



Investment & Financial Services Association Ltd

ABN 82 080 744 163

10 April 2007

Insurance Contracts Act Review
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: icareview@treasury.gov.au

Dear Sir,

Draft Insurance Contracts Act 1984 Reform Package Q & A

The Investment and Financial Services Association is pleased to provide this supplementary submission which specifically addresses the questions asked in the Reform Package.

IFSA's previous submissions of 19 February and 23 March 2007 addressed matters relating to the proposed Bill and Regulations included in the draft reform package for the Insurance Contracts Act 1984.

Please contact either myself or David Micó on 02 9299 3022, if you wish to discuss the contents of this submission or arrange a meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Gilbert', is written over a vertical red line.

Richard Gilbert
Chief Executive Officer

APPENDIX

INSURANCE CONTRACTS AMENDMENT BILL 2007 EXPLANATORY MEMORANDUM

REQUEST FOR COMMENT	COMMENT
<p>Chapter 2 Outline and Financial Impact Statement</p>	
<p>Page 12</p> <p>Some requests for comment appear in the ‘Notes on clauses’ part below regarding commencement dates of specific measures. However, comments are welcomed about the proposed dates of effect for any of the measures.</p> <p>In many cases, the amendments apply only to contracts ‘entered into’ after commencement (see descriptions of the application of specific measures). If the definition of ‘entered into’ in subsections 11(9) and (10) of the IC Act were to apply to the application provisions, the amendments may apply to contracts that are first entered into, renewed, varied, extended or reinstated on after the commencement dates.</p> <p>Would the application of the amended provisions to variations, extensions etc cause difficulties? If so, should the phrase ‘entered into’ be given a special definition just for the purposes of the application provisions?</p>	<p>This is a similar transition issue to that which arose when the IC Act itself commenced on 1 January 1986. The Act does not apply to a contract of insurance which was entered into before the Act commenced: subsection 4(1). However, where a contract entered into before the Act commenced is renewed, extended, varied or reinstated after the Act commenced, the Act applies to the renewal, extension, variation or reinstatement by virtue of subsection 11(9): <i>Alexander Stenhouse Limited Austcan Investments Pty Limited</i> (1993) 7 ANZ Ins Cas 61-166 at 77,917.</p> <p>IFSA submits that this same approach is appropriate for the current set of amendments, apart from those amendments which should apply to all contracts of insurance (ie irrespective of when the contract was entered into). In other words, as a general rule the amendments should apply to renewals, extensions, variations and reinstatements occurring after the amendments commence. It would help if, by the inclusion of appropriate wording, the Act made it crystal clear that in the case of an extension, variation or reinstatement, <i>only</i> the extension, variation or reinstatement is subject to the amendments, and not the <i>whole</i> of the contract as extended, varied or reinstated. For example, if a contract is varied by increasing the sum insured, the amendments should only apply to the increase in the sum insured, and not the whole sum insured. On this approach, in the case of a non-disclosure or misrepresentation at the time of the increase, the insurer’s remedies in respect of a claim are limited to the increase in the sum insured, and not the whole sum insured.</p> <p>IFSA submits that the following amendments should commence on Assent and apply to all contracts (ie irrespective of when the contract was entered into):</p> <ul style="list-style-type: none"> • all amendments relating to the unbundling of contracts of life insurance under the new section @27A, and the insurer’s remedies for non-disclosure and misrepresentation applicable to certain contracts of life insurance under section @28A, in Schedule 7; and • all amendments relating to the new section @31A ‘Non-disclosure by life insured’, in Part 4 of Schedule 2.

Chapter 4 Notes on clauses	
<p>Page 17</p> <p>Should subsection 14(1) also be extended to third party beneficiaries?</p>	<p>At common law, the relationship between an insurer and a third party beneficiary involves a bilateral obligation of (utmost) good faith: <i>Hannover Life Re of Australasia Limited v Sayseng</i> (2005) 13 ANZ Ins Cas 90-123 at 86,628. For example, if a third party beneficiary lodges an exaggerated claim, this is a breach of the beneficiary's duty of utmost good faith owed to the insurer. IFSA supports the extension of sections 13 and 14 to third party beneficiaries.</p>
<p>Page 19</p> <p>Will the unbundling process using notional contracts as proposed in new subsections 9(1A) and 9(1B) be able to be applied effectively? If not, what alternative processes for unbundling contracts would be possible?</p>	<p>The proposed unbundling process presents no difficulties. Paragraph 764A(1A) of the Corporations Act 2001 already provides for a similar unbundling process for contracts of insurance, for the purposes of Chapter 7 of that Act. IFSA is not aware of any difficulties with that unbundling process.</p>
<p>Page 25 Electronic Communication</p> <p>1. Should a natural person be able to change or cancel their 'nominated address' under subsection 77(1B) by electronic communication?</p> <p>2. How does the additional safeguard proposed in subsection 77(1C) materially add to the 'readily accessible and useable for subsequent reference' requirement in the ET Act?</p> <p>3. How does the context of the IC Act justify including additional requirements on saving and printing, and departing from the generic rules on electronic communication as set out in the ET Act?</p> <p>4. What actions should an insurer demonstrate to show they had reasonable grounds to expect that an intended recipient could readily save the notice or other document and subsequently print copies of it?</p>	<p>1. See IFSA's comments on Schedule 2 'Electronic communication' on page 3 of its submission dated 27 March 2007.</p> <p>2. IFSA doubts that the additional safeguard in proposed subsection 77(1C) materially adds to the requirement in subsection 9(1) of the ET Act. Under either requirement, the communication is saved. Whether the insured can print the communication would seem to depend on the software that is available to the insured. IFSA submits that the insurer should not be expected or required to satisfy itself that the insured has the requisite software for printing the communication.</p> <p>3. Given IFSA's view expressed in paragraph 2 above, this question does not arise.</p> <p>4. See paragraph 2 above. In IFSA's view, emails, facsimiles and text messages all come within the definition of 'electronic communication' in section 5 of the ET Act. If the notice is sent by email or facsimile, if the insured has the right software and equipment, they will be able to print the communication and save a hard copy of it. IFSA considers it unlikely that insurers would want to use text messages as a way of giving notices.</p>

<p>5. How would the proposed amendments affect communication by facsimile? Is this an electronic communication and is this relevant to communications in the insurance context?</p> <p>6. Should bodies corporate be subject to the 'appropriate address' rule in proposed subsection 77(1B), or is their situation adequately dealt with by application of paragraph 77(1)(a) and the ET Act?</p>	<p>5. See paragraphs 2 and 4 above. Insurers still communicate with insureds by facsimile but it appears that facsimiles are gradually being replaced by scanned documents sent as attachments to emails.</p> <p>6. See IFSA's comments on Schedule 2 'Electronic communication' on page 3 of its submission dated 27 March 2007.</p>
<p>Page 26 Electronic Communication</p> <p>1. Are there any notices or other documents under the IC Act that are of sufficient note that their sending in hard copy should be mandated under subsection 77(1E)? If so, is it possible for the requirement to send communications in hard copy to be waived if the intended recipient requests receipt of the communication electronically?</p> <p>2. Section 14 of the ET Act contains rules regarding the timing for receipt of electronic communications. Where a document is sent by hard copy pursuant to a regulation made under subsection 77(1E) and also electronically, is there a need to clarify which date of dispatch and/or receipt (if different) is effective for the purposes of the IC Act? If so, should the date of the electronic communication, or the hard copy communication, be treated as the effective date for the purposes of the IC Act?</p>	<p>1. No. However, in practice, both to ensure that the insured receives the notice and reads it promptly, and for evidentiary reasons, insurers are likely to send a hard copy which confirms the electronic copy. IFSA submits that sending a hard copy should not be mandated.</p> <p>2. See paragraph 1 above. The dilemma exposed by the question is one reason why sending a hard copy in addition to an electronic copy should not be mandated. If 'dual notice' is mandated, the latter time of receipt would have to be the effective time of receipt.</p>

<p>Page 26 Electronic Communication</p> <p>Is the proposed transition period of six months necessary, or could Schedule 2 commence from Royal Assent?</p>	<p>See IFSA's comments on Schedule 2 'Electronic communication' on page 3 of its submission dated 27 March 2007. If Treasury agrees with IFSA's proposed changes to section 77, no transition period is required. However, if IFSA's proposed changes are <i>not</i> accepted, the transition period should be extended from 6 months to 12 months, to give insurers a reasonable amount of time in which to make changes to their systems.</p>
<p>Page 29 Insured's duty of disclosure</p> <p>1. What factors, besides those proposed, should a court/insurer have regard to when determining what an insured must disclose to meet the objective element of their duty of disclosure?</p> <p>2. Should the objective test in section 21 be applied having regard to the individual circumstances of the particular insured? If so, what circumstances?</p> <p>3. Will the additional factors proposed for inclusion in section 21 assist users of the IC Act to understand the insured's duty of disclosure obligation, or do they unnecessarily add to complexity?</p> <p>4. Is the proposed 12 month transitional period for the commencement of amendments in Part 1 of Schedule 4 appropriate?</p>	<p>1. None.</p> <p>2. No. The individual idiosyncrasies of the particular insured (eg his or her cultural background, level of education or business acumen) should not be taken into account.</p> <p>3. The additional factors will assist.</p> <p>4. A 12 month transition period would give insurers ample time to review the questions they are asking on their current application forms. However, IFSA is not opposed to Part 1 of Schedule 4 commencing on Assent.</p>
<p>Page 36 Non-standard provisions</p> <p>Panel Recommendation 5.3 was that sections 35 and 37 of the IC Act should be amended to make it clear that the PDS may be used as the vehicle to disclose non-standard and unusual policy terms.</p> <p>Many insurers already use a PDS for the purpose — the IC Act does not prevent this occurring. Further, recent changes to the Corporations Regulations (Regulation</p>	

<p>7.9.15E) will require general insurers to disclose non-standard or unusual policy terms in the PDS from 20 June 2007.</p> <p>1. Accordingly, adopting Panel Recommendation 5.3 to amend sections 35 and 37 appears to be unnecessary and it is proposed that this recommendation will not be proceeded with.</p> <p>2. Further, could an amendment be made to the Corporations Regulations to require life insurers to disclose non standard or unusual policy terms in the PDS so that the treatment of life insurers is consistent with the treatment of general insurers from 20 June 2007.</p> <p>Comments are sought on the appropriateness of this suggestion</p>	<p>1. IFSA agrees that adopting Panel Recommendation 5.3 is unnecessary.</p> <p>2. Regulation 7.9.15E(a) requires a general insurer to include the <i>whole</i> of the policy wording (except the policy schedule) in the PDS. As some policy wordings run to many pages, this is inconsistent with the principle of clear, concise and effective disclosure. It also imposes a cost burden on insurers which is disproportionate to any consumer benefit. IFSA therefore opposes regulation 7.9.15E being extended to apply to contracts of life insurance.</p>
<p>Page 36 Disclosure period transition</p> <p>Is the proposed two year transition period necessary in light of the forthcoming comparable requirements in Corporations Regulation 7.9.15E?</p>	<p>See IFSA's response to the previous question. If, contrary to IFSA's submission, regulation 7.9.15E is extended to apply to contracts of life insurance, a 2-year transition period is necessary.</p>
<p>Page 37 Remedies of the parties</p> <p>The Panel suggested that any amendment giving effect to this recommendation may be relevant to finding a breach of utmost good faith against an insurer who fails to provide the notification required under subsection 40(2) but then seeks to rely on other provisions of the IC Act to support denial or limitation of its liability under a 'claims made' policy.</p>	<p>IFSA considers that the amendment proposed to subsection 14(1) in Schedule 6 may create uncertainty.</p> <p>The duty of utmost good faith implied by section 13 is 'paramount': ALRC, <i>Report No 20: Insurance Contracts</i>, page 281. The duty is not limited by other provisions of the Act (except in relation to the insured's duty of disclosure): section 12. The current subsection 14(1) confirms the broad scope of the duty. It is therefore at least arguable that the duty already operates in the way contemplated by the proposed amendment to subsection 14(1).</p>

<p>Aside from this example, under what other circumstances might reliance by a party on a provision of the Act be a breach of the duty of utmost good faith?</p> <p>Does allowing a general, equitable principle to override statutory provisions raise any concerns from a certainty perspective?</p>	<p>Insurers are already constrained in their dealings with insureds not only by the duty of utmost good faith, but also (where they hold an Australian financial services licence) by the obligation to provide financial services ‘efficiently, honestly and fairly’, and the prohibition against unconscionable conduct in relation to the provision of a financial service: paragraph 912A(1)(a) and subsection 991A(1).</p> <p>IFSA is not aware of any difficulties with the way the utmost good faith principles are applied, nor with these constraints, but we hesitate to support the proposed amendment on the general principle of the uncertainty it may create.</p>
<p>Page 39 Remedies life insurance contracts ‘Unbundling’</p> <p>Is the expression in proposed new section 27A ‘kinds of insurance cover’ suitable terminology to describe clearly the different components of a life insurance policy that are commonly bundled (for example, death/income protection/trauma/total and permanent disability)?</p> <p>New section 27A is directed at unbundling contracts of life insurance for the purposes of applying insurer remedies. Should the amendment therefore refer explicitly to contracts of life insurance providing death or with a surrender value and other types of contract of life insurance?</p>	<p>See IFSA’s comments on the proposed amendments in Schedule 7, on pages 7 to 9 of its submission dated 23 March 2007.</p>

<p>Page 40 Remedies for non-disclosure and misrepresentation</p> <p>Could the IC Act provide that remedies such as those found in section 28 of the IC Act apply to all contracts of life insurance?</p>	<p>See IFSA's comments on the proposed amendments in Schedule 7, on pages 7 to 9 of its submission dated 23 March 2007.</p> <p>IFSA submits that contracts of life insurance that have a surrender value are in a special category. Such contracts are heavily regulated by the Life Insurance Act 1995. They should continue to come under section 29, while contracts of life insurance that do <i>not</i> have a surrender value should come under the new section @28A. This would provide a clear and simple rule. This approach would also be consistent with the stricter regulation of contracts with a surrender value, under the Life Insurance Act.</p>
<p>Page 41 Remedies for misstatement of date of birth</p> <p>Section 60 of the Act outlines the circumstances in which an insurer may cancel a contract of general insurance. There is no equivalent for contracts of life insurance. At paragraph 7.55 of its final report, the Panel indicated '...it is also understood that life insurers can currently rely upon the common law and specific cancellation clauses in their policies to provide a similar outcome to that of section 60 of the IC Act'.</p> <p>Have there been any developments subsequent to the Panel's report that warrant revisiting this issue?</p>	<p>Yes. In relation to the cancellation of contracts of life insurance, see page 3 of IFSA's submission dated 19 February 2007 and pages 9 to 11 of its submission dated 23 March 2007.</p>
<p>Page 42 ADR apply S 31 and 56 IC Act</p> <p>Panel Recommendation 8.1 was that sections 31 and 56 of the IC Act should be re-drafted so that they can be applied by alternative dispute resolution (ADR) bodies.</p>	<p>IFSA agrees that the Review Panel's recommendation to extend section 31 and 56 of the IC Act should not be proceeded with, as we consider ADR bodies are not creatures of statute. Therefore, they should not have any powers conferred on them by statute.</p>

<p>Subsequent legal advice has indicated that, except in the case of the Superannuation Complaints Tribunal, this amendment is not necessary because the ADR bodies are not creatures of statute.</p> <p>In the case of the Superannuation Complaints Tribunal, legal advice has been obtained which indicates that the Tribunal may already exercise powers of the type conferred by sections 31 and 56.</p> <p>As a consequence it is not proposed to amend the IC Act or Superannuation (Resolution of Complaints) Act 1993 as part of giving effect to recommendations of the Review.</p> <p>Comments are sought on whether this proposal is appropriate.</p>	
<p>Page 44 Relief for innocent non-disclosure or misrepresentation</p> <p>Are the proposed amendments to subsection 31(4) necessary? Is it relevant to refer to a reduction of liability in the context of subsection 31(4)?</p> <p>Is the 12 month transitional period for commencement of the amendment in Part 1 of Schedule 8 appropriate?</p>	<p>IFSA strongly opposes the amendments proposed in Schedule 8 ‘Restrictions on insurers’ contractual rights and remedies’ which would extend section 31 to apply to innocent non-disclosure or misrepresentation.</p> <p>The Review Panel (at paragraph 8.8) made this recommendation without any detailed consideration of the kinds of circumstances in which the courts might invoke the proposed broadened power under section 31. The Review Panel simply said ‘although subsection 28(3) of the IC Act will achieve a just result in most cases, there may be cases where it does not. We would only see section 31 being used ... to disregard innocent non-disclosure or misrepresentation, in exceptional circumstances.’ No examples were provided.</p> <p>IFSA submits that contrary to the Review Panel’s expectations, the proposed amendment has the potential to be frequently applied against insurers, especially as insurers allege innocent non-disclosure or misrepresentation much more frequently than they allege fraudulent non-disclosure or misrepresentation. The proposed amendment could turn out to be very costly. Higher claim costs would eventually be passed on to insureds in the form of higher premiums.</p>

As the Review Panel noted (at paragraph 8.3), the basis for the current section 31 is that fraud entitles the insurer to avoid the policy and refuse to pay all claims, even where the total loss of the insured's claim is seriously disproportionate to the harm which the insured's misconduct has caused. *Von Braun v Australian Associated Motor Insurers Limited* (1998) 10 ANZ Ins Cas 61-419 provides an example. The insured fraudulently represented to AAMI that he had paid \$70,000 for his car, when in fact he had paid a lesser amount. AAMI insured it for an agreed value of \$65,000. The car was worth about \$56,000. The court held that AAMI was entitled to avoid the policy under subsection 28(2). However, as AAMI, if it had been told the truth, would have insured the car, but for a lesser amount, the court applied section 31 and allowed the claim as if AAMI had insured the car for \$56,000.

The *Von Braun* case shows how the courts can use section 31 to ameliorate the 'all or nothing' results produced by the exercise by the insurer of its right to avoid the contract for fraud. However, subsection 28(3) operates in a fundamentally different way by allowing / requiring the insurer to put itself in the position in which it would have been if the innocent non-disclosure or misrepresentation had not occurred. This is a result which is proportionate to the harm caused by the insured's misconduct. IFSA submits that this is a fair result, and that there is no need for a further, discretionary remedy in this area. If an insurer purported to put itself in a position different to that which accurately reflects the position it would have been in if the misrepresentation / non disclosure had not occurred, a Court has the right to review, without any extension to s.31.

Also, unbundling life insurance contracts works in favour of insureds and lives insured and ensures a fair result in cases of bundled cover . IFSA has proposed more extensive unbundling than the Review Panel.

IFSA submits that the case for extending section 31 to apply to innocent non-disclosure or misrepresentation has simply not been made out.

<p>Page 49 Rights and obligations of third parties under contracts of life insurance</p> <p>New subsection 48A(2) includes paragraph (a) which provides that a third party beneficiary has a right to recover from the insurer any money that becomes payable under the contract; and paragraph (b) which provides that any money which is recovered under the contract is payable to the third party beneficiary.</p> <p>Is it necessary to make this distinction or are the contents of paragraph 48A(2)(b) implicit in paragraph 48A(2)(a)?</p>	<p>The question relates to draft paragraphs 48A(1)(a) and (b), and not draft paragraphs 48A(2)(a) and (b).</p> <p>IFSA submits that draft paragraph 48A(1)(b) is superfluous and can be dispensed with. In addition however, IFSA requests a drafting change to the wording used in s.48A. The section should be amended by replacing the words : “ that is” in the first line, with the words “ to the extent that it is”,. The section as amended would read: “The following provisions have effect in relation to a contract of life insurance to the extent that it is expressed to be for the benefit of a third party beneficiary (who may be the life insured):” IFSA’s reasoning for this is that these policies often only provide some policy benefits (eg death) to the third party and other benefits (eg Disablement) to the policyowner. So the Section should acknowledge that it only apply to the extent of the benefit being expressed to be for the third party’s benefit.</p>
<p>Page 56 Claims made and claims made and notified policies</p> <p>What impact, if any, would the extended reporting period of 28 days have on an insured’s duty of disclosure as part of renewal of the relevant contract or entry into a new contract of liability insurance shortly after cover provided by the old contract expires?</p> <p>The last exposure draft of amendments to section 54 and related provisions included a proposed subsection 40(2). That subsection required insurers to issue insureds with a notice of their right to notify of facts or circumstances in a period beginning 30 days before the</p>	<p>As life insurers do not issue this kind of policy, IFSA offers no comments on this issue.</p>

<p>cover expires and ending 14 days before the cover expires.</p> <p>That requirement has been omitted from the current draft following comments from industry at the need to provide two notices to comply with this requirement.</p> <p>Please provide comments if you think that the 30 day cap in which to provide a notice from the last exposure draft should be reinstated.</p>	
<p>Page 57 Claims made and claims made and notified policies</p> <p>Have there been any changes in the market for claims made and notified policies, or industry developments, that would render the proposed amendments inappropriate or outdated? If so, what are these changes?</p>	<p>As life insurers do not issue this kind of policy, IFSA offers no comments on this issue.</p>

INSURANCE CONTRACTS AMENDMENT REGULATIONS 2007 EXPLANATORY STATEMENT

REQUEST FOR COMMENT	COMMENT
<p>Page 3 Regulation 32</p> <p>Is there still a purpose for the transitional provision in section 32?</p>	<p>IFSA understands that previous changes to the interest rate on withheld payments under regulation 32 have not applied retrospectively but have applied to all withheld payments from the date of the amendment, irrespective of whether the contract was entered into before or after the amendment. IFSA suggests that this approach be followed again. If Treasury agrees with this approach, subparagraph 4(1) ‘Transitional’ on page 2 needs to be amended so that the new interest rate applies to withheld payments under contracts entered into before the amendment, and not just contracts entered into after the amendment.</p>
<p>Page 4 Electronic communications</p> <p>The legislative package will remove the current exemption for the Principal Act from the scope of the ET Act.</p> <p>Do the additional safeguards in paragraph 34 materially add to the ‘readily accessible and useable for subsequent reference’ requirement in the ET Act?</p> <p>Are the additional safeguards included in Regulation 34 sufficient, given the potential consequences of failing to respond to a notice or other document required under the Principal Act?</p>	<p>Yes.</p> <p>The additional safeguards in paragraph 34(1) are sufficient. In relation to paragraph 34(2), IFSA submits that in conformity with the requirements for PDSs, etc, in the Corporations Act, it should be sufficient for the insurer to include its ‘name and contact details’. See page 13 of IFSA’s submission dated 23 March 2007.</p>
<p>Page 5 Schedules 1 and 2</p> <p>Is there a need to revise Schedule 2 of the Regulations (the prescribed words for oral notifications), now that it also covers non-eligible contracts of insurance, to deal with duties beyond answering questions? Does there need to be a different form of words for eligible and non-eligible contracts?</p>	<p>The proposed wording for oral notifications is sufficient for both eligible and non-eligible contracts.</p>

CHAPTER 3 INSURANCE CONTRACTS AMENDMENT BILL 2007 DRAFT REGULATION IMPACT STATEMENT

REQUEST FOR COMMENT	COMMENT
Claims handling	
<p>Page 15:</p> <p>Are the suggested relative ratings appropriate?</p>	<p>Ratings appear appropriate with no suggested alternatives.</p>
<p>Page 17</p> <p>Is there any quantitative information about the incidence of poor claims handling practices?</p> <p>Is the life insurance industry proposing to develop best practice guidelines for claims handling such as those promulgated by the general insurance industry?</p>	<p>There are no available statistics for poor claims handling for the life insurance industry.</p> <p>IFSA's Standard No.1.00 Code of Ethics & Code of Conduct requires all members, which includes life insurers and life reinsurers, to follow ethical principles and rules of conduct which extends to their employees. This Standard does not need to be supplemented by additional specific codes of practice. Unlike the general insurance industry, the timing for a payment of a claim under a life risk insurance policy is very much dependent on external factors. For example when probate for the estate of a deceased policyowner is granted.</p>
Electronic Communications	
<p>Page 27</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Are the suggested ratings appropriate?</p> <p>Information to assist with quantification of costs and benefits is sought for inclusion in the final regulation impact statement.</p>	<p>See pages 3 to 5 of IFSA's submission dated 23 March 2007. Insurers will incur costs in developing computer systems to be able to provide notices electronically. However, there will also be savings in printing and postage costs. IFSA does not have any information about the likely quantum of these costs and savings.</p> <p>No further suggestions on the ratings.</p>

<p>Page 32</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Are the ratings appropriate?</p> <p>Information to assist with the quantification of costs and benefits is sought for inclusion in the final regulation impact statement. Examples of prejudice to insureds arising from the objective elements of sections 21 and 21A would be helpful.</p>	<p>No further suggestions on the ratings.</p>
<p>Notification of duty of disclosure</p>	
<p>Page 42</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Are the ratings appropriate?</p> <p>Information to assist with quantification of costs and benefits is sought for inclusion in the final regulation impact statement</p>	<p>No further suggestions on the ratings.</p>
<p>Page 46</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Are the ratings appropriate?</p> <p>Information to assist with quantification of costs and benefits is sought for inclusion in the final regulation impact statement. In particular, information on the financial cost to insurers of non-disclosures by life insureds would be helpful.</p>	<p>No further suggestions on the ratings.</p>

<p>Are there any benefits in maintaining a distinction between misrepresentations and non-disclosures by a life insured in relation to when they are imputed to an insured?</p>	<p>There are no benefits in maintaining a distinction between a misrepresentation and a non-disclosure by a life insured in relation to when they are imputed to an insured. In all cases, the relevant risk affected by the non disclosure or misrepresentation by the life insured is the same risk for the insured. Where there is more than one risk or more than one life insured, the proposed ‘unbundling’ provisions will achieve the correct result.</p>
<p>Life insurance remedies</p>	
<p>Page 52</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Information to assist with quantification of costs and benefits is sought for inclusion in the final regulation impact statement.</p>	<p>In relation to a life insurer’s remedies for non-disclosure and misrepresentation, see pages 8 and 9 of IFSA’s submission dated 23 March 2007. IFSA proposes a fourth option, with the following benefits and costs:</p> <p>Option B1: As per Option A but retain specialised life insurance remedies for policies that have a surrender value</p> <p>Benefits</p> <p>This option would allow more flexibility in determining remedies for breach of duty of disclosure, to the benefit of both insurers and insureds [4]</p> <p>Increased flexibility of remedy may benefit insureds overall by allowing the use of less costly remedies [2]</p> <p>Costs</p> <p>There will be transitional administrative costs for insurers associated with adopting a new remedies framework [1]</p> <p>The claims of some insureds may be detrimentally affected by loss of protections afforded under the present remedies framework [1]</p>

<p>Page 57</p> <p>Are there additional costs and benefits for the above options, which are not listed?</p> <p>Are the ratings appropriate?</p> <p>Information to assist with quantification of costs and benefits is sought for inclusion in the final regulation impact statement. In particular, is there information about the frequency with which insurers may wish to exercise subrogation rights over a third party beneficiary against another person? How does an insurer deal with this circumstance under the current regime where subrogation is not permitted?</p>	<p>.</p> <p>The ratings are appropriate, but see IFSA's comments on section 22 'Insurer to inform of duty of disclosure', on page 6 of IFSA's submission dated 23 March 2007.</p> <p>As contracts of life insurance are not written on an indemnity basis, subrogation is not an issue for the life insurance industry.</p>
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