

INSURANCE LAW REFORM BILL (NO. 2)

EXPLANATORY NOTE

THIS Bill is, subject to minor amendments, in the form in which the Insurance Law Reform Bill, introduced by Honourable J. K. McLay in 1983, was reported back to the House by the Statutes Revision Committee on 14 June 1984. The Bill so reported back lapsed with the dissolution of the 40th Parliament.

This Bill, which effects certain reforms in the law governing contracts of insurance, is based on the recommendations made by the Contracts and Commercial Law Reform Committee in its report entitled *Aspects of Insurance Law (2)*. This report was presented to the Minister of Justice on 19 May 1983.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on 1 April 1985.

Clause 2 provides that the Act is to bind the Crown.

Clause 3 amends the Life Insurance Act 1908 by inserting a new section 41A. The new section requires insurers to pay interest on the proceeds of life policies which become payable on the death of the life assured. The interest is to be calculated from the 91st day after the date of death at the rate specified in the policy or at the rate from time to time prescribed for the purposes of section 87 of the Judicature Act 1908. See paragraphs 7.1 to 7.3 of the Report. The Contracts and Commercial Law Reform Committee recommended that interest be paid from the date of death.

Clause 4 repeals sections 65 and 66 of the Life Insurance Act 1908. These sections protect life policies against creditors. The protection is limited in amount to \$4,000, plus bonuses, and, in the case of annuities, to \$208 a year. That limited protection will be abolished by the repeal of the sections. See paragraphs 2.1 to 2.8 of the Report.

The repealed enactments will continue to apply, as if they had not been repealed, in respect of policies held by a person who died or was adjudged bankrupt before the date of the commencement of the clause.

Clause 5, which is related to *clause 4*, repeals the Inalienable Life Annuities Act 1910. See paragraph 3 of the Report.

Subclause (2) provides that, with respect to any inalienable life annuity policy issued under the Inalienable Life Annuities Act 1910 and in force at the commencement of the Bill, the Inalienable Life Annuities Act 1910 shall, notwithstanding its repeal by *subclause (1)* of *clause 4*, continue to apply as if the Bill had not been passed.

Clause 6 provides that a contract of assurance on the life of a person is not void or illegal by reason only of the fact that the insured under the contract does not have, or did not have when the contract was entered into, any interest in the life of that person. See paragraphs 4.1 to 4.6 of the Report.

Clause 7 preserves, except in the case of any contract of assurance on the life of any person or of any contract of indemnity against loss, the existing law in relation to insurable interests. See paragraph 4.6 of the report (which recommended the abolition, effected by *clause 6* of the Bill, of the requirement for an insurable interest in relation to life policies).

The abolition of the need for an insurable interest for the purposes of any contract of indemnity against loss (which abolition is effected by *clause 7 (3) (a)* of the Bill) was recommended by the Statutes Revision Committee.

Clause 8 provides that, as from the commencement of the Bill, the Life Insurance Act 1774 (14 Geo. III, c. 48) shall cease to have effect as part of the law of New Zealand. This clause is consequential on the provisions of *clause 6*.

Clause 9 repeals section 67 of the Life Insurance Act 1908, and substitutes 10 new sections. The existing section 67 (as modified by section 3 of the Life Insurance Amendment Act 1921–22) limits the amount that an insurer may pay (apart from the return of premiums with interest up to a maximum of 5 percent per annum) on the death of a child under 10 years of age. If the child is under 5 years of age, the amount is limited to \$12. If the child is between 5 years of age and 10 years of age, the amount is limited to \$20.

It is not clear whether a minor under 16 years of age may validly insure his own life.

The new *section 66A* provides that a minor who is under the age of 10 years may effect a policy on the minor's own life only if the effecting of the policy is in accordance with a contract approved under section 9 of the Minors' Contracts Act 1969 by a District Court.

The new *section 66B (1)* provides that, subject to the limitations set out in *sections 67A to 67E*, a minor of or over the age of 10 years may do, execute, suffer, and perform all acts, deeds, matters, and things necessary or proper for the purpose of effecting a policy on the minor's own life.

In addition, *section 66B (1)* is subject,—

- (a) In the case of a minor who has not attained the age of 16 years, to section 6 of the Minors' Contracts Act 1969; and
- (b) In the case of a minor who has attained the age of 16 years, to section 5 (2) of the Minors' Contracts Act 1969.

A minor change has been made to the form in which *section 66B (3)* was reported from the Statutes Revision Committee.

The new *section 66C* sets out the powers that a minor has to deal with any policy which is effected on the life of the minor and which is owned by the minor.

In the case of a minor of or over the age of 16 years, the new *section 66C* follows section 75 of the Life Insurance Act 1908 (as substituted by section 17 (1) of the Minors' Contracts Act 1969).

In the case of a minor under the age of 16 years, the approval of a District Court must be obtained before a dealing in respect of the policy can be entered into by the minor.

Nothing in *section 66B* or *section 66C* limits or affects section 4 of the Minors' Contracts Act 1969 (which confers full contractual capacity on married minors).

The new *section 66D* sets out certain presumptions in respect of policies issued to minors and in respect of dispositions made by minors. The provisions of the section are based on those of section 75 (3) of the Life Insurance Act 1908 (as substituted by section 17 (1) of the Minors' Contracts Act 1969).

The new *section 67 (1)* provides that, subject to the limitations set out in *sections 67B to 67E*, a policy on the life of a minor who is under the age of 16 years may be effected by any of the following persons:

- (a) The parents or guardians of the minor, or one of them;
- (b) A parent or guardian of the minor and the spouse of that parent or guardian, jointly;
- (c) Any person who has obtained the consent of a District Court to do so.

Subsection (2) provides that, except as provided in *subsection (1)* or in *section 66A* or *section 66B* or *section 67A* or in section 9 of the Minors' Contracts Act 1969, no person may effect a policy on the life of a minor who is under the age of 16 years.

The new *section 67A* (which relates to endowment insurances on lives of minors) re-enacts the substance of section 3 (1) (b) of the Life Insurance Amendment Act 1921-22.

Limitations on Payments in respect of Death of Minors

The new *section 67B (1)* provides that on the death of a minor under 10 years of age, the maximum amount recoverable by any proponent from all insurers will be limited to—

- (i) A return of premiums, together with interest thereon (compounded annually) at the maximum rate from time to time prescribed for the purposes of section 87 of the Judicature Act 1908 at the date of the death of the minor; and
- (ii) \$1,000 (representing a rough approximation of the cost today of a funeral) or such larger sum as may from time to time be specified by Order in Council.

Subsection (2) provides that nothing in *subsection (1)* limits *section 41A* and interest under that section 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.

The new *section 67C* provides that no company shall pay, on the death of a minor who is under the age of 16 years, any sum under any policy issued on or after 1 April 1985 to any person other than—

- (a) A person specified in *section 67 (1)*; or
- (b) An executor or administrator of a person specified in *section 67 (1)*; or
- (c) A person to whom payment may be made under section 65 (2) of the Administration Act 1969.

The new *section 67D (1)* provides that no company shall issue a policy on the life of a minor who is under the age of 16 years unless—

- (a) A statement explaining the effect of *sections 67B and 67C* is set out in the proposal for the policy; and
- (b) The person effecting the policy has signed a separate acknowledgment that that person is aware of the limitations imposed by those sections.

The issue of a policy in contravention of *subsection (1)* does not make the policy illegal, unenforceable, or of no effect.

The new *section 67E* provides that every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who,—

- (a) Being a company, contravenes *section 67B* or *section 67C* or *section 67D (1)*; or
- (b) Being a person claiming money on the death of a minor under the age of 16 years,—
 - (i) Produces to the company from which the money is claimed a false certificate of death or one fraudulently obtained; or
 - (ii) In any way attempts to defeat the provisions of the Life Insurance Act 1908 with respect to payments upon the death of minors.

The maximum penalty for an offence against the existing section 67 of the Life Insurance Act 1908, is a fine not exceeding \$200.

Clause 10 effects a consequential amendment to section 5 (1) (b) of the Minors' Contracts Act 1969. A minor change has been made to the form in which the consequential amendment was reported from the Statutes Revision Committee.

Clause 11 effects repeals that are consequential upon the amendments effected by *clause 9*. See paragraph 6.1 of the Report.

Clause 12 repeals section 57 of the Finance Act 1933 (No. 2). This section empowers the Governor-General by Order in Council to require that every policy of fire insurance (of a class defined by the Governor-General by Order in Council) shall contain only such provisions as may be approved by the Governor-General in Council. The power conferred by this section has not been used. See paragraph 11.1 of the Report.

Clause 13 provides that a person who purchases land and all or any fixtures thereon is entitled, during the period between the date of sale and the date of possession, or final settlement, whichever is the sooner, to the benefit of any policy of insurance maintained by the vendor. See paragraphs 9.1 to 9.18 of the Report.

Clause 14, which is related to *clause 13*, deals with the problem of double insurance. The new *clause 14* provides that where there is a contract for the sale of land and all or any fixtures thereon, it shall not be a defence or answer to any claim by the purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the policy to which the claim relates is affected or defeated by the existence or terms of any policy held by or on behalf of the vendor. See paragraph 9.15 of the Report.

Clause 15 provides that no contract of insurance relating to a dwellinghouse or any of the contents thereof, or both, shall contain a *pro rata* condition of average; and any provision of a contract of insurance that contravenes this clause shall be of no effect. See paragraphs 8.1 to 8.4 of the Report.

Subclause (3) contains a new definition of the term "dwellinghouse".

Clause 16: Subclause (1) requires that where a contract of insurance (not being a contract to which *clause 15* applies or a contract of marine insurance within the meaning of section 3 of the Marine Insurance Act 1908) contains a *pro rata* condition of average, the condition shall be of no effect unless, before that contract is entered into, the insurer clearly informs the insured in writing of the nature and effect of the condition.

Subclause (2) provides that, notwithstanding *subclause (1)*, where it is not reasonably practicable for the information required by that subclause to be given to the insured in writing before the contract is entered into, that subclause shall be deemed to be 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 reasonable practicable to do so.

Subclause (3) explains the meaning of the term "Subject to Average". This explanation may be used for the purposes of *subclauses (1) and (2)*.

See paragraphs 8.5 to 8.7 of the Report.

Friendly Societies and Credit Unions

Clause 18 brings section 46 of the Friendly Societies and Credit Unions Act 1982 into line with the provisions of the new *sections 67B to 67E* of the Life Insurance Act 1908. See *clause 9* of this Bill and paragraph 6.1 of the Report.

Hon. Geoffrey Palmer

INSURANCE LAW REFORM (NO. 2)

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A BILL INTITULED

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

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Insurance Law Reform Act (No. 2) 1984.

(2) This Act shall come into force on the 1st day of April
10 1985.

2. Act to bind the Crown—This Act shall bind the Crown.

3. Interest payable from 91st day after date of death—The Life Insurance Act 1908 is hereby amended by inserting, after section 41, the following section:

“41A. (1) Where—

“(a) Any money becomes payable by a company under a policy as a result of the death, on or after the **1st day of April 1985**, of the person on whose life the policy was effected; and

“(b) That money is not paid, within 90 days after the date of death, to the person entitled to that money,— the company shall, in addition to that money and at the same time as that money is paid to that person, pay to that person interest on that money in respect of the period beginning on the 91st day after the date of death and ending with the close of the day on which that money is paid to that person.

“(2) The interest payable pursuant to **subsection (1)** of this section shall be paid at the rate specified in the policy or at the rate from time to time prescribed for the purposes of section 87 of the Judicature Act 1908, whichever is the greater.

“(3) The provisions of this section shall have effect notwithstanding any provision to the contrary in any agreement or in any contract of insurance.”

4. Abolition of protection of life policies from creditors—(1) The following enactments are hereby repealed:

(a) Sections 65 and 66 of the Life Insurance Act 1908:

(b) Sections 3 and 4 of the Life Insurance Amendment Act 1925:

(c) So much of the First Schedule to the Crown Proceedings Act 1950 as relates to the Life Insurance Act 1908.

(2) The enactments repealed by **subsection (1)** of this section shall continue to apply, as if they had not been repealed, in respect of policies held by a person who died or was adjudged bankrupt before the date of the commencement of this section.

(3) Section 119 of the Family Proceedings Act 1980 is hereby consequentially amended by omitting the words “notwithstanding sections 65 and 66 of the Life Insurance Act 1908”.

5. Repeal of Inalienable Life Annuities Act 1910—(1) The Inalienable Life Annuities Act 1910 is hereby repealed.

(2) With respect to any inalienable life annuity policy issued under the Inalienable Life Annuities Act 1910 and in force at

the commencement of this Act, the Inalienable Life Annuities Act 1910 shall, notwithstanding its repeal by **subsection (1)** of this section, continue to apply as if this Act had not been passed.

5 **6. Need for insurable interest in life policy abolished—**

A contract of assurance on the life of a person is not void or illegal by reason only of the fact that the insured under the contract does not have, or did not have when the contract was entered into, any interest in the life of that person.

10 **7. Insurable interest required for contracts of general insurance—**(1) Notwithstanding anything in Part IX of the Gaming and Lotteries Act 1977, no insurance shall be made by any person—

15 (a) On any event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest; or

 (b) By way of gaming or wagering.

 (2) Every insurance made contrary to **subsection (1)** of this section shall be void.

20 (3) Nothing in **subsection (1) (a)** of this section requires any person for whose use or benefit or on whose account a policy of insurance is made to have any interest in any event for the purposes of—

 (a) Any contract of indemnity against loss; or

25 (b) Any contract of assurance on the life of a person.

 (4) Nothing in this section limits the provisions of the Marine Insurance Act 1908.

30 **8. Repeal of Life Insurance Act 1774—**As from the commencement of this Act, the Life Insurance Act 1774 (14 Geo. III, c. 48) shall cease to have effect as part of the law of New Zealand.

35 **9. New sections substituted—**The Life Insurance Act 1908 is hereby amended by repealing section 67 and the heading above that section, and substituting the following headings and sections:

“Insurance of Minors

40 **“66A. Insurance by minor who is under the age of 10 years—**A minor who is under the age of 10 years may effect a policy on the minor’s own life only if the effecting of the policy is in accordance with a contract approved under section 9 of the Minors’ Contracts Act 1969 by a District Court.

“66B. Insurance by minor who is of or over the age of 10 years—(1) A minor of or over the age of 10 years may do, execute, suffer, and perform all acts, deeds, matters, and things necessary or proper for the purpose of effecting a policy on the minor’s own life. 5

“(2) Subsection (1) of this section is,—

“(a) In the case of a minor who has not attained the age of 16 years, subject to section 6 of the Minors’ Contracts Act 1969; and

“(b) In the case of a minor who has attained the age of 16 years, subject to section 5 (2) of the Minors’ Contracts Act 1969. 10

“(3) Subsection (1) of this section is subject to sections 67A, 67C, 67D, and 67E of this Act.

“66C. Dealings by minors with policies—(1) Where any policy effected on the life of a minor is owned by the minor, the minor,— 15

“(a) If of or over the age of 16 years, may—

“(i) Surrender the policy:

“(ii) Give discharges for the money payable under the policy: 20

“(iii) Dispose of the policy by will in accordance with the provisions of section 6 of the Wills Amendment Act 1955 or section 2 of the Wills Amendment Act 1969: 25

“(iv) Dispose of the policy or interest therein or deal with the same in any manner authorised by this Act:

“(b) If under the age of 16 years, may, with the approval of a District Court, do, in relation to the policy, any of the things mentioned in paragraph (a) of this subsection. 30

“(2) Subsection (1) of this section shall apply whether or not the policy was effected in the first place by the minor.

“(3) Subsection (1) (a) of this section shall apply whether the policy has been effected before or after the minor attained the age of 16 years. 35

“(4) Where a minor of or over the age of 16 years—

“(a) Exercises the power conferred on the minor by subsection (1) (a) (i) or subsection (1) (a) (ii) of this section; or 40

“(b) Enters into a contract in relation to any policy to which subsection (1) of this section applies—

section 5 (2) of the Minors’ Contracts Act 1969 shall apply to the surrender or discharge and to every contract so entered into. 45

“(5) Nothing in this section or in **section 66B** of this Act shall limit or affect the provisions of section 4 of the Minors’ Contracts Act 1969 (which confers full contractual capacity on married minors).

5 “**66D. Presumption in respect of policies issued and dispositions made**—(1) So far as concerns the company issuing any policy, and so far as concerns any person claiming under any disposition of a policy made bona fide and for valuable consideration, it shall be conclusively presumed, subject to
10 **subsection (2)** of this section,—

 “(a) That the person who effected the policy was, at the time when that person effected the policy, of or over the age of 10 years; and

15 “(b) That the person who disposed of the policy was, at the time when that person disposed of the policy, of or over the age of 16 years.

 “(2) The presumption set out in **subsection (1)** of this section shall not apply where the company issuing the policy, or the person claiming under any disposition of the policy made bona
20 fide and for valuable consideration, had, at the time of the issue, actual knowledge that the person purporting to effect the policy was under the age of 10 years or had, at the time of the disposition, actual knowledge that the person purporting to dispose of the policy was under the age of 16 years.

25 “(3) Nothing in this section applies in respect of any policy effected in accordance with a contract approved under section 9 of the Minors’ Contracts Act 1969.

 “**67. Insurance on life of minor who is under the age of 16 years**—(1) A policy on the life of a minor who is under
30 the age of 16 years may be effected by any of the following persons:

 “(a) The parents or guardians of the minor, or one of them:

 “(b) A parent or guardian of the minor and the spouse of that parent or guardian, jointly:

35 “(c) Any person who has obtained the consent of a District Court to do so.

 “(2) Except as provided in **subsection (1)** of this section or in **section 66A** or **section 66B** or **section 67A** of this Act or in section 9 of the Minors’ Contracts Act 1969, no person may effect a
40 policy on the life of a minor who is under the age of 16 years.

 “(3) **Subsection (1)** of this section is subject to **sections 67B** to **67E** of this Act.

“67A. Endowment insurances on lives of minors—It shall be lawful for any company to issue, on the life of a minor of any age, a policy that provides for the payment of money—

“(a) On the expiration of a certain period; or

“(b) On the attainment of a specified age by the minor in respect of whom the policy is issued. 5

Limitations on Payments in respect of Death of Minors

“67B. Limitation on total amount of payments where deceased minor under the age of 10 years—(1) No company shall knowingly pay, on the death of a minor who is under the age of 10 years, any sum that is more than the total of the following amounts: 10

“(a) The total amount of premiums paid under the policy issued by the company on the life of the minor, together with interest thereon (compounded annually) at the rate prescribed for the purposes of section 87 of the Judicature Act 1908 at the date of the death of the minor; and 15

“(b) The amount that, when added to any other sum permitted by this paragraph to be paid by any other company or by any friendly society, equals \$1,000 or such larger sum as may from time to time be specified by Order in Council for the purposes of this paragraph. 20

“(2) Nothing in **subsection (1)** of this section limits **section 41A** of this Act and interest under that section may be paid in addition to the amounts required to be aggregated for the purposes of **subsection (1)** of this section and irrespective of the limit imposed by that subsection. 25

“67C. Limitation on persons to whom payments may be made where deceased minor under the age of 16 years— 30
No company shall pay, on the death of a minor who is under the age of 16 years, any sum under any policy issued on or after the **1st day of April 1985** to any person other than—

“(a) A person specified in **section 67 (1)** of this Act; or 35

“(b) An executor or administrator of a person specified in **section 67 (1)** of this Act; or

“(c) A person to whom payment may be made under section 65 (2) of the Administration Act 1969.

“67D. Company to supply statement in respect of limitations—(1) No company shall issue a policy on the life of a minor who is under the age of 16 years unless— 40

“(a) A statement explaining the effect of **sections 67B and 67C** of this Act is set out in the proposal for the policy; and

5 “(b) The person effecting the policy has signed a separate acknowledgment that that person is aware of the limitations imposed by those sections.

“(2) The issue of a policy in contravention of **subsection (1)** of this section shall not make the policy illegal, unenforceable, or of no effect.

10 “**67E. Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who,—

“(a) Being a company, contravenes **section 67B or section 67C or section 67D (1)** of this Act; or

15 “(b) Being a person claiming money on the death of a minor under the age of 16 years,—

“(i) Produces to the company from which the money is claimed a false certificate of death or one fraudulently obtained; or

20 “(ii) In any way attempts to defeat the provisions of this Act with respect to payments upon the death of minors.”

10. Consequential amendment to Minors' Contracts Act 1969—Section 5 (1) of the Minors' Contracts Act 1969 is hereby
25 consequentially amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Entered into pursuant to **section 66B** of the Life Insurance Act 1908 by a minor who has attained the age of 16 years; or”.

30 **11. Consequential repeals**—The following enactments are hereby consequentially repealed:

(a) Sections 75 and 75A (1) of the Life Insurance Act 1908:

(b) Section 3 of the Life Insurance Amendment Act 1921–22:

35 (c) Section 4 (5) of the Administration Amendment Act 1964:

(d) The Life Insurance Amendment Act 1967:

(e) Section 17 of the Minors' Contracts Act 1969.

12. Repeal of power to regulate provisions of fire insurance policies—Section 57 of the Finance Act 1933 (No. 2)
40 is hereby repealed.

13. Purchaser of land entitled to benefits of insurance between dates of sale and possession—(1) During the period between—

(a) The making of a contract for the sale of land and all or any fixtures thereon; and

(b) The purchaser taking possession of the land and fixtures, or final settlement, whichever is the sooner—

any policy of insurance maintained by the vendor in respect of any damage to or destruction of any part of the land or fixtures shall, in respect of the land and fixtures agreed to be sold and to the extent that the purchaser is not entitled to be indemnified under any other policy of insurance, enure for the benefit of the purchaser as well as for the vendor, and the purchaser shall be entitled to be indemnified by the insurer under the policy in the same manner and to the same extent as the vendor would have been if there had been no contract of sale:

Provided that nothing in this subsection shall oblige an insurer to pay more in total under a policy of insurance than it would have had to pay if there had been no contract of sale.

(2) It shall not be a defence or answer to—

(a) Any claim by a purchaser against an insurer under this section, that the vendor otherwise would not be entitled to be indemnified by the insurer because the vendor has suffered no loss or has suffered diminished loss by reason of the fact that the vendor is or was entitled to be paid the purchase price, or the balance thereof, by the purchaser; or

(b) Any claim under this section by a purchaser against the vendor's insurer in relation to the land or fixtures sold, that the purchaser's entitlement under the policy to which the claim relates is affected or defeated by the existence or terms of another policy; or

(c) Any claim by a purchaser against an insurer (other than the vendor's insurer) that the purchaser's entitlement under the policy to which the claim relates is affected or defeated by a claim under this section.

(3) Where, in respect of a contract for the sale of land and all or any fixtures thereon,—

(a) There is damage to or destruction of any part of the land or fixtures during the period specified in **subsection (1)** of this section; and

(b) The whole or part of the amount payable in respect of the damage or destruction under the policy of insurance maintained by the vendor is payable to a mortgagee of, or any person claiming through, the vendor—

the purchase price payable under the contract of sale shall be reduced by the amount so payable to the mortgagee or person claiming through the vendor.

(4) In this section, “vendor” includes a mortgagee of the vendor and any person claiming through the vendor.

(5) This section shall not apply to the extent that the purchaser and vendor under a contract of sale expressly agree
5 at any time.

(6) This section—

(a) Shall apply only in respect of contracts of sale made after the commencement of this Act; and

10 (b) Subject to **subsection (5)** of this section, shall have effect notwithstanding any provision to the contrary in any enactment, rule of law, policy of insurance, deed, or contract; and

15 (c) Shall apply, with all necessary modifications, in respect of a sale or exchange of land and fixtures by order of a Court as if the order were a contract of sale.

14. Double insurance relating to contracts for sale of land—Where there is a contract for the sale of land and all or any fixtures thereon, it shall not be a defence or answer to any claim by the purchaser against an insurer (other than
20 the vendor’s insurer) that the purchaser’s entitlement under the policy to which the claim relates is affected or defeated by the existence or terms of any policy held by or on behalf of the vendor.

15. Prohibition on inclusion of *pro rata* condition of average in contract of insurance relating to dwellinghouse—(1) No contract of insurance relating to a dwellinghouse or to any of the contents thereof or to both
25 shall contain a *pro rata* condition of average.

(2) Any provision of any contract of insurance that
30 contravenes **subsection (1)** of this section shall be of no effect.

(3) In this section “dwellinghouse” means a building or part of a building occupied or intended to be occupied as a separate dwelling; and includes any outbuildings used primarily for domestic or residential purposes.

35 (4) The application of this section to any contract of insurance relating to a dwellinghouse shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes.

16. Disclosure of *pro rata* condition of average—
40 (1) Where a contract of insurance (not being a contract to which **section 15** of this Act applies or a contract of marine insurance within the meaning of section 3 of the Marine Insurance Act

1908) contains a *pro rata* condition of average, the condition shall be of no effect unless, before that contract is entered into, the insurer clearly informs the insured in writing of the nature and effect of the condition.

(2) Notwithstanding **subsection (1)** of this section, where it is not reasonably practicable for the information required by that subsection to be given to the insured in writing before the contract is entered into, that subsection shall be deemed to be 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.

(3) Without limiting the means by which the requirements of **subsections (1) and (2)** of this section may be satisfied, it is hereby declared that any requirement which is imposed by any provision of those subsections and which requires information in writing of the nature and effect of a *pro rata* condition of average to be given shall be satisfied if that information is given in writing in the following form:

“The Meaning of Subject to Average

“(1) Your insurance policy contains a provision making it ‘subject to average’.

“(2) That provision will have effect only if the property insured under the policy is underinsured at the time of loss.

“(3) If the property insured under the policy 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:

“(c) Whatever your loss, in no case will you be entitled to recover more than the amount for which the property is insured.

“Example: Your property is worth \$20,000. You insure it for \$10,000. You suffer a loss of \$5,000. If your policy is ‘subject to average’, the maximum amount that you may recover will be \$2,500.”

(4) This section does not apply in respect of a contract of insurance entered into before the commencement of this Act.

Friendly Societies and Credit Unions

17. Sections to be read with Friendly Societies and Credit Unions Act 1982—This section and the next succeeding section shall be read together with and deemed part of the Friendly Societies and Credit Unions Act 1982* (in that section referred to as the principal Act).

*1982, No. 118

18. Restriction on payments on account of death of minors—The principal Act is hereby amended by repealing section 46, and substituting the following section:

“46. Sections 67B to 67E of the Life Insurance Act 1908 shall, with all necessary modifications, apply in respect of a registered society or branch as if—

“(a) Every reference therein (except section 67B (1) (b)) to a company were a reference to a registered society or branch; and

“(b) The reference in section 67B (1) (a) to premiums paid under the policy issued by the company on the life of the minor were a reference to any contributions paid to the registered society or branch in order to obtain the benefit payable on the death of the minor.”