

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 3 June 1977.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Thomson

INSURANCE LAW REFORM

ANALYSIS

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A BILL INTITULED

An Act to effect certain reforms in the law governing contracts of insurance

1. **Short Title**—This Act may be cited as the Insurance Law Reform Act **(1976) 1977**.

2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Company” has the meaning ascribed to that term by section 41 of the Life Insurance Act 1908:

10 “Continuous disability insurance contract” means a contract of insurance (which is by its terms to be of more than one year’s duration and is incorporated in a life policy) whereby any person is to be entitled to a benefit in the event of the occurrence, within the duration of the contract, of death by accident or by
15 some other cause specified in the contract, or of injury or disability caused by accident or sickness:

“Life policy” means a policy insuring payment of money on death (not being death by accident or specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract); and includes an instrument evidencing a contract which is subject to the payment of premiums for a term dependent on the termination or continuance of human life and an instrument securing the grant of an annuity for a term dependent upon human life.

Cf. Life Insurance Act 1945–1973, s. 4 (1) (Commonwealth of Australia)

3. Act to bind the Crown—This Act shall bind the Crown. 15

4. Mis-statements in contracts of life insurance—A life policy shall not be avoided by reason only of any statement (other than a statement as to the age of the life insured) made in any proposal or other document on the faith of which the policy was issued, reinstated, or renewed by the company unless the statement— 20

- (a) Was substantially incorrect; and
- (b) Was material; and
- (c) Was made either—
 - (i) Fraudulently; or 25
 - (ii) Within the period of 3 years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

New

(2) For the purposes of subparagraph (i) of paragraph (c) of subsection (1) of this section, a statement is made fraudulently if the person making it makes it— 30

- (a) Knowing it is incorrect; or
- (b) Without belief in its correctness; or 35
- (c) Recklessly, without caring whether it is correct or not.

Cf. Life Insurance Act 1945–1973, ss. 4 (1), 84 (Commonwealth of Australia)

5. Mis-statements in other contracts of insurance—(1) *(No contract of insurance shall)* A contract of insurance shall not be avoided by reason only of any statement made in any pro- 40

posal or other document on the faith of which (such) the contract was entered into, reinstated, or renewed by the insurer unless (such) the statement—

- (a) Was substantially incorrect; and
- 5 (b) Was material.
- (2) Nothing in this section shall—
 - (a) Apply in respect of any contract of insurance embodied in a life policy; or
 - (b) Limit the provisions of sections 4 and 7 of this Act.
- 10 Cf. Instruments Act 1958, s. 25 (Victoria)

6. Incorrectness and materiality defined—(1) For the purposes of sections 4 and 5 of this Act, and notwithstanding any admission, term, condition, stipulation, warranty, or proviso in the application or proposal for insurance or in the

15 life policy or contract of insurance, a statement is substantially incorrect only if the difference between what is stated and what is actually correct would have been considered material by a prudent insurer.

(2) For the purposes of sections 4 and 5 of this Act, and

20 notwithstanding any admission, term, condition, stipulation, warranty, or proviso in the application or proposal for insurance or in the life policy or contract of insurance, a statement is material only if that statement would have influenced the judgment of a prudent insurer in fixing the premium or in

25 determining whether he would have taken or continued the risk upon substantially the same terms.

Cf. 1908, No. 112, s. 20 (2), (4)

7. Mis-statement of age—(1) A life policy is not avoided by reason only of a mis-statement of the age of the life insured.

30 (2) Where the true age as shown by the proofs is greater than that on which the policy was based, the company may vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the

35 policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age.

(3) Where the true age as shown by the proofs is less

40 than that on which the policy was based, the company shall either—

- (a) Vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or 5
- (b) Reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay to the policy owner the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age. 15

Cf. Life Insurance Act 1945–1973, s. 83 (Commonwealth of Australia)

8. Arbitration clauses not binding—(1) Subject to sub-section (2) of this section, a provision of a contract of insurance— 20

- (a) Requiring differences or disputes arising out of or in relation to the contract to be referred to arbitration; or 25
- (b) Providing that no action or suit shall be maintainable upon the contract or against the insurer in respect of any claim under or difference or dispute arising out of or in relation to the contract unless the issue, claim, difference, or dispute has first been referred to arbitration or an award in arbitration proceedings has been first obtained; or 30
- (c) Providing that arbitration or an award in arbitration proceedings is a condition precedent to any right of action or suit upon or in relation to the contract; or 35
- (d) Imposing by reference to arbitration or to an award in arbitration proceedings any limitation on the right of any person to bring or maintain an action or suit upon or in relation to the contract,— 40

shall not bind the insured.

(2) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of or in

relation to the contract to submit the difference or dispute to arbitration shall have effect as if subsection (1) of this section had not been enacted.

Cf. Insurance Amendment Act 1968, s. 7 (Queensland)

5 **9. Time limits on claims under contracts of insurance—**

(1) A provision of a contract of insurance prescribing any manner in which or any limit of time within which notice of any claim by the insured under such contract must be given or prescribing any limit of time within which any suit or
10 action by the insured must be brought shall—

(a) If that contract of insurance is embodied in a life policy and the claim, suit, or action relates to the
15 death of the insured, not bind the insured; and

(b) In any other case, bind the insured only if in the
20 opinion of the arbitrator or Court determining the claim the insurer has in the particular circumstances been so prejudiced by the failure of the insured to comply with such provision that it would be inequitable if such provision were not to bind the insured.

(2) Where—

(a) The insured under any contract of insurance to which
25 subsection (1) (b) of this section applies fails to give notice of any claim in any manner or within any limit of time prescribed by the contract; and

(b) The cost of (*meeting the claim*) repairing, replacing,
30 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 so prescribed,—

that greater cost shall not constitute prejudice to the insurer for the purposes of subsection (1) (b) of this section, but the insurer shall not be obliged to apply or pay in (*satisfaction of the claim*) repairing, replacing, or reinstating the property a
35 greater sum than that for which he would have been liable if the notice of claim had been given in the manner or within the time so prescribed.

Cf. Instruments Act 1958, s. 27 (Victoria)

10. Salesman, etc., to be agents of insurer—*[(1) A representative of the insurer shall for all purposes during the negotiation of a contract of insurance until the proposal of the insured is accepted by the insurer be deemed, as between the insured and the insurer, to be the agent of the insurer.]* 5

(1) A representative of the insurer who acts for the insurer during the negotiation of any contract of insurance, and so acts within the scope of his actual or apparent authority, shall be deemed, as between the insured and the insurer and at all times during the negotiations until the contract comes into being, to be the agent of the insurer. 10

(2) An insurer shall be deemed to have notice of all matters material to a contract of insurance known to a representative of the insurer concerned in the negotiation of the contract before the proposal of the insured is accepted by the insurer. 15

(3) In this section the term “representative of the insurer” includes any servant or employee of the insurer and any person entitled to receive from the insurer commission or other valuable consideration in consideration for such person’s arranging, negotiating, soliciting, or procuring the contract of insurance between a person other than himself and such insurer. 20

11. Certain exclusions forbidden—Where—

(a) By the provisions of a contract of insurance the circumstances in which the insurer is bound to indemnify the insured against loss are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances; and 25 30

(b) In the view of the Court or arbitrator determining the claim of the insured the liability of the insurer has been so defined because the happening of such events or the existence of such circumstances was in the view of the insurer likely to increase the risk of such loss occurring,— 35

the insured shall not be disentitled to be indemnified by the insurer by reason only of such provisions of the contract of insurance if the insured proves on the balance of probability 40

that the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of such events or the existence of such circumstances.

5 **12. Actions on or in relation to contracts of insurance to be tried before a Judge alone—**(1) Notwithstanding anything in section 2 or section 3 of the Judicature Amendment Act (No. 2) 1955, but subject to subsection (2) of this section, every action maintained upon any contract of insurance or
10 against any insurer in respect of any claim under or difference or dispute arising out of or in relation to any contract of insurance shall, if tried in the Supreme Court, be tried before a Judge without a jury.

(2) The service of a third-party notice making an insurer a party to an action shall not affect the manner in which the
15 issues between the plaintiff and the defendant are to be tried but any insurer who is so made a party to an action may, if he agrees to be bound by the issues arising between the plaintiff and the defendant, require the issues arising
20 between the insurer and the party who served the third-party notice to be determined by a Judge without a jury if the insurer, within the time limited for filing his statement of defence, files a notice to that effect in the Court and serves copies of it on the other parties to the action.

25 **13. Application of Act—**(1) This Act shall apply in relation to life policies whether issued, reinstated, or renewed before or after the commencement of this Act:

Provided that nothing in this subsection shall affect—

- 30 (a) The rights of any claimant under a life policy if the event giving rise to the claim occurred before the commencement of this Act; or
- (b) The rights of the parties under any judgment given in any Court before the commencement of this Act, or under any judgment given on any appeal from any such judgment, whether the appeal is commenced
35 before or after the commencement of this Act; or
- (c) The rights of the parties to any award made—
- (i) Before the commencement of this Act following the reference of any matter to arbitration; or
- 40 (ii) After the commencement of this Act following the setting aside of an award made before the commencement of this Act; or

(d) In the case of an award to which paragraph (c) of this proviso applies, the rights of the parties to any proceedings by way of appeal against the making of any such award or for the setting aside of any such award.

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(2) This Act shall apply in relation to contracts of insurance (other than life policies) entered into, reinstated, or renewed after the commencement of this Act.

New

13A. Marine Insurance Act 1908 to be subject to this Act— 10
Nothing in the Marine Insurance Act 1908 shall limit any provision of this Act and the provisions of this Act shall prevail in any case where they are in conflict with any provision of that Act.

14. No contracting out—The provisions of this Act shall 15
have effect notwithstanding any provision to the contrary in any agreement or in any contract of insurance (whether embodied in a policy or not).

15. Repeal—Section 23 (3) of the Mutual Insurance Act 1955 is hereby repealed. 20