

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Acting Assistant Treasurer

Insurance Contracts Act 1984

Insurance Contracts Regulations 1985

Section 78 of the *Insurance Contracts Act 1984* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Insurance Contracts Amendment Act 2013* (2013 Amendment Act), which received Royal Assent on 28 June 2013, made several amendments to the Act, including to the duty of consumers to disclose matters to an insurer before entering into the contract (the duty of disclosure). For an insurer to rely on a consumer's compliance with this duty, the insurer needs to inform the consumer, in writing, of the general nature and effect of the duty. The *Insurance Contracts Regulations 1985* (the Principal Regulations) prescribe notices that insurers may use for this purpose.

The purpose of the draft Regulation is to amend the Principal Regulations to prescribe new notices which reflect the amendments made to the duty of disclosure by the 2013 Amendment Act.

In particular, the draft Regulation prescribes:

- written notices in relation to:
 - contracts of general insurance, life insurance and eligible contracts of insurance;
 - the duty of disclosure in relation to a person who will be insured by others; and
- an oral notice in relation to eligible contracts of insurance.

Details of the draft Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the draft Regulation may be exercised.

The draft Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the draft Regulation would commence the day after registration. Schedule 2 of the draft Regulation would commence on 28 December 2015.

Details of the *Insurance Contracts Amendment Regulation 2014 (No. 1)*

Section 1 – Name of regulation

The name of the regulation is the *Insurance Contracts Amendment Regulation 2014 (No. 1)*.

Section 2 – Commencement

The regulation commences as below:

- Sections 1 to 4 and Schedule 1 – the day after the regulation is registered; and
- Schedule 2 – 28 December 2015.

Section 3 – Authority

The regulation is made under the *Insurance Contracts Act 1984* (the Act).

Section 4 – Schedules

Schedule 1 amends the *Insurance Contracts Regulations 1985* (the Principal Regulations) to prescribe words (notices) insurers may use to inform insureds about their duty of disclosure. Separate notices are prescribed for:

- contracts of general insurance (other than eligible contracts);
- contracts of life insurance;
- eligible contracts of insurance; and
- oral notification of the duty of disclosure for eligible contracts of insurance.

Schedule 2 amends the Principal Regulations to prescribe notices that insurers may use to inform insureds about their duty of disclosure in relation to:

- renewing eligible contracts of insurance;
- persons to be insured other than the insured; and
- reminding insureds about their duty of disclosure when an insurer's acceptance of, or counter-offer to, a contract of insurance is made more than two months after the insured's most recent disclosure.

Schedule 1 – Amendments commencing the day after registration

Item 1 inserts regulation 42 into the Principal Regulations which, despite the repeal of Schedules 1 and 2 in the Principal Regulations, provides that until 28 December 2015 the repealed Schedules (current notices) or the Schedules substituted by item 2 of Schedule 1 and items 4 and 5 of Schedule 2 of the regulation (new notices) may be used for the purposes of regulation 3 of the Principal Regulations.

Therefore, until 28 December 2015, insurers may use either the current notices or the new notices.

This regulation will expire on 28 December 2015, with insurers required to use the new notices from that date.

Item 2 repeals the current notices and inserts new notices into the Principal Regulations as below:

- Schedule 1:
 - contracts of general insurance, other than eligible contracts (Part 1);
 - contracts of life insurance (Part 2);
 - eligible contracts of insurance (Part 3);
- Schedule 2 – words to inform insureds of the duty of disclosure for eligible contracts of insurance (oral notices).

Schedule 2 – Amendments commencing on 28 December 2015

Item 2 repeals regulation 3 in the Principal Regulations and substitutes:

- a new regulation 3, which provides that the new written notices in Parts 1, 2, 3 and 4 of Schedule 1 may be used by insurers for the purposes of subsection 22(1) of the Act (as amended by the 2013 Amendment Act);
- regulation 3A, which provides that the new reminder notices in Parts 1, 2 and 3 of Schedule 1B may be used by insurers for the purposes of subsection 22(1) of the Act (as amended by the 2013 Amendment Act); and
- regulation 3B, which provides that the oral notice in Schedule 2 may be used by insurers for the purposes of subsection 22(1) of the Act (as amended by the 2013 Amendment Act).

Items 4 and 5 insert new written notices as below:

- Schedule 1 – renewal of eligible contracts of insurance (Part 4);
- Schedule 1A – writing to inform persons to be insured by others;
- Schedule 1B – writing to remind of the duty of disclosure for:
 - contracts of general insurance (Part 1);
 - contracts of life insurance (Part 2); and
 - eligible contracts of insurance (Part 3).

Items 1, 3 and 6 make consequential changes to headings and notes required by the amendments made in items 2, 4 and 5.