

## Media release

# Insurers warned: review consumer questions carefully

## Insurers are advised to carefully review the questions they ask potential insureds in light of 2021 changes to the Insurance Contracts Act.

That's the message two lawyers will share at the Australian Insurance Law Association's 2024 National Conference, *Sunny Side Up*, on Queensland's Gold Coast.

Barrister Ken Horsley and Minter Ellison Partner Katie Clark will examine the impact the revised duty of disclosure for consumer insurance contracts has had since it came into force in October 2021.

Mr Horsley says because the revised legislation gives insureds more "wriggle room" on what information they disclose on proposal or renewal forms, insurers must be "particular and precise" with the questions they ask.

He and Ms Clark said some smaller insurers, particularly underwriting agencies, may be insufficiently focused on reviewing the questions they ask and may therefore see declined claims overturned.

Mr Horsley said some proposal forms are "still woolly".

The changes to the duty of disclosure follow the financial services royal commission finding the previous approach to disclosure did not adequately safeguard consumers from having claims denied if they had inadvertently failed to disclose information because the insurer did not ask the right questions.

The revised law applies only to "consumer insurance contracts", including home and contents, motor vehicle and landlords' policies.

The Act's prior, more stringent duty of disclosure has been replaced with a duty to take reasonable care not to make a misrepresentation to an insurer.

Ms Clark says simplifying the disclosure regime "makes sense and fits with the unfair contract terms legislation", but there has been no major litigation to give the industry guidance on how courts are likely to interpret the changes.

In a February 2024 Australian Financial Complaints Authority (AFCA) case, Allianz was unsuccessful in denying a landlord's claim after a fire destroyed her property. AFCA's determination found the insurer could not prove the property had been unoccupied for more than 60 days and in the renewal schedule Allianz "did not ask any questions [about] the occupancy or otherwise, of the insured property".

Mr Horsley and Ms Clark said the Act's changes were "not a big talking point" in the insurance industry, so it was likely some insurers had not sufficiently revised proposal forms and renewal documents. That meant they could be forced to pay claims for coverage they may not have intended to include under the policy wording.

However, the pair agreed that, while there was no legislated limit to the number of questions an insurer can ask of a potential insured, insurers had to weigh that against "the goodwill factor". "If you're asking 64 questions, the consumer may simply go to the next insurer," Mr Horsley said.

Ms Clark and Mr Horsley will review examples of insurers' proposal questions – good and bad – during their presentation at the [2024 AILA conference](#).

The event, at the Gold Coast Convention and Exhibition Centre at Broadbeach, features a wide range of speakers who will explore issues that will shape the insurance market's future and consider how the industry should respond.

AILA National President Melanie Quixley says the theme of *Sunny Side Up* will see speakers explore the opportunities for insurance to "positively influence the community, the climate and our way of living moving forward".

Registrations are [now open](#).

**FOR MEDIA INQUIRIES, PLEASE CONTACT:**

AILA Communications Consultant Kate Tilley  
P 07 3831 7500      E [ktj@ktjournalism.com](mailto:ktj@ktjournalism.com)

**FOR AILA INQUIRIES, PLEASE CONTACT:**

AILA Secretariat Victoria Saccaro  
P 1300 699 140      E [office@aila.com.au](mailto:office@aila.com.au)

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