

## EXPLANATORY STATEMENT

Issued by the Parliamentary Secretary to the Treasurer

*Insurance Contracts Act 1984*

*Insurance Contracts Amendment Regulations 2007 (No. )*

Section 78 of the *Insurance Contracts Act 1984* (the Principal Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed by regulations or necessary or convenient to be prescribed by regulations for the carrying out or giving effect to the Act.

The *Insurance Contracts Amendment Act 2007* (the Amending Act) amended the Principal Act to:

- introduce a new regulation-making power concerning electronic communications;
- introduce a new regulation making power regarding a form of reminder notice; and
- expand the regulation-making power regarding the legibility of notices and other documents.

The Regulations amend the Insurance Contracts Regulations (the Principal Regulations) to:

- change the prescribed rates of interest payable in relation to unreasonably delayed payment of claims and adjustments due to misstatements of age;
- introduce new requirements for electronic communication of notices or other documents under the Principal Act;
- change various prescribed notices and forms consequential on changes to the Principal Act made by the Amending Act; and
- make some consequential changes.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

## **Details of the Insurance Contracts Amendment Regulations 2007 (No. )**

### **Regulation 1 — Name of Regulations**

This regulation provides that the name of the Regulations is the *Insurance Contracts Amendment Regulations 2007 (No. )*.

### **Regulation 2 — Commencement**

This regulation provides that the Regulations are to commence as follows:

- Regulations 1 to 4 and Schedule 1 — on the day after the Regulations are registered;
- Schedule 2 — on the commencement of Schedule 2 to the *Insurance Contracts Amendment Act 2007*; and
- Schedule 3 — on the commencement of Schedule 4 to the *Insurance Contracts Amendment Act 2007*.

### **Regulation 3 — Amendment of Insurance Contracts Regulations 1985**

This regulation provides that Schedules 1, 2 and 3 of the Regulations amend the *Insurance Contracts Regulations 1985* (the Principal Regulations).

### **Regulation 4 — Transitional**

This regulation provides for transitional arrangements when the Regulations commence.

Item [5] of Schedule 1, which amends the prescribed rate for late payments in response to a claim, applies only in respect of contracts of insurance entered into on or after the commencement of that item.

Schedule 3, which contains amendments relating to the prescribed forms and notices to inform insureds of their duty of disclosure, affects only contracts of insurance entered into on or after the commencement of that Schedule.

### **Schedule 1 — Amendments commencing on day after registration**

#### **Item [1] Part I, heading**

This item replaces the heading to Part 1 to utilise Arabic numbering rather than Roman numerals.

#### **Item [2] Definition of 10-year Treasury Bond yield**

Sub-regulation 32(2) contains a definition of '10-year Treasury Bond yield'. The amended Regulation 4 (see Item [5] below) also makes use of this term. Item 2 moves the definition of '10-year Treasury Bond yield' from sub-regulation 32(2) to Regulation 2 (Interpretation).

### **Item [3] Definition of half-financial year**

Regulation 32 and amended Regulation 4 (see Item [5] below) make use of the phrase ‘half-financial year’. Item [3] amends sub-regulation 2(1) of the Regulations to define that phrase as a period of six months commencing on either 1 January or 1 July.

### **Item [4] Regulation 2B**

The Amending Act revised the subsection numbering of section 21A of the Principal Act. Regulation 2B was made pursuant to the former subsection 21A(9). That subsection was repealed by the Amending Act. Item [4] remakes Regulation 2B under the equivalent new regulation-making power now in subsection 21A(5) of the Principal Act. New subregulation 2B(1) does not include the requirement from the former subsection 2B(1) that an eligible contract of insurance be for ‘new business’. This is because the new section 21A in the Principal Act, which applies only to eligible contracts of insurance, is intended to apply in all situations where a contract is ‘entered into’, including on renewal, extension, variation or reinstatement.

### **Item [5] Regulation 4**

Item [5] amends the prescribed rate in Regulation 4 for the purposes of subparagraph 30(2)(b)(i) of the Principal Act. The prescribed rate will now be the rate equal to the 10-year Treasury Bond yield at the end of the half-financial year immediately before the making of the repayment mentioned in that subparagraph.

This will ensure consistency with the rate prescribed for the purposes of section 57 of the Principal Act under Regulation 32 (see Items [8], [9] and [10]).

### **Items [6] and [7] New part headings**

Items [6] and [7] amend part headings in the regulations so that they are stated in Arabic numerals rather than Roman numerals.

### **Items [8], [9] and [10] Regulation 32**

Items [8], [9] and [10] amend Regulation 32, which deals with the prescribed rate of interest on a payment withheld by an insurer.

Item [8] replaces the prescribed rate of 3 per cent with a prescribed rate of 5 per cent.

Item [2] moves the definition of ‘10-year Treasury Bond yield’ to sub-regulation 2(1) so the definition in sub-regulation 32(2) is not required. Items [9] and [10] remove sub-regulation 32(2) and renumber the remaining subparagraphs.

#### **Request for comment**

Is there still a purpose for the transitional provision in section 32?

## **Schedule 2 — Amendment commencing on commencement of Schedule 2 to the Insurance Contracts Amendment Act 2007**

### **Item [1] New Part 4 — Electronic communications**

Under section 72 of the Principal Act (as amended by the Amending Act), there is a power to prescribe requirements for notices and other documents required to be given under the Act. Item [1] of Schedule 2 inserts a new Part 4 into the regulations entitled ‘Electronic communications’.

The new part contains Regulation 34, which includes requirements for transmitting notices or other documents required under the Principal Act by means of electronic communication. The purpose of Regulation 34 is to prescribe some safeguards for the use of electronic communication of documents under the Principal Act, beyond the generic provisions of the *Electronic Transactions Act 1999* (ET Act).

Paragraph 34(a) requires that any notice or other document sent electronically not include an image, message, advertisement or other feature that distracts or interferes with the recipient’s ability to understand the notice or other document or is reasonably likely to have this effect.

Paragraph 34(b) requires any notice or other document that is sent electronically to appear in a way that clearly identifies the information that forms part of the notice or other document. Further, the relevant notice must be presented in a way that would reasonably be expected to allow its recipient to readily be able to scroll through the entire document.

Paragraph 34(d) requires insurers to include in any notice or other document sent electronically a street address and telephone number where they may be contacted.

#### **Request for comment**

The legislative package will remove the current exemption for the Principal Act from the scope of the ET Act.

Do the additional safeguards in paragraph 34 materially add to the ‘readily accessible and useable for subsequent reference’ requirement in the ET Act?

Are the additional safeguards included in Regulation 34 sufficient, given the potential consequences of failing to respond to a notice or other document required under the Principal Act?

## **Schedule 3 — Amendments commencing on commencement of Schedule 4 to the Insurance Contracts Amendment Act 2007**

### **Item [1] Regulation 3**

Regulation 3 in Item [1] reflects changes that the Amending Act made to duty of disclosure obligations and remedies under the Principal Act in respect of particular types of contract of insurance.

Contracts of life insurance are now divided so that insureds under some life insurance contracts have access to remedies that previously were available only in respect of contracts of general insurance. However, contracts of life insurance that provide cover on death or have a surrender value remain subject to the previous life insurance remedies structure.

To reflect those changes, Item [1] of Schedule 3 replaces the existing Regulation 3. New sub-regulation 3(1) prescribes for revised notification requirements for insurers to advise insureds about the duty of disclosure. The revised forms for written notifications are included in Schedule 1 (see Item [2] below). New regulation 3(2) provides for a new form of words to be used in cases where the insurer advises the insured of the duty of disclosure orally. The new form of words for oral notifications is included in Schedule 2 (see Item [2] below).

## **Item [2] Schedules 1 and 2**

Item [2] replaces Schedule 1 and 2 of the Regulations.

Schedule 1 comprises three parts. Part 1 contains the prescribed form of words for an insurer to give written notification to a proposed insured about their duty of disclosure for contracts, other than life insurance contracts that offer death cover or have a surrender value. Part 2 applies to that type of life insurance contract (as defined in section 29 of the Principal Act), and Part 3 applies to ‘eligible insurance contracts’ (as defined in Regulation 2B).

All three new prescribed forms in Schedule 1 include a section entitled ‘When the duty applies’. This section emphasises that the duty extends until the proposed insurance contract is entered into.

Other revisions to the previous forms in Schedule 1 are:

- Part 2 includes words concerning the duty of disclosure for persons who are not parties to the contract of insurance but receive cover under its terms (‘life insureds’), to reflect the duty of disclosure for those persons introduced by Part 4 of Schedule 4 of the Amending Act;
- Part 2 has been amended to elaborate on the consequences of failing to comply with the duty of disclosure;
- the prescribed wording in the first section of the form in Part 3 dealing with the matters an insured must tell the insurer under eligible contracts of insurance has been revised to reflect changes to section 21A of the Principal Act made by Part 2 of Schedule 4 of the Amending Act;
- the prescribed wording in the last sections of the forms in Part 1 and Part 2 have been revised to clarify the meaning of ‘avoiding’ the contract which was included in the former notices (being that the contract may be treated as never having worked); and
- the prescribed wording in the forms in Part 1 and Part 2 have been revised to clarify that an insurer has the option to treat the contract as never having worked *and/or* reduce its liability under the contract for a non-disclosure.

Schedule 2 of the Regulations, which sets out prescribed words for notifying insureds orally of the duty of disclosure, has been re-made under the new Regulation 3, but there have been no changes of substance to that Schedule.

### **Request for comment**

Is there a need to revise Schedule 2 of the Regulations (the prescribed words for oral notifications), now that it also covers non-eligible contracts of insurance, to deal with duties beyond answering questions? Does there need to be a different form of words for eligible and non-eligible contracts?

EXPOSURE DRAFT