

The Insurance Act 2015 came into force on the 12th of August 2016 and changed the way the law deals with the duty of disclosure for commercial insurance contracts. The purpose of the Act was to update the previous law to reflect the way in which the insurance market has evolved in modern times with the aim being to achieve a fair and balanced regime between insurers and insureds.



What do you need to do?

Under the Act, insurance contracts will still be based on good faith and you will have a duty to make a fair presentation of the risk to insurers which will include disclosure of:

- Every material circumstance which as an insured you are expected to know or ought to know about the risk for which you are seeking insurance; or
- Sufficient information to put a prudent insurer on notice that it needs to make further enquires to reveal those material circumstances.

You must ensure that any information you provide is correct to the best of your knowledge and subject to you having conducted a reasonable search for information. This could require you to obtain or verify information with a number of sources who may hold or have access to important information about your business or the insurance risk.

This may include key decision makers or those with responsibility for arranging your insurance (including us as your broker) or other parties that carry out outsourced functions for your business such as (but not limited to):

Senior managers and those with accountability for managing functions relevant to the risk

Persons covered by the insurance e.g. co insured or sub-contractors

Persons normally involved in arranging insurance for the organisation

Employees who may have in-depth or specialist knowledge on processes and procedures

Risk managers

Outsource contractors and service providers

What happens if I make a misrepresentation?

In the event that you make a misrepresentation of information which is considered to be deliberate or reckless i.e. you were aware that you were making a misrepresentation or did not care whether or not you were misrepresenting the risk, an insurer will be allowed to avoid your policy, which means that any claims you make will not be met and no refund of the insurance premium will be made.

If however you make a misrepresentation of information which is not deliberate or reckless i.e. you appropriately carried out your duty to make a fair presentation but made an honest mistake or omission there are a number of remedies which may be applied by the insurer to achieve a fair outcome as follows:

- If the insurer can prove that it would not have written the policy at all, the insurer can avoid the policy but must return the premiums paid.
- If the insurer would have accepted the risk but on different terms, the contract is to be treated as if it included those terms.
- If the insurer would have entered into the contract but charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

Warranties & Terms

The Act also changed the way that the law deals with insurers rights in the event of breaches of warranties and terms. These changes affected both commercial and personal insurance contracts.

Clauses which have the effect of turning representations made by you into a warranty are prohibited under the Act.

An insurer is no longer able to avoid a policy where a breach of warranty occurs; instead cover will be suspended for the period that you are in breach of the warranty. This means that where it is possible you may be able to remedy the breach of warranty and continue with the insurance policy; However Insurers will not be responsible for a loss during any period where cover was suspended for a breach of warranty.

The insurer cannot avoid a policy or limit or discharge its liability for non-compliance with any terms which are not relevant to the loss or did not increase the risk of loss which has occurred.

In order to ensure that you remain fully protected, you must continue to advise us of any warranty on the policy that you cannot comply with.

An insurer may wish to contract out of certain elements of the Act subject to your understanding and agreement and we will advise you of the implications of this should the situation arise.

As your insurance broker, you can rest assured that we are on hand to help you understand your obligations under the Act and to guide you through the process of gathering the information required to make a fair presentation. We will undertake to present this information to insurers on your behalf in a way which is clear and accessible.

In the meantime if you would like to discuss the Insurance Act or any other related Insurance matters please contact us.