

INSURANCE ACT 2015

Main Provisions of the Act

aspire

Duty of fair presentation

1. Insured must disclose all material information they know or ought to know or;
2. give sufficient information to put the insurer on notice that they need to ask more questions.
3. The information must be provided in a way that is reasonably clear and accessible and is not a data dump.
4. Information does not need to be disclosed which:
 - a) Diminishes the risk.
 - b) The insurer knows, ought to know or is presumed to know, or;
 - c) The insurer has waived the right to.

This applies to disclosure before the contract is concluded, for both new contracts and renewals, as well as mid-term variations.

Remedies for breach of duty of fair presentation

Deliberate or reckless breach

The Insurer may:

- a) Avoid the policy;
- b) Refuse to pay any claims; and
- c) Retain any premium paid.

For any other breach:

- a) If the insurer would not have entered into the contract on any terms the insurer can return the premium and refuse to pay claims;
- b) If the insurer would have entered into the contract on different terms other than additional premium the contract will be treated as if on those terms;

Warranties and other terms

Breach of warranty will result in the insurer having no liability under the contract until the breach has been remedied; Terms not relevant to the actual loss - unless a term defines the risk as a whole

Basis of contract clauses

Basis of contract clauses are abolished. These clauses currently operate to turn the insured's pre-contractual representations, including answers to proposal form questions, into warranties.

Fraudulent claims

The insurer may refuse to pay the claim, recover any sums already paid and treat the contract as terminated with effect

Duty of Good Faith

The duty of good faith remains but the remedy of avoidance will be lost.

For more information please contact us on:

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