

Contracts of Insurance (Repeals and Amendments) Bill

(Divided from the Contracts of Insurance Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Contracts of Insurance Bill as reported from the Finance and Expenditure Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Contracts of Insurance Bill comprising clauses 1 and 2, Parts 1 to 6, and Schedules 1 to 3
- this Bill comprising Part 7 and Schedules 4 to 6.

Contracts of Insurance (Repeals and Amendments) Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Andrew Bayly

Contracts of Insurance (Repeals and Amendments) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Contracts of Insurance (Repeals and Amendments) Act **2024**.

2 Commencement

- (1) This Act comes into force on a date or dates set by Order in Council. 5
- (2) However, **section 178(1)** comes into force on the day after Royal assent.
- (3) Any part of the Act that has not come into force by the third anniversary of Royal assent comes into force then.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

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Repeals

169 Repeals

The following legislation is repealed:

- (a) the Insurance Intermediaries Act 1994 (1994 No 41): 15
- (b) the Insurance Law Reform Act 1977 (1977 No 14):
- (c) the Insurance Law Reform Act 1985 (1985 No 117):
- (d) the Life Insurance Act 1908 (1908 No 105):
- (e) Part 3 of the Law Reform Act 1936.

Amendments to Marine Insurance Act 1908 20

170 Principal Act

Sections 171 to 173 amend the Marine Insurance Act 1908.

171 Cross-heading above section 18 replaced

Replace the cross-heading above section 18 with:

When contract is deemed to be concluded 25

172 Sections 18 to 20, 34 to 39, and 42 repealed

Repeal sections 18 to 20, 34 to 39, and 42.

173 Section 40 amended (Warranty of seaworthiness of ship)

After section 40(5), insert:

- (6) An insurer may not rely on a warranty under this section if the assured proves that the loss for which the assured seeks to be indemnified was not caused, or contributed to, by the matters that gave rise to the breach of the warranty.

Amendments to Fair Trading Act 1986

174 Principal Act 5

Sections 175 to 178 amend the Fair Trading Act 1986.

175 Section 26D amended (Specified trade contracts: trading relationship, annual value threshold, and other definitions)

Replace section 26D(4)(d)(i) with:

- (i) in relation to a small trade contract that is a contract of insurance (within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010), means \$20,000; and 10
- (ia) in relation to any other small trade contract, means \$250,000; and

176 New section 46KA inserted (Other matters relating to insurance contracts)

After section 46K, insert: 15

46KA Other matters relating to insurance contracts

- (1) This section applies to contracts of insurance within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010.
- (2) For the purposes of section 46K(1)(a), a term of a contract of insurance defines the main subject matter of the contract only to the extent that the term— 20
 - (a) identifies the uncertain event or otherwise specifies the subject matter insured or the risk insured against; or
 - (aa) relates to the amount of a premium payable under a life policy or a contract of health insurance; or
 - (b) specifies the sum or sums insured or assured; or 25
 - (c) describes the basis on which a claim under the contract of insurance may be settled; or
 - (d) specifies any contributory sum due from, or amount to be borne by, a policyholder in the event of a claim under the contract of insurance; or
 - (e) excludes or limits the liability of the insurer to indemnify the policyholder on the happening of certain events or on the existence of certain circumstances. 30
- (3) **Subsection (2)** does not limit section 46K(1).
- (4) In this section,— 35

contract of health insurance means a contract of health insurance within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010

	life policy has the meaning set out in section 84 of the Insurance (Prudential Supervision) Act 2010	
	premium has the meaning set out in section 6(1) of the Insurance (Prudential Supervision) Act 2010	
	uncertain event has the meaning set out in section 7(2) of the Insurance (Prudential Supervision) Act 2010.	5
177	Section 46L amended (When term in consumer contract or specified trade contract is unfair) Repeal section 46L(4) and (5).	
178	Schedule 1AA amended	10
(1)	In Schedule 1AA, clause 1(3), definition of specified date , replace paragraph (a) with:	
(a)	the date that is the third anniversary of Royal assent of the Contracts of Insurance Act 2024 Part 7 of the Contracts of Insurance Act 2024 ; or	15
(2)	In Schedule 1AA,—	
(a)	insert the Part set out in Schedule 4 of this Act as the last Part; and	
(b)	make all necessary consequential amendments.	
	<i>Amendments to Financial Markets Conduct Act 2013</i>	
179	Principal Act Sections 180 to 189 amend the Financial Markets Conduct Act 2013.	20
180	Section 6 amended (Interpretation)	
(1)	In section 6(1), replace the definition of contract of insurance with:	
	contract of insurance —	
(a)	has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010; but	25
(b)	in subparts 6A and 6B of Part 6, does not include a contract of reinsurance within the meaning of that Act	
(2)	In section 6(1), insert in their appropriate alphabetical order:	
	consumer insurance contract has the meaning set out in section 446P(1)	30
	health insurance means insurance against a liability to pay fees or charges relating to the provision of a health service (within the meaning of section 5(1) of the Health Practitioners Competence Assurance Act 2003)	
	life insurance —	
(a)	means insurance of the kind described in section 84(1)(a) to (f) of the Insurance (Prudential Supervision) Act 2010; but	35

- (b) does not include insurance under a contract referred to in section 84(3) or (4) of that Act
- (3) In section 6(1), definition of **market services licensee obligation**, after paragraph (d), insert:
- (da) ~~sections 56, 58, 59, and 86A and Part 4 of the Contracts of Insurance Act 2024:~~ 5
- (da) the Contracts of Insurance Act 2024:

180A Section 386 amended (Overview)

Before section 386(1)(g), insert:

- (fb) **subpart 6B** imposes duties to assist policyholders to understand insurance contracts: 10

181 Section 431Z amended (Application of conduct obligations)

Replace section 431Z(2)(d) with:

- (d) do not apply to a broker within the meaning of **section 100** of the Contracts of Insurance Act **2024** in relation to any money to which **subpart 4 of Part 4** of that Act applies. 15

182 Section 446P amended (Other definitions used in subpart)

- (1) In section 446P(1), repeal the definitions of **contract of insurance**, **health insurance**, and **life insurance**.
- (2) In section 446P(1), definition of **consumer insurance contract**, replace paragraph (a) with: 20
- (a) means a contract of insurance ordinarily entered into by a New Zealand policyholder wholly or predominantly for personal, domestic, or household purposes; and
- (3) In section 446P(2)(c), replace “have the benefit” with “would ordinarily have the benefit”. 25
- (4) After section 446P(2) (after the example), insert:
- (3) **Subsection (2)** does not apply to a contract if the insurance cover referred to in that subsection is only a minor or an incidental part of the insurance cover provided by the contract as a whole. 30

182A Section 446S repealed (Presumption relating to consumer insurance contract)

Repeal section 446S.

183B Section 446T amended (Effect of certificate from policyholder or client)

- (1) In section 446T(1), replace “An insurance contract” with “A contract of insurance”. 35

- (2) In section 446T(5)(a), replace “insurance contract” with “contract of insurance”.

183 New subpart 6B of Part 6 inserted

After section 446W, insert:

Subpart 6B—Duties to assist policyholders to understand insurance contracts	5
447 When this subpart applies	
This subpart applies to—	
(a) a consumer insurance contract that is entered into by a licensed insurer; and	10
(b) a contract of insurance that—	
(i) is entered into by a licensed insurer; and	
(ii) provides for life insurance or health insurance (or both).	
447A Insurer must ensure contract is worded and presented in clear, concise, and effective manner	15
(1) An insurer under a contract of insurance to which this subpart applies must ensure that the contract is worded and presented in a clear, concise, and effective manner.	
(2) An insurer must, when performing the duty under subsection (1) , have regard to whether the wording and presentation of the contract assist consumers to understand their rights and obligations under the contract.	20
(3) All other information that the insurer has or will provide to policyholders to ensure that they are reasonably aware of the implications of entering into contracts of insurance with the insurer may be taken into account in determining whether the insurer has complied with this section.	25
(4) In this section, concise refers to the wording and presentation of particular terms of the contract, rather than the overall length of the contract.	
(5) This section is not a civil liability provision for the purposes of subpart 3 of Part 8 (but <i>see</i> subpart 1 of Part 8, which allows the FMA to make a stop order if an insurer does not comply with this section).	30
447B Insurer must ensure contract complies with prescribed requirements relating to form and presentation	
An insurer under a contract of insurance to which this subpart applies must ensure that the contract complies with all requirements of the regulations relating to the form and presentation of the contract.	35

447C Insurer must make information publicly available

- (1) This section has following purposes (in addition to those set out in sections 3 and 4):
- (a) to assist consumers to make decisions relating to the provision of insurance: 5
 - (b) to promote and facilitate transparency in connection with an insurer's insurance business.
- (2) **Subsection (1)** does not limit section 3 or 4.
- (3) An insurer under a contract of insurance to which this subpart applies must, at the prescribed times or on the occurrence of the prescribed events and otherwise in the prescribed manner, make publicly available the information that is required to be made publicly available by the regulations. 10
- (4) The regulations may require disclosure of any information in connection with either or both of the following:
- (a) contracts of insurance entered into by the insurer: 15
 - (b) the business, operation, or management of the insurer as an insurer.

Example

The regulations may require an insurer to disclose information about claim acceptance rates, the length of time to settle claims, contract cancellations, complaints made against the insurer, and disputes the insurer is or has been involved in. 20

184 Section 447 replaced (Application of regulations made under this subpart)

Replace section 447 with:

447D Application of regulations made under this subpart

Regulations made under this subpart may apply to a derivatives issuer (whether or not it is licensed and whether or not it makes any regulated offer). 25

185 Section 449 amended (Part 6 services provisions)

- (1) After section 449(4)(k), insert:
- (kaa) **section 447B** (insurer must ensure contract complies with prescribed requirements relating to form and presentation):
 - (kab) **section 447C** (insurer must make information publicly available): 30
- (2) After section 449(4)(m), insert:
- (n) **sections 56, 58, 59, 86A, and 108** and **subpart 4 of Part 4** of the Contracts of Insurance Act **2024**:
 - (o) those provisions of the regulations made under **section 166** of the Contracts of Insurance Act **2024** that are stated by those regulations to be Part 6 services provisions. 35

- 186 Section 462 amended (When FMA may make stop orders)**
- (1) In section 462(1)(h), replace “or 431X” with “, 431X, **447A**, **447B**, or **447C**”.
- (2) After section 462(1)(h), insert:
- (i) **section 86A** of the Contracts of Insurance Act **2024** has been, or is likely to be, contravened in respect of the supply of market services. 5
- 187 Section 463 amended (Terms of stop order)**
- After section 463(d), insert:
- (da) prohibit an insurer from entering into contracts of insurance of the kind specified in the order while the order is in force:
- 188 Section 546 amended (Regulations for purposes of Part 6 (market services))** 10
- After section 546(1)(og), insert:
- (oga) regulating the form and presentation of contracts of insurance, including—
- (i) prescribing explanatory material or guidance that must, or must not, be contained in a contract of insurance; and 15
- (ii) prescribing requirements as to the layout or method of presentation of contracts of insurance (including the length of a contract and of parts of a contract, the size of type used, and when information may be incorporated by reference); and 20
- (iii) prescribing the documents that must, or must not, accompany a contract of insurance:
- (ogb) prescribing the information that must be made publicly available under **section 447C**, the times or events referred to in that section, and the manner of making the information available (including prescribing the manner in which the information is to be presented, calculated, or prepared): 25
- 189 Schedule 4 amended**
- In Schedule 4,—
- (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and 30
- (b) make all necessary consequential amendments.
- 189 Schedule 4 amended**
- (1) In Schedule 4, clause 1(1), insert as the last paragraph:
- (i) **Part 9** provides for transitional provisions relating to **Part 7 of the Contracts of Insurance Act 2024**. 35
- (2) In Schedule 4, clause 1(1), in the last paragraph (as inserted by **subsection (1)**), make any necessary consequential amendment.

- (3) In Schedule 4,—
 - (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and
 - (b) make all necessary consequential amendments.

Amendments to Personal Property Securities Act 1999

190 Principal Act 5

Sections 191 and 192 amend the Personal Property Securities Act 1999.

191 Section 16 amended (Interpretation)

In section 16(1), insert in its appropriate alphabetical order:

non-life contract of insurance means a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**) other than a life policy (with the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010) 10

192 Section 23 amended (When Act does not apply)

In section 23(e)(vi), replace “policy of insurance” with “non-life contract of insurance”. 15

Amendments to other legislation

193 Amendments to other legislation

- (1) Amend the Acts specified in **Part 1 of Schedule 6** as set out in that schedule.
- (2) Amend the secondary legislation specified in **Part 2 of Schedule 6** as set out in that schedule. 20

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Schedule 4

New Part 3 inserted into Schedule 1AA of Fair Trading Act 1986

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Part 3

Provisions relating to ~~Contracts of Insurance Act 2024~~ **Part 7 of
Contracts of Insurance Act 2024**

- 3 Amendments relating to unfair contract terms do not apply to existing insurance contracts**
- (1) This clause applies to—
 - (a) a contract of insurance entered into on or after 17 March 2015 but before the commencement of this clause; and
 - (b) any variation of the contract referred to in **paragraph (a)**; and
 - (c) any new contract that has the effect of operating as a renewal of the contract referred to in **paragraph (a)**, and any subsequent renewal.
- (2) However, this clause does not apply to any contract to which section 26A(3) applies.
- (3) The amendments made by **sections 176 and 177** of the Contracts of Insurance Act **2024** do not apply to a contract or variation to which this clause applies, and sections 46H to 46M as in force before the commencement of this clause continue to apply as if that Act had not been enacted.

Schedule 5
New Part 9 inserted into Schedule 4 of Financial Markets Conduct Act 2013

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Part 9	5
Provisions relating to Contracts of Insurance Act 2024 <u>Part 7 of Contracts of Insurance Act 2024</u>	
99 Duties to assist policyholders to understand insurance contracts	
(1) Sections 447A and 447B do not apply to an existing contract.	
(2) However, if a variation of an existing contract is entered into after the commencement of this clause, sections 447A and 447B apply to any part of the existing contract that has been varied.	10
(3) Section 447C applies in relation to any contracts of insurance (regardless of whether or not they are existing contracts).	
(4) In this clause, existing contract —	15
(a) means a contract of insurance entered into before the commencement of this clause; and	
(b) does not include any new contract entered into after that commencement that has the effect of operating as a renewal of a contract referred to in paragraph (a) or any subsequent renewal.	20

Schedule 6

Amendments to other legislation

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Part 1

Amendments to other Acts

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Administration Act 1969 (1969 No 52)

In section 65(5), replace “policy or policies of insurance within the meaning of the Life Insurance Act 1908” with “life policy (within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010)”.

In section 65(5), replace “company liable under the policy or policies” with “insurer liable under the life policy”. 10

In section 65(5), replace “lawful for the company” with “lawful for the insurer”.

Arbitration Act 1996 (1996 No 99)

Replace section 11(6)(b) with:

- (b) a contract of insurance to which **section 71** of the Contracts of Insurance Act **2024** applies. 15

Contract and Commercial Law Act 2017 (2017 No 5)

In section 34, insert as subsection (2):

- (2) This section does not apply in relation to **sections 35(3) and 37(4)**. 20

After section 35(2), insert:

- (3) Subsection (1)(a) does not apply if— 20
- (a) the contract is a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**); and
 - (b) A is the insurer under that contract. 25

After section 37(3), insert:

- (4) Subsection (1)(a) does not apply if— 25
- (a) the contract is a contract of insurance (within the meaning of **section 6** of the Contracts of Insurance Act **2024**); and
 - (b) the party that has been induced to enter into the contract by a misrepresentation is the insurer. 30

In section 92(1)(b), replace “section 66B of the Life Insurance Act 1908” with “**section 144** of the Contracts of Insurance Act **2024**”.

Financial Markets Authority Act 2011 (2011 No 5)

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Financial Markets Authority Act 2011 (2011 No 5)—continued**Contracts of Insurance Act 2024****Fire and Emergency New Zealand Act 2017 (2017 No 17)**

In section 81(1), replace the definition of **insurance intermediary** with:

insurance intermediary has the same meaning as in **section 100** of the Contracts of Insurance Act **2024**

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Replace section 94(5) with:

(5) In this section, **arrange** has the same meaning as in **section 5** of the Contracts of Insurance Act **2024**.

In section 111(3), replace the definition of **arrange** with:

arrange has the same meaning as in **section 5** of the Contracts of Insurance Act **2024**

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Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Repeal section 46.

Income Tax Act 2007 (2007 No 97)

Replace section EY 11(4) and the heading above section EY 11(4) with:

15

Trustee cannot be a life insurer

(4) At all times in the income year, no trustee of the fund is a life insurer within the meaning of section 6 of the Insurance (Prudential Supervision) Act 2010.

Natural Hazards Insurance Act 2023 (2023 No 1)

In section 121(7), replace the definition of **insurance intermediary** with:

20

insurance intermediary has the same meaning as in **section 100** of the Contracts of Insurance Act **2024**

Property Law Act 2007 (2007 No 91)

In section 4, definition of **registered**, replace paragraph (f) with:

(f) in relation to an instrument concerning a life policy within the meaning of section 84 of the Insurance (Prudential Supervision) Act 2010 (other than an instrument creating a security interest over a life policy), means registered under **Part 5** of the Contracts of Insurance Act **2024**:

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Repeal section 111(6).

Trade Unions Act 1908 (1908 No 196)

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Repeal section 6(1)(b).

Part 2
Amendment to secondary legislation

Overseas Investment Regulations 2005 (SR 2005/220)

Replace regulation 43(b) with:

- (b) the investment is of funds held in the overseas person's statutory fund or funds (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010). 5

Legislative history

Divided from Contracts of Insurance Bill (Bill 41-2) as
Bill 41-3A