The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019

No. , 2019

(Treasury)

A Bill for an Act to amend the law relating to unfair contract terms and insurance contracts, and for related purposes
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A Bill for an Act to amend the law relating to unfair contract terms and insurance contracts, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Act 2019.

2 Commencement

(1) Each provision of this Act 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

<table>
<thead>
<tr>
<th>Provisions</th>
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<tr>
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<td>Commencement</td>
<td>Date/Details</td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>The day after the end of the period of 18 months beginning on the day this Act receives the Royal Assent.</td>
<td></td>
</tr>
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</table>

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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2  *Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill No. , 2019* 2019
Schedule 1—Unfair contract terms in insurance contracts

Australian Securities and Investments Commission Act 2001

1 Subsection 12BA(1)
   Insert:

   Insurance Contracts Act insurance contract means a contract of insurance to which the Insurance Contracts Act 1984 applies.

2 At the end of section 12BF
   Add:

   Note: This section applies to Insurance Contracts Act insurance contracts in addition to the Insurance Contracts Act 1984 (see paragraph 15(2)(d) of that Act).

3 At the end of subsection 12BI(1)
   Add:

   ; or (d) if the contract is an Insurance Contracts Act insurance contract—is a transparent term that:

   (i) is disclosed at or before the time the contract is entered into; and

   (ii) sets an amount of excess or deductible under the contract.

4 At the end of section 12BI
   Add:

   (4) For the purposes of applying paragraph (1)(a) to an Insurance Contracts Act insurance contract, have regard to the main subject matter of the contract only to the extent that it describes what is being insured.

5 At the end of subsections 12GND(1) and (2)
   Add:

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Schedule 1  Unfair contract terms in insurance contracts

; or (c) if the contract is an Insurance Contracts Act insurance contract—a person who is a third party beneficiary (within the meaning of the Insurance Contracts Act 1984) under the contract.

6 In the appropriate position

Insert:

Part 28—Application provisions relating to the Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Act 2019

324 Application—unfair contract terms

(1) The amendments of this Act made by Schedule 1 to the Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Act 2019 apply in relation to a contract entered into on or after the commencement of that Schedule.

(2) The amendments do not apply to a contract entered into before the commencement of that Schedule. However:

(a) if the contract is renewed on or after that commencement—the amendments apply to the contract as renewed, on and from the day (the renewal day) on which the renewal takes effect, in relation to conduct that occurs on or after the renewal day; or

(b) if a term of the contract is varied on or after that commencement and paragraph (a) has not already applied in relation to the contract—the amendments apply to the term as varied, on and from the day (the variation day) on which the variation takes effect, in relation to conduct that occurs on and after the variation day.

(3) If paragraph (2)(b) of this section applies to a term of a contract, subsection 12BF(2) and section 12BK of this Act apply to the contract.
(4) Despite paragraphs (2)(a) and (b) and subsection (3) of this section, the amendments do not apply to a contract, or a term of a contract, to the extent that the operation of the amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

**Insurance Contracts Act 1984**

7 At the end of section 12

Add:

Note: This Part operates in addition to the unfair contract terms provisions of the *Australian Securities and Investments Commission Act 2001* (see paragraph 15(2)(d) of this Act).

8 Subsection 15(2)

Omit all the words after “but does not”, substitute:

include:

(c) relief in the form of compensatory damages; or

(d) relief relating to the effect of section 12BF (unfair contract terms) of the *Australian Securities and Investments Commission Act 2001*.

Note: See Subdivision G (enforcement and remedies) of Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* for certain remedies relating to the effect of section 12BF of that Act.

9 Application of amendments of the *Insurance Contracts Act 1984*

The amendments of the *Insurance Contracts Act 1984* made by this Schedule apply in the same way as the amendments of the *Australian Securities and Investments Commission Act 2001* made by this Schedule.

Note: See Part 28 of the *Australian Securities and Investments Commission Act 2001*.