on a claim by an amount calculated in accordance with the following formula:

$$r = p_1 - p_2$$

where—

- r is the amount of the reduction
- p_1 is the total amount of the premiums that the insurer would have been likely to have charged under the relevant contracts if the qualifying misrepresentation or breach (or substantially similar qualifying misrepresentations or breaches) had not occurred
- p_2 is the total amount of the premiums that the insurer actually charged under the relevant contracts.
- (3) **Subclause (2)** applies whether the terms relating to matters other than the premium would have been the same or different.
- (4) If the insurer would have entered into the contract on different terms relating to the premium and other different terms, both **subsection (1) and (2)** apply.
- (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)**).
- (6) In this clause, **relevant contracts** means—
- (a) the contract of insurance under which the claim is made; and
 - (b) if that contract is part of a series of contracts of insurance between the policyholder and the insurer that have been renewed, each of those contracts for which terms relating to the premium would be different because of the qualifying misrepresentation or breach (or because of a substantially similar qualifying misrepresentation or breach).

Example

Person A makes a misrepresentation to insurer B in relation to A's home and contents policy. After the initial contract is entered into, the insurance is renewed 9 times before a claim worth \$500,000 is made (a series of 10 contracts). The same misrepresentation is made in relation to each contract.

A was actually charged \$40,000 in premiums, but B would likely have charged \$60,000 if the misrepresentation had not been made.

B can reduce the claim by \$20,000. B pays only \$480,000.

Part 2

Remedies for variations

6 When Part applies

This Part applies to qualifying misrepresentations or 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

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.

9 Insurer would not have agreed to variation

If, in the absence of the qualifying misrepresentation or breach, 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

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.

12 Insurer would not have agreed to variation

If, in the absence of the qualifying misrepresentation or breach, 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 would have agreed to variation on different terms

- (1) If the insurer would have agreed to the variation, but on different terms relating to the premium, the insurer may reduce the amount otherwise payable on a claim by an amount calculated in accordance with the following formula:

$$r = p_1 - p_2$$

where—

- r is the amount of the reduction
 - p_1 is the total amount of the premiums that the insurer would have been likely to have charged under the contract if the qualifying misrepresentation or breach (or substantially similar qualifying misrepresentations or breaches) had not occurred
 - p_2 is the total amount of the premiums that the insurer actually charged under the contract.
- (2) 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).

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 cover provided for B under a contract of insurance mentioned in **section 21**.
- (2) In this Part, **A** and **B** mean the same as in **section 21**.
- (3) References to the contract of insurance (however described) are to that part of the contract that provides for cover for B.
- (4) References to claims and premiums are to claims and premiums in relation to that cover.

Part 4

Miscellaneous provisions

16 Marine Insurance Act 1908

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 83** and used, but not defined, in this schedule has the same meaning as in **section 83**.

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 on which A relies on as giving them an entitlement 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 4 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 on which A relies on as giving them an entitlement to give the notice.

4 Information that may be requested

- (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:
 - (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:
 - (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:
 - (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 a proceeding are,—
 - (a) in the case of court proceedings, 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:
 - (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)**.

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—
- (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.
- (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.
- (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 Notice that requires disclosure in connection with body that has been wound up

- (1) This clause applies if—
- (a) a person (**P**) has started a proceeding under **subpart 4 of Part 3** against an insurer in respect of a liability; and
 - (b) P claims the liability has been incurred to P by—
 - (i) a body corporate; or
 - (ii) an unincorporated body other than a partnership, and
 - (c) the body has been wound up.
- (2) P may, by notice in writing, require a person to whom **subclause (3)** applies to disclose to P any documents that are relevant to that liability.
- (3) This subclause applies to a person if,—
- (a) immediately before the relevant time, the person was a director, an officer, or an employee of the body; or
 - (b) immediately before the body was wound up (or, if it has been wound up more than once, immediately before it was last wound up), that person was acting as an insolvency practitioner in relation to the body (within the meaning of section 5 of the Insolvency Practitioners Regulation Act 2019).
- (4) In **subclause (3)(a)**, the **relevant time** is the later of the following:

-
- (a) the time that the body referred to in **subclause (1)** became a specified policyholder;
 - (b) the time that the body referred to in **subclause (1)** incurred the liability to P.
- (5) A notice under this clause must be accompanied by—
- (a) a copy of the particulars of claim required to be served in connection with the proceeding referred to in **subclause (1)**; or
 - (b) if the proceeding is an arbitration, the particulars of claim that would be required to be so served if it were a court proceeding.
- (6) For the purposes of this clause,—
- (a) a body is **wound up** if it is dissolved or otherwise ceases to exist; and
 - (b) a body has been wound up even if, since it was wound up, something has happened that has the effect that (but for this paragraph) the body is treated as continuing to exist.
-

Example

The Registrar removes company A from the New Zealand register under section 317 of the Companies Act 1993. The Registrar later restores A to the register under section 328 of that Act. Under section 330 of that Act, A is deemed to have continued in existence as if it had not been removed from the register.

Despite the restoration, A has been wound up for the purposes of this clause.

7 Disclosure and inspection where notice given under clause 6

- (1) The duties of disclosure of a person who receives a notice under **clause 6**, and the rights of inspection of the person giving the notice, are the same as the corresponding duties and rights under the rules of the High Court of parties to a proceeding in which standard discovery applies.
- (2) For the purposes of this clause, the rules of court apply with all necessary modifications.
- (3) A person who, under **subclause (1)**, has to serve a list of documents must do so within 28 days after the receipt of the notice.
- (4) A person who has received a notice under **clause 6** and has served a list of documents in response to it is not under a duty of disclosure by reason of that notice in relation to documents that the person did not have when the list was served.

8 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
- (b) otherwise to prohibit, prevent, or restrict a person from providing such information or giving such disclosure.

9 Other rights to information

A right to information, or to inspect documents, that a person has under this schedule are in addition to any such rights that the person has apart from this schedule.

10 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
 - (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.

Schedule 4
New Part 2 inserted into Schedule 1AA of Fair Trading Act 1986

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Part 2

Provisions relating to Insurance Contracts Act 2022

- 2 Amendments relating to unfair contract terms do not apply to existing insurance contracts**
- (1) This clause applies to—
- (a) a contract of insurance entered into on or after 17 March 2015 but before the commencement of this clause; and
 - (b) any variation of the contract referred to in **paragraph (a)**; and
 - (c) any new contract that has the effect of operating as a renewal of the contract referred to in **paragraph (a)**, and any subsequent renewal.
- (2) However, this clause does not apply to any contract to which section 26A(3) applies.
- (3) The amendments made by **sections 170 to 173** do not apply to a contract or variation to which this clause applies and sections 46H to 46M as in force before the commencement of this clause continue to apply as if the Insurance Contracts Act **2022** had not been enacted.

Schedule 5

Amendments to other legislation

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Part 1

Amendments to other Acts

Administration Act 1969 (1969 No 52)

In section 65(5), replace “policy or policies of insurance within the meaning of the Life Insurance Act 1908” with “life policy (within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010)”.

In section 65(5), replace “company liable under the policy or policies” with “insurer liable under the life policy”.

In section 65(5), replace “lawful for the company” with “lawful for the insurer”.

Arbitration Act 1996 (1996 No 99)

Replace section 11(6)(b) with:

- (b) a contract of insurance to which **section 67** of the Insurance Contracts Act **2022** applies.

Contract and Commercial Law Act 2017 (2017 No 5)

After section 35(2), insert:

- (3) Subsection (1) does not apply if—
 - (a) the contract is a contract of insurance (within the meaning of **section 6** of the Insurance Contracts Act **2022**); and
 - (b) A is the insurer under that contract.

After section 37(3), insert:

- (3) Subsection (1)(a) does not apply if—
 - (a) the contract is a contract of insurance (within the meaning of **section 6** of the Insurance Contracts Act **2022**); and
 - (b) the party that has been induced to enter into the contract by a misrepresentation is the insurer.

In section 92(1)(b), replace “section 66B of the Life Insurance Act 1908” with “**section 141** of the Insurance Contracts Act **2022**.”

Financial Markets Authority Act 2011 (2011 No 5)

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Subpart 6 of Part 2, section 94, Part 4, and sections 126 to 136 and 146 to 149 of the Insurance Contracts Act **2022**

Fire and Emergency New Zealand Act 2017 (2017 No 17)

In section 81(1), replace the definition of **insurance intermediary** with:

insurance intermediary has the same meaning as in **section 95** of the Insurance Contracts Act **2022**

Replace section 94(5) with:

(5) In this section, **arrange** has the same meaning as in **section 95** of the Insurance Contracts Act **2022**.

In section 111(3), replace the definition of **arrange** with:

arrange has the same meaning as in **section 95** of the Insurance Contracts Act **2022**

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Repeal section 46.

Income Tax Act 2007 (2007 No 97)

Replace section EY 11(4) with:

Trustee cannot be a life insurer

(4) At all times in the income year, no trustee of the fund is a life insurer within the meaning of section 6 of the Insurance (Prudential Supervision) Act 2010.

Property Law Act 2007 (2007 No 91)

In section 4, definition of **registered**, replace paragraph (f) with:

(f) in relation to an instrument concerning a life policy within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010, means registered under **Part 5** of the Insurance Contracts Act **2022**:

Repeal section 111(6).

Trade Unions Act 1908 (1908 No 196)

Repeal section 6(1)(b).

Part 2**Amendments to secondary legislation****Overseas Investment Regulations 2005 (SR 2005/220)**

Replace regulation 43(b) with:

(b) the investment is of funds held in the overseas person's statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).