

Duty to take reasonable care not to make a misrepresentation

This is a consumer insurance contract under the Insurance Contracts Act 1984 (Cth) (Act).

Under the Act, you have a duty to take reasonable care not to make a misrepresentation to us.

This duty applies whenever you enter into, renew, extend or vary this contract of insurance. In all cases, we will ask you questions that are relevant to our decision to insure you and on what terms.

It is important that you understand you are answering our questions in this way for yourself and anyone else that you want to be covered by the contract.

When you answer the questions you must give a true and accurate account of matters. Your response should tell us everything that you know about the question because your response is relevant to whether we offer you insurance and the terms we offer you.

A misrepresentation made fraudulently is made in breach of the duty to take reasonable care not to make a misrepresentation.

Circumstances relevant to your duty

Whether or not you took reasonable care not to make a misrepresentation will be determined with regard to all the relevant circumstances.

If we know, or ought to know about your particular characteristics or circumstances, we will consider these to determine if you took reasonable care not to make a misrepresentation to us.

We may consider the following matters to determine if you took reasonable care not to make a misrepresentation to us:

- the type of consumer insurance contract in question, and its target market
- explanatory material or publicity produced or authorised by us
- how clear, and how specific, the questions we asked were
- how clearly we communicated to you the importance of answering those questions and the possible consequences of failing to do so
- whether or not an agent/insurance broker was acting for you, or
- whether the contract was a new contract or was being renewed, extended, varied or reinstated.

You are not to be taken to have made a misrepresentation merely because you:

- failed to answer a question, or
- gave an obviously incomplete or irrelevant answer to a question.

Consequences if you fail to take reasonable care and do make a misrepresentation

If you do not take reasonable care when answering our questions and the result is you do make a misrepresentation to us, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to take reasonable care not to make a misrepresentation to us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.