

# Insurance act update

Thursday, 12th May 2016

**From 12th August 2016, the Insurance Act comes into effect. It brings in substantial changes to disclosure requirements and obliges insurers to take a more pro-active role in understanding risks.**

NIG agree with the widely-held view that the Insurance Act 2015 is the greatest change to insurance contract law in this country for more than 100 years. At NIG, we've been preparing for the changes for some time. Between now and August we'll keep you updated on what the changes mean and what we're doing to comply with the new rules.

## **Who is most affected by the changes?**

Everyone in the insurance market will be affected, although policyholders who take out insurance mainly for business, trade or professional purposes and their insurers are the primary focus of the reforms.

There are also changes for brokers in the business insurance market regarding client engagement:

The Act makes clear that policyholders are under a duty to present risks fairly and in order to do so, a number of hurdles will have to be cleared. These include ensuring:

- (i) that all material circumstances that are known or ought to be known to client's senior management are disclosed; and
- (ii) a client's senior management has conducted "a reasonable search".

Brokers must satisfy themselves that all client facing documentation is updated to refer to the new duty and the requirements of the Act are clearly explained.

Brokers must also be wary that their own individual knowledge can be imputed to their clients, such that a failure to disclose something discussed informally, or information obtained in some other way than directly from the client, might lead to a client breaching the duty of fair presentation.

This means that brokers should review the manner in which relationships are conducted with clients as well as their record keeping.

A failure to do so could not only adversely affect a client's policy, but could also result in a professional liability claim against the broker.

## What is changing?

The key changes include:

- Before the Act the remedy for failing to disclose material facts was policy avoidance. The new provisions replace the duty to disclose with a Fair Presentation of Risk, with a number of remedies available including, in certain circumstances, a proportionate payment option.
- An expectation that the insurer will take a more active part in making further enquiries if alerted to things that might influence a decision on choosing to insure a risk or premiums and terms
- Basis of Contract Clause Removal
- Changes to the effect of Warranties
- Clear guidance on dealing with fraudulent claims by policyholders

The Act allows insurers to contract out of the new provisions by agreeing alternative fair terms. However, for maximum transparency, NIG have chosen not to contract out of any terms

## How is NIG responding to the changes?

"We are real advocates of these changes that will improve how we meet customer needs now and in the future" says Neil Manser, Managing Director of NIG. "Fair Presentation of Risk will help us understand our customers' needs and circumstances even better and should result in customers receiving better service and fairer outcomes".

"You can be confident that our revised processes and documentation under the Insurance Act 2015 will be in place by 12th August 2016" says Neil. "We've made sure our documents and online journeys have been updated to comply with the Act".

## What does this mean for brokers working with NIG?

You can expect:

- Compliance with the Insurance Act by the deadline of 12th August 2016
- All Warranties replaced with Conditions Precedent
- No contracting out of any terms of the Insurance Act
- Updated and compliant documentation - including proposal forms, policy wordings and endorsements
- Basis of Contract clause removed from all wordings
- Fair presentation of risk - eTrade information accepted as fair presentation

## When will the changes take effect?

For all new business policies, the Insurance Act changes will come into effect on 12th August 2016.

For existing business, the changes will come into force as and when customers' policies come up for renewal on or after 12th August 2016 and will apply to any mid term alteration on existing business that takes place on or after 12th August 2016.

As part of the renewal process, we'll be sending existing customers a 'Notice to policyholder' to make them aware of the changes to their policies.

Over the coming months we'll keep you updated on the Insurance Act and NIG's response to it.