



Insurance Contracts Amendment Regulations 2007 (No.)¹

Select Legislative Instrument 2007 No.

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Insurance Contracts Act 1984*.

Dated 2007

Governor-General

By His Excellency's Command

[EXPOSURE DRAFT ONLY – NOT FOR SIGNATURE]

Parliamentary Secretary to the Treasurer

EXPOSURE DRAFT ONLY

1 Name of Regulations

These Regulations are the *Insurance Contracts Amendment Regulations 2007* (No.).

2 Commencement

These Regulations commence as follows:

- (a) on the day after these Regulations are registered — regulations 1 to 4 and Schedule 1;
- (b) on the commencement of Schedule 2 to the *Insurance Contracts Amendment Act 2006* — Schedule 2;
- (c) on the commencement of Schedule 4 to the *Insurance Contracts Amendment Act 2006* — Schedule 3.

3 Amendment of *Insurance Contracts Regulations 1985*

Schedules 1, 2 and 3 amend the *Insurance Contracts Regulations 1985*.

4 Transitional

- (1) The amendment made by item [5] of Schedule 1 applies in relation to a contract of insurance entered into on or after the commencement of the item.
- (2) The amendments made by Schedule 3 apply in relation to a contract of insurance entered into on or after the commencement of Schedule 3.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] **Part I, heading**

substitute

Part 1 Preliminary

[2] **Subregulation 2 (1), before definition of *accidental damage***

insert

10-year Treasury Bond yield means the rate known as the 10-year Treasury Bond yield, published by the Reserve Bank of Australia.

[3] **Subregulation 2 (1), after definition of *expropriation***

insert

half-financial year means a period of 6 months starting on 1 January or 1 July.

[4] **Regulation 2B**

substitute

2B Eligible contracts of insurance (Act s 21A (5))

- (1) A contract of insurance is an ***eligible contract of insurance*** if it is wholly in a class of contracts that is declared to be a class of contracts in relation to which Division 1 of Part V of the Act applies.

Note The following regulations declare certain classes of insurance contracts for Division 1 of Part V of the Act:

- regulation 5 (motor vehicle insurance)
- regulation 9 (home buildings insurance)
- regulation 13 (home contents insurance)
- regulation 17 (sickness and accident insurance)
- regulation 21 (consumer credit insurance)
- regulation 25 (travel insurance).

- (2) A contract of insurance is an *eligible contract of insurance* if:
- (a) it is not mentioned in subregulation (1); and
- (b) the insurer, before the contract is entered into, gives to the insured:
- (i) a written notice in accordance with the form set out in Part 3 of Schedule 1; or
 - (ii) an oral notice in accordance with the words set out in Schedule 2; or
 - (iii) a notice otherwise complying with subsection 22 (1) of the Act clearly informing the insured of the general nature and effect of the duty of disclosure and the general nature and effect of section 21A of the Act.

[5] Regulation 4

substitute

4 Prescribed rate of interest — subparagraph 30 (2) (b) (i) of the Act

For subparagraph 30 (2) (b) (i) of the Act, the prescribed rate of interest is 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.

[6] **Part II, heading**

substitute

Part 2 Standard cover

[7] **Part III, heading**

substitute

Part 3 Miscellaneous

[8] **Subregulation 32 (1)**

omit

3%

insert

5%

[9] **Subregulation 32 (2)**

omit

[10] **Subregulation 32 (3)**

renumber as subregulation 32 (2)

Schedule 2 Amendment commencing on commencement of Schedule 2 to the *Insurance Contracts Amendment Act 2006*

(regulation 3)

[1] After Part 3

insert

Part 4 Electronic communications

34 Requirements for electronic communications

- (1) For section 72 of the Act, if a notice or other document under the Act is given by electronic communication, the communication:
 - (a) must not incorporate any image, message, advertisement or other feature that:
 - (i) distracts, or is reasonably likely to distract, the recipient; or
 - (ii) otherwise reduces or interferes, or is reasonably likely to reduce or interfere, with the recipient's ability to understand the notice or document; and
 - (b) must be presented in a way that clearly identifies the information that is part of the notice or document; and
 - (c) must be presented in a way that would reasonably be expected to enable the recipient to readily be able to scroll through the whole of the notice or document.

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- (2) If the electronic communication is given by an insurer, the communication must also show:
- (a) a full address (not a post office box); and
 - (b) a telephone number;
at which the insurer may be contacted.

**Schedule 3 Amendments commencing on
commencement of Schedule 4
to the *Insurance Contracts
Amendment Act 2006***

(regulation 3)

[1] Regulation 3

substitute

3 Notice of duty of disclosure

- (1) 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 insurance that is not a contract of life insurance within the meaning of section 29 of the Act — the form set out in Part 1 of Schedule 1; and
 - (b) for a contract of life insurance within the meaning of section 29 of the Act — the form set out in Part 2 of Schedule 1; and
 - (c) for an eligible contract of insurance — the form set out in Part 3 of Schedule 1.
- (2) The words that may be used to inform an insured orally of the matters mentioned in subsection 22 (1) of the Act for a contract of insurance are set out in Schedule 2.

Note Section 69 of the Act provides for the circumstances in which information that is required by other provisions of the Act to be given in writing may be given orally.

[2] **Schedules 1 and 2**

substitute

**Schedule 1 Writing to inform insureds of
general nature and effect of
duty of disclosure**

(subregulation 3 (1))

**Part 1 Contracts of insurance (other than
contracts of life insurance within the
meaning of section 29 of the Act)**

Your duty of disclosure

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

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

Your duty, however, does not require disclosure of matter:

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

When the duty applies

The duty to disclose a matter applies until the proposed contract is entered into.

Non-disclosure

If you fail to comply with your duty of disclosure or make a misrepresentation to the insurer, the insurer may be entitled to reduce its liability under the contract in relation to a claim and/or may cancel the contract.

If the non-disclosure or misrepresentation is fraudulent, the insurer may also have the option of refusing to pay a claim and treating the contract as never having worked.

**Part 2 Contracts of life insurance (within the
 meaning of section 29 of the Act)****Your duty of disclosure**

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

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

Your duty, however, does not require disclosure of a matter:

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

Duty of disclosure by life insureds

If, under the contract, the life of someone else will be insured, that person has the same duty to disclose matters to the insurer as the person who enters into the contract.

The matters that must be disclosed by the other person are the ones explained above under the heading '**Your duty of disclosure**'.

If the other person fails to disclose a matter or makes a misrepresentation, this will be treated as if the person who entered into the contract failed to disclose a matter or made a misrepresentation.

When the duty applies

The duty to disclose a matter applies until the proposed contract is entered into.

Non-disclosure

If there is a failure to comply with the duty of disclosure or a misrepresentation is made (whether by you or by someone else whose life is insured under the contract), the insurer may be entitled to refuse to pay a claim and/or treat the contract as never having worked or to reduce its liability under the contract.

If the insurer would not have entered into the contract on any terms if the failure or misrepresentation had not occurred, the insurer may treat the contract as never having worked within 3 years of entering into it.

An insurer who is entitled to treat the contract as never having worked may, within 3 years of entering into the contract, choose not to treat it as never having worked but to reduce the sum insured in accordance with a formula that takes into account the premium that would have been payable if the failure or misrepresentation had not occurred.

If the failure or misrepresentation is fraudulent, the insurer may, at any time, treat the contract as never having worked.

Part 3 Certain eligible contracts of insurance

What you must tell us

When answering our questions, you must be honest. You have a duty under law to tell us anything known to you and which a reasonable person in the circumstances would include in answer to the question.

We will use the answers in deciding whether to insure you and anyone else to be insured under the policy, and on what terms.

When the duty applies

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

Who needs to tell us

It is important that you understand you are answering our questions in this way for yourself and anyone else whom you want to be covered by the policy.

If you do not tell us

If you do not answer our questions in this way, we may reduce or refuse to pay a claim, or cancel the policy. If you answer our questions fraudulently, we may refuse to pay a claim and treat the policy as never having worked.

**Schedule 2 Words to inform insureds
orally of general nature and
effect of duty of disclosure
under contracts of insurance**
(subregulation 3 (2))

I have to tell you about your duty of disclosure.

When answering our questions, you must be honest and tell us anything that you, and a reasonable person in the circumstances, would include in your answer.

It is important that you understand you are answering the questions for yourself and anyone else to whom the questions apply.

We may reduce or refuse to pay a claim and/or cancel the policy, if you have not answered our questions in this way.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.