

EXPOSURE DRAFT



EXPOSURE DRAFT (02/06/2014)

Insurance Contracts Amendment Regulation 2014 (No. 1)

Select Legislative Instrument No. , 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Mathias Cormann
Minister for Finance
for the Treasurer

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1 Name of regulation

This regulation is the *Insurance Contracts Amendment Regulation 2014 (No. 1)*.

2 Commencement

Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provision(s)	Commencement
1. Sections 1 to 4 and anything in this regulation not elsewhere covered by this table	The day after this regulation is registered.
2. Schedule 1	The day after this regulation is registered.
3. Schedule 2	28 December 2015.

3 Authority

This regulation is made under the *Insurance Contracts Act 1984*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments commencing day after registration

Schedule 1—Amendments commencing day after registration

Insurance Contracts Regulations 1985

1 At the end of Part 4

Add:

42 Amendments made by the *Insurance Contracts Amendment Regulation 2014 (No. 1)*

- (1) Despite the repeal and substitution of Schedules 1 and 2 by the *Insurance Contracts Amendment Regulation 2014 (No. 1)*, either the repealed or substituted Schedules may be used for the purposes of regulation 3 in relation to a contract of insurance entered into before 28 December 2015.
- (2) This regulation expires on 28 December 2015 as if it had been repealed by another regulation.

2 Schedules 1 and 2

Repeal the Schedules, substitute:

Schedule 1—Writing to inform of duty of disclosure

Note: See subregulation 3(1).

Part 1—Contracts of general insurance, other than eligible contracts

Your duty of disclosure

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

This duty of disclosure applies until the contract is entered into.

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Amendments commencing day after registration **Schedule 1**

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

Your duty however does not require disclosure of matter:

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

Non-disclosure

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

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Part 2—Contracts of life insurance

Your duty of disclosure

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

This duty of disclosure applies until the contract is entered into.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the contract.

The duty however does not require disclosure of a matter:

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

Non-disclosure

If you fail to comply with your duty of disclosure and we would not have entered into the contract on any terms if the failure had not occurred, we may avoid the contract within 3 years of entering into it.

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Schedule 1 Amendments commencing day after registration

If your non-disclosure is fraudulent, we may avoid the contract at any time.

If we are, or have been, entitled to avoid a contract of life insurance but do not avoid it, we may elect, at any time, to reduce the sum that you have been insured for in accordance with a formula that takes into account the premium that would have been payable if you had disclosed all relevant matters to us.

If the contract is for insurance of the life of another person, any failure by him or her to tell us a matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to enter into the contract and, if so, on what terms may be treated as a failure by you to comply with your duty of disclosure.

Part 3—Eligible contracts of insurance

Your duty of disclosure

Before you enter into an eligible contract of insurance with us, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If we ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms, you must disclose to us anything that you know and that a reasonable person in the circumstances would include in answer to the questions.

This duty of disclosure applies until the contract is entered into.

Non-disclosure

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

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Schedule 2—Words to inform of duty of disclosure for eligible contracts of insurance

Note: See subregulation 3(2).

Before you enter into an eligible contract of insurance with us, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

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Amendments commencing day after registration **Schedule 1**

We may ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. If we do, you must tell us anything that you know and that a reasonable person in the circumstances would include in their answer.

This duty applies until the contract is entered into.

If you fail to comply, we may be entitled to reduce our liability under the contract in respect of a claim or we may cancel the contract.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

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Schedule 2 Amendments commencing 28 December 2015

Schedule 2—Amendments commencing 28 December 2015

Insurance Contracts Regulations 1985

1 Regulation 2B (heading)

Repeal the heading, substitute:

2B Eligible contracts of insurance (Act, s21A(6))

2 Regulation 3

Repeal the regulation, substitute:

3 Duty of disclosure—written notice

- (1) This regulation is made for paragraph 22(4)(a) of the Act.
- (2) The form of writing that may be used to inform an insured of the matters mentioned in subsection 22(1) of the Act is:
 - (a) for a contract of general insurance other than an eligible contract or insurance—the form set out in Part 1 of Schedule 1; and
 - (b) for a contract of life insurance—the form set out in Part 2 of Schedule 1; and
 - (c) for the original entering into of an eligible contract of insurance—the form set out in Part 3 of Schedule 1; and
 - (d) for the renewal of an eligible contract of insurance—the form set out in Part 4 of Schedule 1.
- (3) The form of writing that may be used to inform another person who may become a life insured of the matters mentioned in subsection 22(1) of the Act is set out in Schedule 1A (see subsection 22(2) of the Act).

3A Duty of disclosure—reminder notice

- (1) This regulation is made for paragraph 22(4)(b) of the Act.
 - (2) The form of writing that may be used to remind an insured of the matters mentioned in subsection 22(1) of the Act is:
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Amendments commencing 28 December 2015 **Schedule 2**

- (a) for a contract of general insurance that is not an eligible contract of insurance—the form set out in Part 1 of Schedule 1B; and
- (b) for a contract of life insurance—the form set out in Part 2 of Schedule 1B; and
- (c) for an eligible contract of insurance—the form set out in Part 3 of Schedule 1B.

3B Duty of disclosure—oral notice

- (1) This regulation is made for subregulation 69(1A) of the Act.
- (2) The words that may be used to inform an insured orally of the matters mentioned in subsection 22(1) of the Act for the original entering into of an eligible contract of insurance are set out in Schedule 2.

3 Schedule 1 (note to Schedule heading)

Repeal the note, substitute:

Note: See subregulation 3(2).

4 At the end of Schedule 1

Add:

Part 4—Renewal of eligible contracts of insurance

Your duty of disclosure

Before you renew this contract of insurance, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If we ask you specific questions that are relevant to our decision whether to accept the risk of the insurance and, if so, on what terms, you must disclose to us anything that you know and that a reasonable person in the circumstances would include in answer to the questions.

Also, we may give you a copy of any matter you have previously told us and ask you to tell us about any change to the matter or to tell us if there is no change to the matter. If we do this, you must disclose to us any change to the matter or inform us that there is no change to the matter.

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Schedule 2 Amendments commencing 28 December 2015

If you do not disclose to us a change to a matter you have previously disclosed, you will be taken to have informed us that there is no change to the matter.

This duty of disclosure applies until the contract is renewed.

Non-disclosure

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

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

5 After Schedule 1

Insert:

Schedule 1A—Writing to inform persons to be insured by others

Note: See subregulation 3(3).

Insured's duty of disclosure

A person who enters into a contract of life insurance with us has a duty under the *Insurance Contracts Act 1984*, before entering into the contract, to disclose to us every matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

The duty of disclosure applies until the contract is entered into.

The person entering into the contract has the same duty to disclose those matters to us before he or she renews, extends, varies or reinstates the contract.

The duty however does not require disclosure of a matter:

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

Non-disclosure

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Amendments commencing 28 December 2015 **Schedule 2**

If the person entering into the contract fails to comply with the duty of disclosure and we would not have entered into the contract on any terms if the failure had not occurred, we may avoid the contract within 3 years of entering into it.

If the non-disclosure is fraudulent, we may avoid the contract at any time.

If we are, or have been, entitled to avoid a contract of life insurance but do not avoid it, we may elect, at any time, to reduce the sum that you have been insured for in accordance with a formula that takes into account the premium that would have been payable if the person entering into the contract had disclosed all relevant matters to us.

Any failure by you to disclose a matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms may be treated as a failure by the person entering into the contract to comply with his or her duty of disclosure.

Schedule 1B—Writing to remind of duty of disclosure

Note: See regulation 3A.

Part 1—Contracts of general insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to a contract of general insurance.

This is a duty to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

This duty of disclosure continues until the contract is entered into.

Part 2—Contracts of life insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to a contract of life insurance.

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Schedule 2 Amendments commencing 28 December 2015

This is a duty to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

If the contract is for insurance of the life of another person, any failure by that person to disclose to us every matter that he or she knows, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms may be treated as a failure by you to comply with your duty of disclosure.

This duty of disclosure continues until the contract is entered into.

Part 3—Eligible contracts of insurance

Reminder—your duty of disclosure

You have previously been given a notice informing you of your duty of disclosure in relation to an eligible contract of insurance.

This is a duty to disclose to us, in response to our questions, every matter that you know, and that a reasonable person in the circumstances would include in answer to the questions.

This duty of disclosure continues until the contract is entered into.

6 Schedule 2 (note to Schedule heading)

Repeal the note, substitute:

Note: See regulation 3B.