

INSURANCE POCKET SQUARE

WHEN CAN A GENERAL INSURANCE POLICY BE CANCELLED?

The Light in Real Life No.11 by Lin Zihao



WHY IS THIS QUESTION IMPORTANT?

When an insurance policy can be cancelled is governed by the terms of the relevant policy and the Insurance Contracts Act 1984 (Cth) (Insurance Contracts Act).

For insurers: insurers can only cancel a policy in certain circumstances that are prescribed by the Insurance Contracts Act (sections 59 - 63 are important).

For insureds: the circumstances in which an insured can cancel a policy are not prescribed by the Insurance Contracts Act and instead will be set out in the relevant policy. This means that insureds can typically cancel a policy in a broader range of circumstances.



WHAT IS THE LAW?

INSURERS

Section 63 of the Insurance Contracts Act provides that, where an insurer cancels a contract of general insurance other than as set out in the Insurance Contracts Act, such cancellation will be of no effect.

When can an insurer cancel a policy?

Sections 60 and 61 of the Insurance Contracts Act identify the only circumstances that an insurer can cancel a general insurance policy. Such circumstances include:

- where the insured **failed to comply with the duty of the utmost good faith** (as set out in section 13 of the Insurance Contracts Act);
- where there was a **relevant failure** as set out in section 27AA of the Insurance Contracts Act. A relevant failure differs depending on the type of policy and includes a failure by the insured to comply with the duty of disclosure as prescribed in section 21 of the Insurance Contracts Act, or a misrepresentation made by the insured before the policy was entered into;
- where the insured fails to comply with a provision of the policy, including by **failing to pay a premium**;
- where the insured has made a **fraudulent claim** (see also section 56 on fraudulent claims);
- where the policy is in **force by virtue of section 58** of the Insurance Contracts Act (as a result of an insurer's failure to provide 14 days' notice of policy expiry and if the insured does not obtain replacement cover) or **is an interim contract of general insurance**; or
- where an insurer is a company that is in **liquidation**.

Prior to the introduction of the Insurance Contracts Act, there were virtually no restrictions (at common law or in legislation) on the circumstances in which an insurer was permitted to cancel a policy. This meant that insurers could cancel a policy for any reason, "however capricious or self serving". Insurers were also not required to provide reasons for the cancellation of an insurance policy. The explanatory memorandum to the *Insurance Contracts Bill 1984* (Cth), which introduced the Insurance Contracts Act, explains that section 60 of the Insurance Contracts Act is intended to ensure that an insurer can only cancel a policy "for good reason".

HOW CAN AN INSURER CANCEL A POLICY?

Section 59 of the Insurance Contracts Act provides that an insurer must provide **written notice** of a proposed cancellation to the insured (**Notice**).

Section 75 of the Insurance Contracts Act requires the insurer to provide written reasons to the insured regarding the reasons for the cancellation, if requested by the insured in writing.

INSURED

There are no provisions in the Insurance Contracts Act setting out when an insured can cancel a general insurance policy. Instead, an insured can only cancel a policy in accordance with the terms of the policy.

A policy will typically allow an insured to cancel the policy for convenience, prior to the policy's expiration, and upon providing written notice to the insurer. In such circumstances, the insurer will ordinarily be required to refund any unused portion of premium.

WHAT ARE THE PRACTICAL IMPLICATIONS?

- There is a difference between the rules applying to cancellation of a policy by insurers versus insureds.
- If an insurer cancels a general insurance policy, it must follow the provisions of the Insurance Contracts Act, including the notice requirements in section 59.

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