

EXPLANATORY STATEMENT

Minute No. _____ of 2012 - Minister for Financial Services and Superannuation

Subject - *Insurance Contracts Amendment Act 2012*
Insurance Contracts Amendment Regulation 2012 (No.)

Section 78 of the *Insurance Contracts Act 1984* (the Principal Act) provides that the Governor-General may make Regulation 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 Principal Act regulates the terms included in insurance contracts and insurer conduct in relation to such contracts. The *Insurance Contracts Regulations 1985* (the Principal Regulations) are the core regulations considered essential to the operation of the Principal Act.

The *Insurance Contracts Amendment Act 2012* (the Amending Act) amended the Principal Act to provide a legislative framework to allow Regulation to be established for the requirement for insurers to provide a prescribed one page key facts sheet for home building and home contents insurance contracts.

The purpose of the proposed Regulation is to introduce a one page key facts sheet for prescribed contracts to provide consumers with easy access to key information in relation to home building and home contents insurance policies. The key facts sheet will reduce consumer confusion regarding what is and is not included in insurance contracts and provide consumers with a mechanism to easily compare the key aspects of insurance contracts.

In 2010-11 Queensland, New South Wales and Victoria experienced a number of severe flood events. These flood events coupled with other natural disasters including cyclone Yasi and the New Zealand earthquakes emphasised the important role the insurance plays in assisting individuals and communities return to normal after natural disasters. However, these natural disasters also highlighted the fact that many consumers lacked awareness regarding the content of their insurance policies and found it hard to access key information in relation to their insurance cover.

The proposed Regulation will amend the Principal Regulations to require an insurer to provide a one page key facts sheet for home building and home contents insurance contracts, which includes particular content presented in a specified format and structure.

Following the 2010-11 floods, the Government undertook targeted consultations with representatives of consumer groups, the insurance industry and the legal profession on insurance-related matters. These consultations assisted the Government in developing the consultation paper 'Reforming Flood Insurance – Clearing the Waters' which included proposals for the provision of one page key fact statements and the introduction of a standard definition of 'flood'. This consultation paper was released for public comment on 5 April 2011. A total of 13 public submissions were received in response to the consultation paper.

On 29 February 2012, in order to further develop the one page key facts sheet proposal the Government released the “Key Facts Sheet: Home Building and Home Contents Insurance Policies” discussion paper which sought stakeholder views on the format, content, structure and provision of the key facts sheet. 10 submissions were received in response to the discussion paper. The comments received during the consultation process aided in the development of a key facts sheet prototype.

On 2, 3 and 4 May 2012, consumer testing of a prototype key facts sheet was undertaken. During the consumer testing process an alternate key facts sheet was developed and tested.

At the completion of the consultation process a final key facts sheet, which contained elements from both of the previous key facts sheets, was developed.

On ** August 2012, the Government released exposure draft Regulation outlining the content, format, structure and provision for key facts sheets for home building and home contents insurance policies.

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

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

The proposed Regulation will be a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The proposed Regulation will commence the day they are registered.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 78 of the Insurance
Contracts Act 1984

Details of the proposed *Insurance Contracts Amendment Regulations 2012 (No.)*

Section 1 – Name of Regulation

This regulation will provide that the title of the Regulation is the *Insurance Contracts Amendment Regulation 2012 (No.)*.

Section 2 – Commencement

This regulation will provide for the Regulation 2 years after the day it is registered.

Section 3 – Amendment of Insurance Contracts Regulations 1985

This regulation will provide that the *Insurance Contracts Regulations 1985* (the Principal Regulations) will be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [5]

Item [5] will insert, after Regulation 4, Division 4 of Part 4, which relates to Key Facts Sheets and inserts Regulation 4A Application of this Division, Regulation 4B What is a Key Facts Sheet and Regulation 4C Insurer's obligation to provide Key Facts Sheet of that Division.

Under Section 33A of the Principal Act (as amended by the Amending Act), there is a power to define, in regulation, the class of contracts or classes of potential contracts to which the provision of a key facts sheet will required for the purposes of Division 4 of Part IV of the Principal Act.

Regulation 4A Application of this Division

Regulation 4A will prescribe the classes of contracts or potential classes of contracts of insurance to which Division 4 of Part IV will apply. These contracts or potential contracts will include:

- Home building insurance contracts;
- Home contents insurance contracts;
- contracts that contain a part that relates to either or both of the following:
 - A home building insurance contract; or
 - A home contents insurance contract.

Under Section 33B of the Principal Act (as amended by the Amending Act), there is a power to define, in regulation, the content, format and structure of key facts sheets for those classes of contracts or classes of potential contracts to which the provision of a

key facts sheet will be required for the purposes of Division 4 of Part IV of the Principal Act.

Regulation 4B What is a Key Facts Sheet

Regulation 4B of Division 4 will prescribe that the content, format and structure of the key facts sheet will be required to be consistent with Form 1 of Schedule 3, for home building insurance contracts, or Form 2 of Schedule 3, for home contents insurance contracts.

In addition to providing a key facts sheet consistent with Form 1 or Form 2 in Schedule 3, Regulation 4B will require the key facts sheet to be provided in an A4 size and be set out in Arial font.

The requirement to use Arial font throughout the document will provide consistency across all key facts sheets and will allow all of the required content to be effectively incorporated.

Particular font size will be required for each element of the key facts sheet and will be as follows:

- The heading of the key facts sheet, that is, the heading that starts with “KEY FACTS” will be required to be in size 18 font.
- The word “STEP” will be required to be in size 16 font.
- The number following the word “STEP” will be required to be in size 48 font.
- All other text will be required to be in size 10 font.

The requirement to provide certain text in the key facts sheet in a particular font size will provide consumers with a visual cue as to the purpose the intent of the different text throughout the key facts sheet.

Certain aspects of the key facts sheet will also be required to be set out in colour. Consistent with the requirement to provide certain text in the key facts sheet to be of a particular font size the requirement to incorporate colour into the key facts sheet (where possible) will provide consumers with a visual cue as to the importance of that information.

The colour requirements for the key facts sheet will be as follows:

- The headings and subheadings and policy name must be in blue type on a white background.
- The boxes in steps 2 and 3 must use white type on a blue background.
- All other type must be black on a white background.

In recognition, that the key facts sheet may only be able to be produced on a black and white printer, the key facts sheet will be able to be printed in black and white. In

developing the key facts sheet insurers will be required to ensure that the incorporation of colour does not reduce the key facts sheet readability.

Under Section 33C of the Principal Act (as amended by the Amending Act), there is a power to prescribe, in regulation, the circumstances and the manner in which an insurer must provide a key facts sheet for a class of contracts or a class of potential contracts to which the provision of a key facts sheet will be required for the purposes of Division 4 of Part IV of the Principal Act.

Section 33C of the Principal Act (as amended by the Amending Act), also has the power to prescribe, in regulation:

- circumstances in which the key facts sheet may or must be provided by electronic means; and
- exceptions to the requirement to provide a key facts sheet in relation to the situations where a key facts sheet would be required to be provided.

Regulation 4C Insurer's obligation to provide Key Facts Sheet

Regulation 4C of Division 4 will require an insurer to provide a key facts sheet to a person for a prescribed contract to which this division applies when that person requests information about that contract.

The purpose of the key facts sheet is to provide an easy to understand one page sheet that outlines the key information pertaining to a particular insurance policy. The key fact sheet will also be able to be used to compare like policies in the initial decision phase of a consumer. Therefore, it is essential that the key facts sheet be provided as soon as a consumer indicates that they are looking, to any extent, at a particular policy.

As such, the provision of the key facts sheet will be required to take place as soon as reasonably practicable, but no later than 14 days after days, after the key facts sheet is required to be provided.

The key facts sheet will be able to be provided by electronic means if a consumer person provides their email address to the insurer for the purpose of receiving the key facts sheet. The electronic form of the key facts sheet may be either an attached copy of the key facts sheet or a hyperlink to the key facts sheet.

To provide flexibility for both consumers and insurers in the provision of the key facts sheet, access to the key facts sheet through an insurer's website (where possible) will be required. The key facts sheet will also be required to be kept on insurer's website in a format which is able to be downloaded by a member of the public.

To ensure that a key facts sheet is not provided in situations where it would be inappropriate and ineffective to do so, an insurer will not be required to provide a key facts sheet to a person in respect to a class of contracts or a class of potential contracts to which Division 4 applies if:

- The insurer has already provided the person with a key facts sheet at a previous time and the only difference is the date.
- The insurer believes that the consumer has already been provided with a key facts sheet by another party and the only difference is the date.
- The person seeking information on a class of contracts or a potential class of contracts indicates that they do not want to be provided with a key facts sheet.

Items [1] – [4] and Items [6]-[10]

Items [1]-[4] and Items [6]-[11] will amend the structure of the *Insurance Contracts Regulations 1985* to suitably incorporate the Regulation.

Item [1] will provide that the heading Part I will be substituted with Part 1.

Item [2] will insert into subsection 2 (1) the terms home building insurance contracts and home contents insurance contract. In accordance with regulation 9 and 13 of the principal Regulations.

Item [3] will insert, after regulation 2A, Part 4 Disclosure and misrepresentations into the Principal Regulations and Division 1 of Part 4, which relates to an Insureds duty of disclosure.

Item [4] will insert, after Regulation 3, Division 3 of Part 4, which relates to Remedies for non-disclosure and misrepresentation by insureds.

Item [6] will provide that the heading Part II will be substituted with Part 5 The Contract – standard cover.

Item [7] will provide that the heading Part III will be substituted with Part 10 Miscellaneous.

Item [8] will provide that the heading Part 4 will be substituted with Part 11 Transitional arrangements.

Item [9] will provide that the section 40 heading will be substituted with 40 the purpose of this Part.

Item [10] will omit Part II from the note in subregulation 41(1) and inserts Part 5.

Item [11]

Item [11] will insert, after Schedule 2, Schedule 3 Key Facts Sheets.

Schedule 3 Key Facts Sheets

Schedule 3 will provide two forms to be used when developing a key facts sheet for home building and home contents insurance policies. Form 1 will apply when a key facts sheet is developed in respect to a home building insurance contract. Form 2 will

apply when a key facts sheet is developed in respect to a home contents insurance contract.

In developing key facts sheets for home building or home contents insurance policies, an insurer will be required to follow and comply with Form 1 or Form 2 in Schedule 3. In complying with Form 1 or Form 2 an insurer will be required to use the format and structure of the relevant form including the standard wording provided in respect to each section of the key facts sheet and insert policy specific information where indicated.

General Policy specific information

In both Form 1 and Form 2 an insurer will be required to:

- Insert the name of the policy.
 - If the relevant policy is a part of a combined policy the name of the policy required to be inserted is the relevant section/part of the combined policy. For example, if the policy is part of a combined policy which has six individual policies all contained in appendixes from A to F and the home contents insurance policy is appendix D the insurer is required to insert appendix D into the policy name section of the key facts sheet.
- The date of the printing of the key facts sheet.
- Their Australian Financial Services Licence (AFSL) number.
- Their logo.

Policy specific information in Step 2

In step 2 of both Form 1 and Form 2 in Schedule 3 an insurer will be required to:

- Include a description of the type of policy outlined in the key facts sheet in accordance with prescribed descriptions of types of cover as provided in step 4 of the KFS.
 - For example in respect to a sum insured policy the insurer is required to insert “you set the maximum level of cover and your payout is limited to that amount”.
 - Indicate whether any amounts claimed include Goods and Services Tax (GST).
- In the table:
 - Insert whether the risks outlined in the table are covered, not covered, optional or have some level of partial cover (where a sub-limit or cap applies).

- Insert a policy specific example of a main condition/ exclusion that applies to the policy to which the key facts sheet is being developed. This example is required to be an example to which a reasonable person would consider to be a main condition/exclusion in relation to the particular type of contract to which the key facts sheet is being developed.

The requirement to include an example of a main condition/exclusion will require an insurer to make a decision as to what a consumer may consider to be the main condition or exclusion in the policy to which the key facts sheet was developed.

To make it clear that the insertion of an example of a main condition/exclusion in the table is not intended to be the only exclusion/condition or what all consumers considered to be the main condition/exclusion, a prescribed statement indicating that:

“The examples provided may only be some of many conditions/exclusions contained in this policy. These examples are considered to be the main conditions /exclusions to which most consumers would generally consider to be the main conditions/exclusions.”

is provided at the bottom of the first page of the key facts sheet.

When determining which conditions or exclusions should be considered to be main conclusions or exclusions insurers should give regard to:

- : The type of policy to which it is being developed.
- : The potential detriment that may occur if a consumer was not aware of the condition/exclusion.
- : A consumer’s understanding of the issues surrounding the risk to which the example is being provided.

In addition to inserting the policy specific main condition or exclusion, in situations where the insurer inserts an exclusion the insurer is required to preface that example with the words not covered for.

Policy specific information in Step 3

In step 3 of both Form 1 and Form 2 in Schedule 3 an insurer will be required to:

- Insert (when appropriate) a policy specific example of a limit that applies in relation to the policy for which the key facts sheet is being developed.
- Insert (when appropriate) a policy specific example of a common excess that applies to the policy to which the key facts sheet is being developed.
- Insert the number of days provided for the cooling off period in respect to the policy to which the key facts sheet is being developed.

- Insert the amount of legal liability insurance cover provided in respect to the policy to which the key facts sheet is being developed.

Policy specific information in Step 4

In step 4 of both Form 1 and Form 2 in Schedule 3 an insurer will be required to:

- Insert their contact information.