

2 July 2014



Mr Ward Sutcliffe
Analyst
Investment and Superannuation Unit
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ward.sutcliffe@treasury.gov.au

Dear Mr Sutcliffe

Exposure draft Insurance Contracts Amendment Regulation 2014 (No 1)

The Law Council of Australia welcomes the opportunity to respond to Treasury's consultation on the exposure draft Insurance Contracts Amendment Regulation 2014 (No 1).

The Law Council would welcome an opportunity to discuss the submission further, and we plan to forward further annotations to the draft regulation by mid next week. Should you wish to discuss the submission meanwhile, in the first instance, please contact the Section Administrator Hanna Jaireth on (02) 6246 3722 or lps@lawcouncil.asn.au, or the Insurance Law Group Chair, Andrew Sharpe on 02 9265 3261 or a.sharpe@mccabes.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "M Hagan".

MARTYN HAGAN
SECRETARY-GENERAL

Exposure draft Insurance Contracts Amendment Regulation 2014 (No 1)

The Treasury

2 July 2014

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Executive summary

This submission makes a number of recommendations and provides suggested amendments to the exposure draft Insurance Contracts Amendment Regulation 2014 (No 1) in marked-up text at **Attachment A**.

The submission suggests that:

- Treasury may wish to amend the regulation so that insurers can continue to use their current duty of disclosure notice in non-prescribed form until 28 December 2015 (as intended by this regulation), provided that the notice meets the obligations under s 22 in force prior to 28 December 2015.
- The regulation could be amended to confirm that the issue of an old notice in the prescribed form or otherwise in accordance with s 21(1) will comply with s 22 and not be misleading or deceptive provided that on the next variation, renewal, reinstatement or extension which occurs on or after 28 December 2015, the insured is advised before or at that time of the new obligations.
- The new prescribed forms of wording do not include the non-exclusive factors to have regard to when determining whether a matter known to the insured is one that a reasonable person in the circumstances could be expected to know to be relevant to the decision of the insurer as to whether to accept the risk or not and if so, on what terms. The Law Council recommends that Treasury specify in the Explanatory Statement that it does not believe that these matters need to be disclosed in the s 22 notice and the reason for this. This will help avoid unnecessary disputes.
- The current notices and proposed notices should be amended to reflect the reality that an insurer's rights in response to innocent non-disclosure are to reduce liability and/or cancel an insurance policy.
- The reference to "course of business" should read "course of our business as an insurer" to better reflect the words used in the qualifier in the Act.
- Consumers may be confused by the reference to "applies until the contract is entered into" where it also applies in relation to renewal and other specified circumstance in the Act. Words such as "applies until the contract is entered into (or renewed, extended, varied or reinstated as applicable)" would be clearer.
- Reminder notices should explain what an insured needs to do at this point (i.e. if anything has changed since last disclosure, the consumer must tell the insurer).
- The Law Council would support consumer testing of notices to ensure that they are readily understandable to consumers. However, any proposal to submit the refined notices to consumer testing would require an extension to the commencement date/transitional period due to the fact that insurers will need some months to make the necessary system changes to implement the regulations once made.

Introduction

The Law Council of Australia welcomes the opportunity to respond to Treasury's consultation on the exposure draft Insurance Contracts Amendment Regulation 2014 (No 1).

The Law Council of Australia is the peak national representative body of the Australian legal profession representing 60,000 legal practitioners nationwide.

This submission has been prepared by the executive committees of the Australian Insurance Law Group and the Australian Consumer Law Group – two Groups in the Legal Practice Section of the Law Council. The Legal Practice Section and its special interest Groups provide assistance to lawyers in various areas of specialist practice and practice management. The Section also encourages and promotes national uniformity of laws and procedural issues, most notably in relation to property law.

The Law Council's view is that the proposed duty of disclosure notices accurately reflect the provisions of the Act, and whilst the provisions are relatively clear for informed readers, some minor amendments would make the notices clearer and more internally consistent, and would assist consumers to understand their obligations.

Clarity and accessibility in the language of the notices is important given the complexity of the information needing to be conveyed, and the serious consequences that may flow from a policy-holder's failure to make full and accurate disclosures. The current wording of the exposure draft regulations may cause even tertiary-educated consumers to experience some difficulty in understanding the information conveyed. Consumers with literacy problems or whose first language is not English may find the proposed notices difficult or impossible to understand.

If a policy-holder innocently fails to mention something they are obliged to disclose, his or her insurer may reduce its liability in the event of a claim and/or cancel the contract of insurance.

The Law Council is also concerned that wording notices in an inaccessible way may perpetuate the impression that consumers may have already, that disclosure documents are too confusing to warrant the investment of time that is needed to enable the documents to be understood. If the notices remain inaccessible, this will do little to build trust and confidence in the insurance industry, where consumers tend to have very limited opportunity or ability to negotiate terms and conditions.

Issues requiring further consideration

(a) Regulation content issues

Regulation 42 – use of existing or amended prescribed wording

Draft regulation 42 states that an insurer may continue to use the current prescribed form of wording or the new version for any contract entered into before 28 December 2015.

This allows insurers, who now use the current prescribed form of wording, to leave updating their s 22 notices until next year, subject to the misleading and deceptive issue noted below.

However, few, if any, insurers use the exact prescribed form of wording because they have the option of whether to follow the exact form or not.

Section 22 of the Act provides that:

Insurer to inform of duty of disclosure

(1) The insurer shall, before a contract of insurance is entered into, clearly inform the insured in writing of the general nature and effect of the duty of disclosure and, if section 21A applies to the contract, also clearly inform the insured in writing of the general nature and effect of section 21A.

Note: If the insurer wishes to rely on section 21B during the transition period (within the meaning of section 21B) in relation to the renewal of an eligible contract of insurance, the insurer must also comply with subsection 21B(2) before the contract is renewed.

(2) If the regulations prescribe a form of writing to be used for informing an insured of the matters referred to in subsection (1), the writing to be used may be in accordance with the form so prescribed.

(3) An insurer who has not complied with subsection (1) may not exercise a right in respect of a failure to comply with the duty of disclosure unless that failure was fraudulent.

The effect of s 22(2) is that if an insurer uses the form of wording in the Schedule it complies with its obligation under s 22(1).

The proposed Regulation 42 covers insurers who use the form in the Schedule.

Those insurers who do not use the form in the Schedule must rely on establishing compliance with s 22(1) above (i.e. the “general nature and effect obligation”).

Since most insurers do not use the form in the Schedule and adapt it in various ways, the value of this regulation seems limited in its practical effect. Most insurers adopt a form of wording that meets what they believe are the content requirements of the duty of disclosure notice obligation in s 22, running the risk that if it is not consistent with the prescribed form, a court is likely to hold there has been non-compliance.

To limit the risk, most insurers ensure the content at least matches the prescribed content, albeit reworded in various respects to be more accurate, or more consumer-friendly. This creates a more even playing field for insurers who use the prescribed form and those who do not.

To address this issue, Treasury may wish to make a change to the regulation so that insurers can continue to use their non-prescribed form existing duty of disclosure notice until 28 December 2015 (as intended by this regulation), provided that the notice meets the obligations under s 22 in force prior to 28 December 2015.

Misleading and deceptive risk for eligible contracts

Even assuming that the above amendment is made, there is a misleading and deceptive conduct risk. For example, if an insurer uses an old “eligible contract notice” that refers to the renewal duty under s 21 (as most do), renewal will be from or after 28 December 2015, and s 21B will apply. The notice may not accurately advise the client about the renewal duty. This is because s 21B will apply for renewals from 28 December 2015.

Whilst the proposed regulation results in compliance with the *Insurance Contracts Act 1984* (Cth), it does not appear to remove the risk of a technical breach of the misleading

or deceptive provisions of the *Australian Securities and Investments Commission Act 2001* (Cth) or the *Corporations Act 2000* (Cth).

The Law Council expects that ASIC would take no action in such circumstances, provided the updated duty is advised prior to the renewal which will take place from or after 28 December 2015.

The Law Council submits that clarity on this issue is crucial.

Assuming insurers do adopt at a minimum the prescribed form content in substance, the same risk would not appear to arise for non-eligible s 21 only contracts. This is because the current form of notice should not be misleading in their current form as against the new form, as the only significant changes relate to:

- telling the customer the duty applies up until entry into force. Not including this in the notice can reasonably be argued not to be misleading on the basis that the statement to which it applies continues until the next renewal can be provided, and prior to that time nothing requires the duty of disclosure notice information to be in one form. Provided all the information is advised prior to the next renewal there should be no issue; and
- the non exclusive factors – which Treasury does not appear to believe need to be included – see comments below on this.

The Law Council suggests that it may be worth including s 21-only notices in any amendments or statements in relation to this issue, as insurers use a variety of notice forms. The regulation could be amended to confirm that the issue of an old notice in the prescribed form or otherwise in accordance with s 21(1) will comply with s 22 and not be misleading or deceptive provided that on the next variation, renewal, reinstatement or extension which occurs on or after 28 December 2015, the insured is advised before or at that time of the new obligations.

(b) Notice content issues

Reasonable person in the circumstances test

The new prescribed forms of wording do not include the non-exclusive factors to have regard to when determining whether a matter known to the insured is one that a reasonable person in the circumstances could be expected to know to be relevant to the decision of the insurer as to whether to accept the risk or not and if so, on what terms.

As noted above, under the Act, if insurers use the prescribed form of wording they are, in effect, protected from any argument from a consumer that these factors should have been disclosed in their s 22 notice to comply with s 22(1) (other than an argument that the regulation is not consistent with the Act itself).

However, if the insurer does not use the prescribed form of wording, and most do not, this protection is not available and the non-inclusion of these factors may be open to challenge. It is acknowledged that the risk is probably low since a Court would be likely to take into account the fact that the prescribed form of words do not refer to these factors.

The Law Council recommends that Treasury specify in the Explanatory Statement that it does not believe that these matters need to be disclosed in the s 22 notice and the reason for this. This will help avoid unnecessary disputes.

Insurer's rights in respect of a breach

An insurer's rights in response to innocent non-disclosure are to reduce liability and/or cancel an insurance policy. They can do both if they wish i.e. reduce the specific claim and then cancel the policy. The current notices and proposed notices do not accurately reflect this reality. This should be tidied up now so consumers are not misled. This would only require a relatively simple change, as has been suggested in the **attached** marked up Regulations.

Situations in which the duty does not apply

The reference to "course of business" should read "course of our business as an insurer" to better reflect the words used in the qualifier in the Act. The existing words are broader than the Act intends. This would only require a relatively simple change and has been incorporated in the **attached** marked up Regulations.

Applies until the contract is entered into

Consumers may be confused by the reference to "applies until the contract is entered into" where it also applies in relation to renewal and other specified circumstance in the Act.

Whilst technically accurate, it may be more consumer-friendly to use a clearer form of words to avoid the need to check the Act for what else constitutes "entry".

The other concepts are dealt with in the Schedule 1 notice after this statement.

It may be better to insert the renewal/variation paragraph first and following this state "applies until the contract is entered into (or renewed, extended, varied or reinstated as applicable)" after it.

The concepts of variation, extension and reinstatement are also not covered in the notices which relate to eligible contracts of insurance (other than at renewal). They are likely to be relevant to consumers. Further consideration should be given to addressing this issue in those notices. It is acknowledged that the inclusion of such reference would require a significantly longer and more complex notice to be given.

Reminder notice

The Law Council is also concerned that the reminder notice does not clearly explain what an insured needs to do at this point (i.e. if anything has changed since last disclosure, the consumer must tell the insurer) and by short-forming the content of the actual notice (e.g. eligible contracts renewal notice) could create confusion.

Consumer Testing

As a general proposition, the Law Council would support consumer testing of such notices to ensure that they are readily understandable to consumers.

However, any proposal to submit the refined notices to consumer testing would require an extension to the commencement date/transitional period due to the fact that insurers will need some months to make the necessary system changes to implement the regulations once made.

Recommended amendments

A marked up copy of recommended amendments are at **Attachment A** for consideration. The proposed amendments are limited to:

- matters of form and increasing the readability of the notices;
- clarifying the final paragraph of each of the two notices concerning contracts of life insurance by, firstly, re-casting the paragraphs in the declarative form, to make it clear that the person whose life is insured must make the specified disclosures; and, secondly, dealing in a separate sentence with the consequences of a failure by the person whose life is insured to make the specified disclosures; and
- address the issues raised above in relation to “Insurers rights in respect of a breach” and “Situations in which the duty does not apply”.

The recommended amendments contained in **Attachment A** do not attempt to address each of the other “Issues requiring further consideration” raise above.

Attachment A: Recommended amendments

See separate file "Att A".

Attachment B: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2014 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

EXPOSURE DRAFT

Field Code Changed



EXPOSURE DRAFT (02/06/2014)

Insurance Contracts Amendment Regulation 2014 (No. 1)

Select Legislative Instrument No. , 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Mathias Cormann
Minister for Finance
for the Treasurer

Field Code Changed

EXPOSURE DRAFT

EXPOSURE DRAFT

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EXPOSURE DRAFT

Field Code Changed

1 Name of regulation

This regulation is the *Insurance Contracts Amendment Regulation 2014 (No. 1)*.

2 Commencement

Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provision(s)	Commencement
1. Sections 1 to 4 and anything in this regulation not elsewhere covered by this table	The day after this regulation is registered.
2. Schedule 1	The day after this regulation is registered.
3. Schedule 2	28 December 2015.

3 Authority

This regulation is made under the *Insurance Contracts Act 1984*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Field Code Changed

EXPOSURE DRAFT

Schedule 1 Amendments commencing day after registration

Field Code Changed

Schedule 1—Amendments commencing day after registration

Insurance Contracts Regulations 1985

1 At the end of Part 4

Add:

42 Amendments made by the *Insurance Contracts Amendment Regulation 2014 (No. 1)*

- (1) Despite the repeal and substitution of Schedules 1 and 2 by the *Insurance Contracts Amendment Regulation 2014 (No. 1)*, either the repealed or substituted Schedules may be used for the purposes of regulation 3 in relation to a contract of insurance entered into before 28 December 2015.
- (2) This regulation expires on 28 December 2015 as if it had been repealed by another regulation.

2 Schedules 1 and 2

Repeal the Schedules, substitute:

Schedule 1—Writing to inform of duty of disclosure

Note: See subregulation 3(1).

Part 1—Contracts of general insurance, other than eligible contracts

Your duty of disclosure

Before you enter into a contract of general insurance with us, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

This duty of disclosure applies until the contract is entered into.

Field Code Changed

2

Insurance Contracts Amendment Regulation 2014 (No. 1)

No. , 2014

EXPOSURE DRAFT

EXPOSURE DRAFT

Amendments commencing day after registration **Schedule 1**

Field Code Changed

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate ~~the~~ [contract of general insurance](#).

Your duty however does not require disclosure of matter:

- that ~~diminishes~~ [reduces](#) the risk ~~of the insurance to be undertaken by us~~; or
- that is of common knowledge; or
- that we know or, in the ordinary course of business, ought to know; or
- as to which compliance with your duty is waived by us.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Part 2—Contracts of life insurance

Your duty of disclosure

Before you enter into a contract of life insurance with us, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

This duty of disclosure applies until the contract is entered into.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the contract.

The duty however does not require disclosure of a matter:

- that ~~diminishes~~ [reduces](#) the risk ~~to be undertaken by us of the insurance~~; or
- that is of common knowledge; or
- that we know or, in the ordinary course of business, ought to know; or
- as to which compliance with your duty is waived by us.

Non-disclosure

Field Code Changed

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments commencing day after registration

Field Code Changed

If you fail to comply with your duty of disclosure and we would not have entered into the contract on any terms if the failure had not occurred, we may avoid the contract within 3 years of entering into it.

If your non-disclosure is fraudulent, we may avoid the contract at any time.

If we are, or have been, entitled to avoid ~~a the~~ contract ~~of life insurance~~ but do not avoid it, we may elect, ~~at any time,~~ to reduce the sum that you have been insured for in accordance with a formula that takes into account the premium that would have been payable if you had disclosed all relevant matters to us.

If the contract is for insurance of the life of another person, ~~any failure by him or her to~~ that person must tell us ~~a every~~ matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to enter into the contract and, if so, on what terms. A failure by that person to do so may be treated as a failure by you to comply with your duty of disclosure.

Part 3—Eligible contracts of insurance

Your duty of disclosure

Before you enter into an eligible contract of insurance with us, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If we ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms, you must disclose to us anything that you know and that a reasonable person in the circumstances would include in answer to the questions.

This duty of disclosure applies until the contract is entered into.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Field Code Changed

EXPOSURE DRAFT

Amendments commencing day after registration **Schedule 1**

Field Code Changed

Schedule 2—Words to inform of duty of disclosure for eligible contracts of insurance

Note: See subregulation 3(2).

Before you enter into an eligible contract of insurance with us, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

We may ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. If we do, you must tell us anything that you know and that a reasonable person in the circumstances would include in their answer.

This duty applies until the contract is entered into.

If you fail to comply, we may be entitled to reduce our liability under the contract in respect of a claim or we may cancel the contract.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Field Code Changed

No. , 2014

Insurance Contracts Amendment Regulation 2014 (No. 1)

5

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 2 Amendments commencing 28 December 2015

Field Code Changed

Schedule 2—Amendments commencing 28 December 2015

Insurance Contracts Regulations 1985

1 Regulation 2B (heading)

Repeal the heading, substitute:

2B Eligible contracts of insurance (Act, s21A(6))

2 Regulation 3

Repeal the regulation, substitute:

3 Duty of disclosure—written notice

- (1) This regulation is made for paragraph 22(4)(a) of the Act.
- (2) The form of writing that may be used to inform an insured of the matters mentioned in subsection 22(1) of the Act is:
 - (a) for a contract of general insurance other than an eligible contract or insurance—the form set out in Part 1 of Schedule 1; and
 - (b) for a contract of life insurance—the form set out in Part 2 of Schedule 1; and
 - (c) for the original entering into of an eligible contract of insurance—the form set out in Part 3 of Schedule 1; and
 - (d) for the renewal of an eligible contract of insurance—the form set out in Part 4 of Schedule 1.
- (3) The form of writing that may be used to inform another person who may become a life insured of the matters mentioned in subsection 22(1) of the Act is set out in Schedule 1A (see subsection 22(2) of the Act).

3A Duty of disclosure—reminder notice

- (1) This regulation is made for paragraph 22(4)(b) of the Act.

Field Code Changed

EXPOSURE DRAFT

Amendments commencing 28 December 2015 **Schedule 2**

Field Code Changed

-
- (2) The form of writing that may be used to remind an insured of the matters mentioned in subsection 22(1) of the Act is:
- (a) for a contract of general insurance that is not an eligible contract of insurance—the form set out in Part 1 of Schedule 1B; and
 - (b) for a contract of life insurance—the form set out in Part 2 of Schedule 1B; and
 - (c) for an eligible contract of insurance—the form set out in Part 3 of Schedule 1B.

3B Duty of disclosure—oral notice

- (1) This regulation is made for subregulation 69(1A) of the Act.
- (2) The words that may be used to inform an insured orally of the matters mentioned in subsection 22(1) of the Act for the original entering into of an eligible contract of insurance are set out in Schedule 2.

3 Schedule 1 (note to Schedule heading)

Repeal the note, substitute:

Note: See subregulation 3(2).

4 At the end of Schedule 1

Add:

Part 4—Renewal of eligible contracts of insurance

Your duty of disclosure

Before you renew this contract of insurance, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If we ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms, you must disclose to us anything that you know and that a reasonable person in the circumstances would include in answer to the questions.

Also, we may give you a copy of any matter you have previously told us and ask you to tell us about any change to the matter or to tell us if there is no change to the matter. If we do this, you must disclose to us any change to the matter or inform us that there is no change to the matter.

Field Code Changed

EXPOSURE DRAFT

Schedule 2 Amendments commencing 28 December 2015

Field Code Changed

If you do not ~~disclose to us~~ disclose to us that there has been a change to a matter you have previously disclosed, you will be taken to have ~~informed~~ told us that there is no change to the matter.

This duty of disclosure applies until the contract is renewed.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

5 After Schedule 1

Insert:

Schedule 1A—Writing to inform persons to be insured by others

Note: See subregulation 3(3).

Insured's duty of disclosure

A person who enters into a contract of life insurance with us has a duty under the *Insurance Contracts Act 1984*, before entering into the contract, to disclose to us every matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

The duty of disclosure applies until the contract is entered into.

The person entering into the contract has the same duty to disclose those matters to us before he or she renews, extends, varies or reinstates the contract.

The duty however does not require disclosure of a matter:

- that ~~diminishes~~ reduces the risk ~~to be undertaken by us~~ of the insurance; or
- that is of common knowledge; or
- that we know or, in the ordinary course of business, ought to know; or
- as to which compliance with the duty is waived by us.

Field Code Changed

EXPOSURE DRAFT

Amendments commencing 28 December 2015 **Schedule 2**

Field Code Changed

Non-disclosure

If the person entering into the contract fails to comply with the duty of disclosure and we would not have entered into the contract on any terms if the failure had not occurred, we may avoid the contract within 3 years of entering into it.

If the non-disclosure is fraudulent, we may avoid the contract at any time.

If we are, or have been, entitled to avoid a contract of life insurance but do not avoid it, we may elect, at any time, to reduce the sum that you have been insured for in accordance with a formula that takes into account the premium that would have been payable if the person entering into the contract had disclosed all relevant matters to us.

~~Any failure by you to~~ You must disclose ~~to us every~~ matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. A failure by you to do so may be treated as a failure by the person entering into the contract to comply with his or her duty of disclosure.

Schedule 1B—Writing to remind of duty of disclosure

Note: See regulation 3A.

Part 1—Contracts of general insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to a contract of general insurance.

~~This is a~~ That duty requires you to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

~~This~~ Your duty of disclosure continues until the contract is entered into.

Part 2—Contracts of life insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to a contract of life insurance.

Field Code Changed

EXPOSURE DRAFT

Schedule 2 Amendments commencing 28 December 2015

Field Code Changed

~~This is a~~That duty requires you to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

If the contract is for insurance of the life of another person, ~~any failure by~~ that person must to disclose to us every matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. A failure by that person to do so may be treated as a failure by you to comply with your duty of disclosure.

This duty of disclosure continues until the contract is entered into.

Part 3—Eligible contracts of insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to an eligible contract of insurance.

~~This is a~~That duty requires you to disclose to us, in response to our questions, every matter that you know, and that a reasonable person in the circumstances would include in answer to the questions.

~~This~~ Your duty of disclosure continues until the contract is entered into.

6 Schedule 2 (note to Schedule heading)

Repeal the note, substitute:

Note: See regulation 3B.

Field Code Changed