



DUTY OF DISCLOSURE



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Your duty to insurance underwriters

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YOUR DUTY TO INSURANCE UNDERWRITERS

Overview

The Insurance Contracts Act 1984 / The Insurance (Agents and Brokers) Act 1984

Under the Insurance Contracts Act 1984, ConGen Insurance Brokers Pty Ltd (ConGen) are obliged to inform you of various matters that relate to your duty of disclosure or to your insurance program.

Your Duty of Disclosure

Before you enter into a contract of general insurance with an underwriter, you have a duty, under the Insurance Contracts Act 1984, to disclose to the underwriter every matter that you know, or could reasonably be expected to know, is relevant to the underwriter's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the underwriter before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matters:

- that diminishes the risk to be undertaken by the underwriter;
- that is of common knowledge;
- that your underwriter knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the underwriter.

Examples of information that is relevant to underwriters are:

- past claims experience;
- a cancellation of a previous insurance policy or refusal by an underwriter to renew a policy previously held by you;
- any unusual features of the subject matter of the insurance which might increase the likelihood of a claim under the policy.

If you are uncertain about whether or not a particular matter should be disclosed to the underwriter, please contact Congen.

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Consequences of Non Disclosure

If you fail to comply with your duty of disclosure, your underwriter may be in a position to reduce its liability under the contract in respect of a claim or may cancel the contract.

The same situation applies where you have made a misrepresentation by providing inaccurate information or incomplete information.

If your non-disclosure or misrepresentation is fraudulent, the underwriter may also have the option of avoiding the contract from its beginning. Non-disclosure or misrepresentation in relation to one policy may affect your ability to obtain other insurance in the future.

Your Duty of Disclosure must be taken seriously as it may affect your right to claim.

The history of losses suffered and claims made by the party seeking insurance, or any person, firm or company closely associated with that party, is one of the principal matters to be disclosed. It is therefore imperative that you maintain an up-to-date record of all such losses and claims.

Whilst ConGen will maintain records of all losses reported to us during the term of our appointment as your Broker, we do not accept responsibility for obtaining details of prior losses or for checking in any particular instance that you have made proper and complete disclosure.

We recommend that you:

- supply all management and senior staff with a copy of this Duty of Disclosure Notice;
- emphasise to them that the Duty of Disclosure applies not only at inception of the insurance, but also when policies are altered or renewed and also applies to a Third Party or Beneficiary who may have an entitlement under the policy even though they are not a Named Insured;
- point out to them that disclosure is most important in matters touching upon past claims, cancellation of insurance covers, premium penalties and any other matters which may influence an underwriter's acceptance of the risk such as criminal convictions or insolvency of previous companies; and
- have a system in place which ensures that all relevant matters come to their attention.

ConGen recommend that any existing or new contracts to which you are a party and which may affect you insurances be brought to our attention so that we may advise you concerning the effect of those contracts on your ability to recover under your insurances.

Should you wish to discuss any of the above matters please contact ConGen

By phoning 02 9089 8623

Emailing admin@congen.com.au

Going to the "Contact Us" tab on our web page www.congen.com.au