

TURKSLEGAL Q&A

Fraud - can a life insurer cancel the policy?

In this edition of TurksLegal Q&A, we respond to a client's question on fraudulent claims.

Q: Can life insurers cancel a policy as a result of a fraudulent claim?

The *Insurance Contracts Act 1984* (ICA) specifically says that insurers cannot treat a policy as void from inception because the insured has made a fraudulent claim under the policy.

But what about eliminating the risk of subsequent fraudulent claims by cancelling the future cover under the policy?

An insured may be fraudulent by seeking to claim a benefit they know they are not entitled to. For instance, providing an IP insurer a progress claim form that states the claimant is totally disabled while in reality they are working.

It is also fraudulent if a claimant deliberately provides misleading information to an insurer in relation to a claim to induce an insurer to pay a claim that would otherwise be valid.

In either case, section 56(1) of the ICA says the insurer is not obliged to pay the claim and section 60(1)(a) always gave an insurer under a policy of general insurance the right to cancel the policy. However, prior to the 2013 amendments to the ICA it said nothing about what a life insurer could do in this situation.

Section 59A of the ICA, which was part of the reforms made by the Insurance Contracts Amendment Act 2013, now makes it clear that a life policy can be cancelled in this situation.

But what about policies entered into prior to 28 June 2013 when the new Sections came into force?

The law in this area has a chequered history.

In the 2004 decision in *Walton v The Colonial Mutual Life Assurance Society Limited*¹ (*Walton*) the Court held that because section 56(1) only said an insurer could refuse payment of the claim, this was the only remedy available to a life insurer in the event of a fraudulent claim and the insurer had no right to cancel the policy.

The decision in *Walton* was the cause of section 59A being added to the ICA in 2013. However, the Federal Court recently had cause to consider the issue again and has expressly refused to follow that aspect of the decision in *Walton*.

In the case of *AIA Australia Ltd v Richards*², the Chief Justice of the Federal Court, Justice Allsop, reached the opposite conclusion, saying that there was "no basis" to consider that the common law right to cancel the policy as a result of the insured's fraud had been abolished by section 56(1).

Utmost good faith is a fundamental term of every policy of insurance and a fraudulent claim is consequently a serious breach of the policy conditions. The reasoning in *Richards* was, that consistent with general principles of contract law, this confers on the innocent party a right to terminate the contract if they choose to. *Richards* is, for this reason, in our view the preferable decision.

Clients will be able to read more about the decision in *Richards* in the updated Life Guide which will be released in March 2018.

¹ *Alexander Raymond Walton v The Colonial Mutual Life Assurance Society Limited* [2004] NSWSC 616

² *AIA Australia Ltd v Richards* (No 3) [2017] FCA 1069