



Insurance Contracts Amendment Regulations 2011 (No.)¹

Select Legislative Instrument 2011 No.

I, QUENTIN BRYCE, 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 2011

Governor-General

By Her Excellency's Command

[EXPOSURE DRAFT ONLY – NOT FOR SIGNATURE]

Minister for Financial Services and Superannuation

EXPOSURE DRAFT ONLY

1 Name of Regulations

These Regulations are the *Insurance Contracts Amendment Regulations 2011* (No.).

2 Commencement

These Regulations commence on **[TBA]**.

3 Amendment of *Insurance Contracts Regulations 1985*

Schedule 1 amends the *Insurance Contracts Regulations 1985*.

Schedule 1 Amendments

(regulation 3)

[1] Subparagraph 10 (a) (xi)

after

flood

insert

(within the meaning given by regulation 29D)

[2] Subparagraph 14 (a) (xi)

after

flood

insert

(within the meaning given by regulation 29D)

[3] After Division 7 of Part II

insert

Division 8 Flood insurance

29A Definitions for Division 8

In this Division:

strata title residence means a residence to which the following apply:

- (a) the portion of land on which the residence is located exists as the result of the subdivision of the title to a larger portion of land into separate titles for use for residential purposes;
- (b) property that is common between the residence and 1 or more other portions of land is managed by a single body corporate (however described);

Example

An 'owners corporation'.

- (c) the title to the portion of land on which the residence is located is regulated under the law of the State or Territory in which the land is located as a 'strata title', a 'community title' or another description that refers to the title being created as described in paragraphs (a) and (b).

29B Small businesses

- (1) This regulation explains whether a business is a *small business* for this Division.
- (2) If the business has operated in the last completed financial year, and its turnover in the last completed financial year is known, the business is a small business if:
 - (a) its turnover in the last completed financial year was less than \$1 000 000; or
 - (b) it has 5 or fewer employees.
- (3) If:
 - (a) the business did not operate in the last completed financial year; or
 - (b) the turnover of the business in the last completed financial year is unknown;the business is a small business only if it has 5 or fewer employees.

29C Prescribed contracts

For section 37A of the Act, the following classes of contracts of insurance are declared to be classes of contracts in relation to which Division 1A of Part V of the Act applies:

- (a) home building insurance contracts described in regulation 9;
- (b) home contents insurance contracts described in regulation 13;
- (c) insurance contracts that combine home building insurance and home contents insurance;

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- (d) contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a strata title residence;
 - (e) contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss caused to a small business.

Note Division 1A of Part V of the Act refers to these contracts as *prescribed contracts*.

29D Meaning of *flood* in prescribed contracts etc.

- (1) For paragraph 37B (2) (a) of the Act, the word ‘flood’ means the covering of normally dry land by water that has escaped or been released from the normal confines any of the following:
 - (a) a lake (whether or not it has been altered or modified);
 - (b) a river (whether or not it has been altered or modified);
 - (c) a creek (whether or not it has been altered or modified);
 - (d) another natural watercourse (whether or not it has been altered or modified);
 - (e) a reservoir;
 - (f) a canal;
 - (g) a dam.
- (2) For the purposes of entering into a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss caused to a business, if an insurer proposes to:
 - (a) use the word ‘flood’ in the contract; and
 - (b) give the word a meaning other than the meaning set out in subregulation (1);

the insurer must take reasonable steps to ensure that the contract is not a prescribed contract in respect of loss caused to a small business.

Note Under subsection 37B (3) of the Act, the meaning of ‘flood’ set out in subregulation (1) will apply in the prescribed contract even if the meaning of the word provided by the prescribed contract (or by a notice or other document or information given by the insurer in relation to the prescribed contract) is different from the meaning set out in subregulation (1).

Note

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