

CONCURRENCE COPY

INSURANCE (AMENDMENT) BILL, 1983

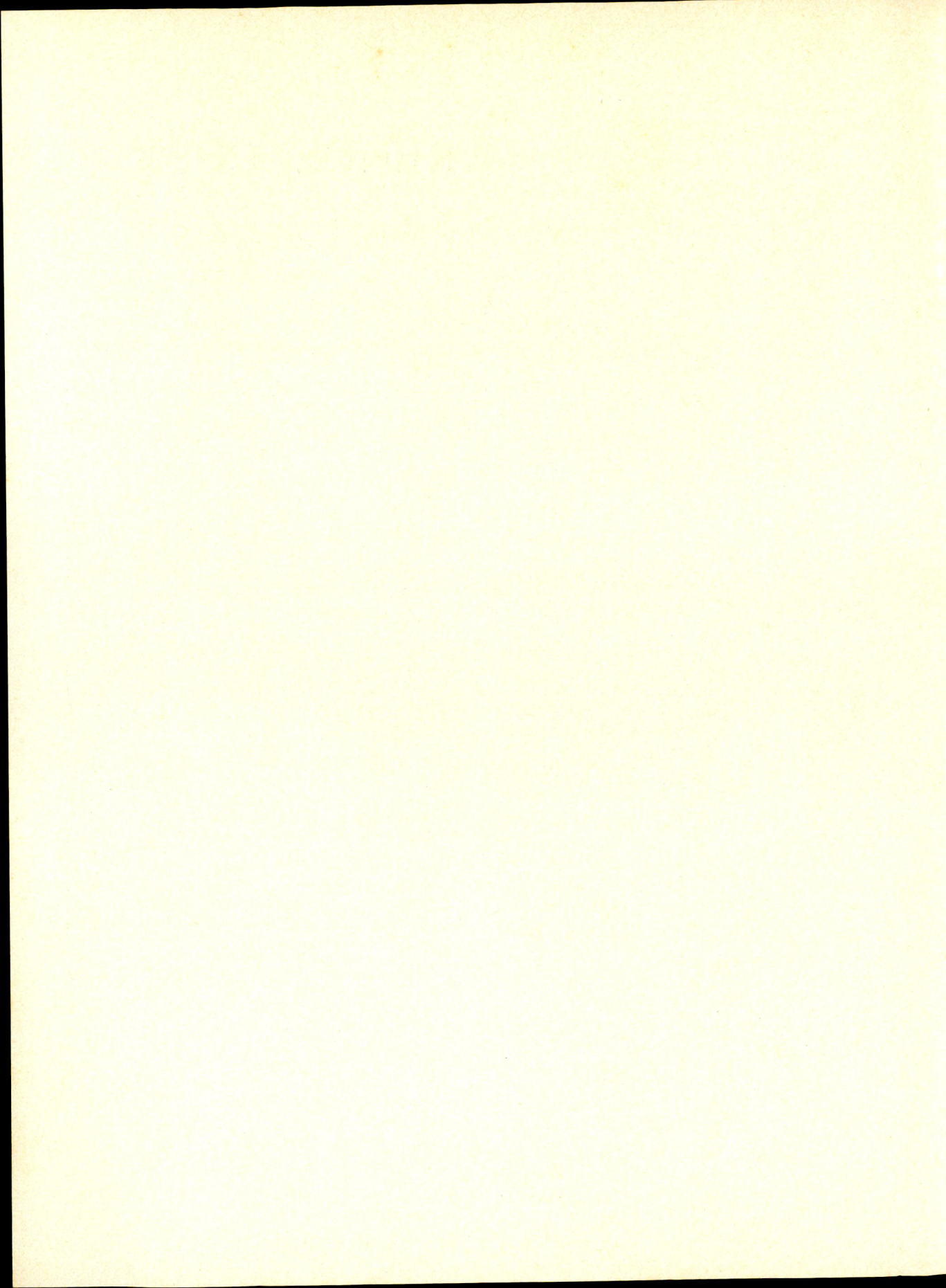
EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill gives effect to the report of the New South Wales Law Reform Commission entitled "Insurance Contracts—Non-disclosure and Misrepresentation" (L.R.C. 34), which is the First Report of the Commission under the Community Law Reform Program.

The objects of this Bill are to amend the Insurance Act, 1902, so as—

- (a) to provide that a contract of insurance is not rendered unenforceable—
 - (i) by reason of a false or misleading statement made by the insured in the contract or relevant proposal, unless the statement was material to the insurer, and either the statement was fraudulent or the insured knew or ought to have known that the statement was material to the insurer; or
 - (ii) by reason only of non-disclosure of any matter by the insured in the contract or relevant proposal, unless the matter not disclosed was material to the insurer and either the omission was deliberate or the insured knew or ought to have known that matter material to the insurer had not been disclosed,(Schedule 1 (1)—proposed section 18A);
 - (b) to provide that a clause of a contract of insurance that excludes or limits the liability of the insurer to indemnify the insured for loss does not operate if the loss was caused by or contributed to by factors not mentioned in that clause of the contract, unless in all the circumstances it is not reasonable for the insurer to be bound to indemnify the insured (Schedule 1 (1)—proposed section 18B);
 - (c) to provide that the proposed sections 18A and 18B do not apply to marine insurance, life insurance, motor vehicle third party insurance, workers' compensation insurance or solicitors' indemnity insurance (Schedule 1 (2)—proposed section 21 (2)); and
 - (d) to make other provisions of a transitional, consequential or ancillary nature.
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INSURANCE (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Insurance Act, 1902, with respect to the enforceability of certain contracts of insurance.

[MR WALKER—28 *September*, 1983.]

Insurance (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Insurance (Amendment) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- 10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 49, 1902.

3. The Insurance Act, 1902, is amended in the manner set forth in 15 Schedule 1.

Transitional provision.

4. Sections 18A and 18B of the Insurance Act, 1902, as amended by this Act, in their application to contracts of insurance entered into, reinstated or renewed after the commencement of those sections, have effect with 20 respect to statements, omissions, events or circumstances referred to in those sections and made, occurring, happening or existing before that commencement (as well as with respect to those so referred to and made, occurring, happening or existing after that commencement).
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Insurance (Amendment).

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE INSURANCE ACT, 1902.

(1) Sections 18A, 18B—

5 After section 18, insert:—

Misrepresentation and non-disclosure.

18A. A contract of insurance that is entered into, reinstated or renewed after the commencement of this section is not void, voidable or otherwise rendered unenforceable—

- 10 (a) by reason only of a false or misleading statement made in or in connection with the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the statement was material to the insurer in relation to the contract of insurance and—
- 15 (i) the statement was fraudulent; or
- (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that the statement was material to the insurer in relation to the contract of insurance; or
- 20 (b) by reason only of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and—
- 25 (i) the omission was deliberate; or
- (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

Insurance (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.***Limitation on exclusion clauses.**

5 18B. (1) Where by or under the provisions of a contract of insurance entered into, reinstated or renewed after the commencement of this section—

10 (a) the circumstances in which the insurer is bound to indemnify the insured are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of particular events or on the existence of particular circumstances; and

15 (b) the liability of the insurer has been so defined because the happening of those events or the existence of those circumstances was in the view of the insurer likely to increase the risk of loss occurring,

20 the insured shall not be disentitled to be indemnified by the insurer by reason only of those provisions of the contract of insurance if, on the balance of probability, the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of those events or the existence of those circumstances, unless in all the circumstances it is not reasonable for the insurer to be bound to indemnify the insured.

25 (2) The onus of proving for the purposes of subsection (1) that, on the balance of probability, loss in respect of which an insured seeks to be indemnified was not caused or contributed to by the happening of particular events or the existence of particular circumstances is on the insured.

(2) Section 21 (2)—

At the end of section 21, insert:—

30 (2) Without limiting subsection (1), sections 18A and 18B do not apply to or in respect of—

(a) contracts of marine insurance;

Insurance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.*

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- (b) contracts of life insurance; or
 - (c) those provisions of contracts of insurance to or in respect of which the Motor Vehicles (Third Party Insurance) Act, 1942, the Workers' Compensation Act, 1926, or section 70A of the Legal Practitioners Act, 1898, applies.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(40c)

INSURANCE (AMENDMENT) ACT, 1983, No. 97

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 97, 1983.

An Act to amend the Insurance Act, 1902, with respect to the enforceability of certain contracts of insurance. [Assented to, 9th November, 1983.]

Insurance (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Insurance (Amendment) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 49, 1902.

3. The Insurance Act, 1902, is amended in the manner set forth in Schedule 1.

Transitional provision.

4. Sections 18A and 18B of the Insurance Act, 1902, as amended by this Act, in their application to contracts of insurance entered into, reinstated or renewed after the commencement of those sections, have effect with respect to statements, omissions, events or circumstances referred to in those sections and made, occurring, happening or existing before that commencement (as well as with respect to those so referred to and made, occurring, happening or existing after that commencement).

Insurance (Amendment).

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE INSURANCE ACT, 1902.

(1) Sections 18A, 18B—

After section 18, insert:—

Misrepresentation and non-disclosure.

18A. A contract of insurance that is entered into, reinstated or renewed after the commencement of this section is not void, voidable or otherwise rendered unenforceable—

- (a) by reason only of a false or misleading statement made in or in connection with the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the statement was material to the insurer in relation to the contract of insurance and—
 - (i) the statement was fraudulent; or
 - (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that the statement was material to the insurer in relation to the contract of insurance; or
- (b) by reason only of an omission of matter from the contract or a proposal, offer or document that led to the entering into, reinstating or renewing of the contract unless the matter omitted was material to the insurer in relation to the contract of insurance and—
 - (i) the omission was deliberate; or
 - (ii) the insured knew or a reasonable person in the insured's circumstances ought to have known that matter material to the insurer in relation to the contract of insurance had been omitted.

Insurance (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.***Limitation on exclusion clauses.**

18B. (1) Where by or under the provisions of a contract of insurance entered into, reinstated or renewed after the commencement of this section—

- (a) the circumstances in which the insurer is bound to indemnify the insured are so defined as to exclude or limit the liability of the insurer to indemnify the insured on the happening of particular events or on the existence of particular circumstances; and
- (b) the liability of the insurer has been so defined because the happening of those events or the existence of those circumstances was in the view of the insurer likely to increase the risk of loss occurring,

the insured shall not be disentitled to be indemnified by the insurer by reason only of those provisions of the contract of insurance if, on the balance of probability, the loss in respect of which the insured seeks to be indemnified was not caused or contributed to by the happening of those events or the existence of those circumstances, unless in all the circumstances it is not reasonable for the insurer to be bound to indemnify the insured.

(2) The onus of proving for the purposes of subsection (1) that, on the balance of probability, loss in respect of which an insured seeks to be indemnified was not caused or contributed to by the happening of particular events or the existence of particular circumstances is on the insured.

(2) Section 21 (2)—

At the end of section 21, insert:—

(2) Without limiting subsection (1), sections 18A and 18B do not apply to or in respect of—

- (a) contracts of marine insurance;

Insurance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INSURANCE ACT, 1902—*continued.*

- (b) contracts of life insurance; or
- (c) those provisions of contracts of insurance to or in respect of which the Motor Vehicles (Third Party Insurance) Act, 1942, the Workers' Compensation Act, 1926, or section 70A of the Legal Practitioners Act, 1898, applies.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 9th November, 1983.





