



# Insurance Regulations 2002

**Statutory Rules 2002 No. 103 as amended**

made under the

*Insurance Act 1973*

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Prepared by the Office of Legislative Drafting  
Attorney-General's Department, Canberra

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**Contents**

<b>Part 1</b>	<b>Preliminary</b>	
	1 Name of Regulations [see Note 1]	4
	2 Commencement	4
	3 <i>Insurance Regulations 1974</i> — repeal	4
	4 Definitions	4
<b>Part 2</b>	<b>Insurance contracts that are not insurance business</b>	
	4A Application of Part 2	6
	4B Insurance contracts for high-value insured	6
	4C Insurance contracts for atypical risks	7
	4D Insurance contracts for other risks that cannot reasonably be placed in Australia	8
	4E Insurance contracts required by foreign laws	9
<b>Part 3</b>	<b>Insurance business to which the Act does not apply</b>	
	5 Prescribed bodies corporate	10
	6 Prescribed insurance business	10
<b>Part 4</b>	<b>Notice of commencement and cessation of insurance business</b>	
	7 Notice of commencement and cessation of insurance business	11
<b>Part 4A</b>	<b>Financial claims scheme</b>	
	7A Definitions	12
	7B Policies that are not protected policies	12
	7C Entitlement to payment of claimant under protected policy — period for making claim	13
	7CA Entitlement to payment of third party — period for making claim	14
	7D Conditions of eligibility	15
	7E Conditions of eligibility — third parties	15
	7F Recovery of overpayments	16

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		Page
<b>Part 5</b>	<b>Inspection of Register and auditors' certificate</b>	
	8 Applications under section 123 of the Act	18
	9 Prescribed fee (Act s 123)	18
	10 Copies of documents to be provided by APRA	18
<b>Part 6</b>	<b>Transitional</b>	
	11 Application of prudential standards during transition period	19
<b>Schedule 1</b>	<b>Prescribed bodies corporate</b>	22
<b>Schedule 2</b>	<b>Prescribed insurance business</b>	23
<b>Notes</b>		25

**Regulation 1**

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**Part 1 Preliminary****1 Name of Regulations** [see Note 1]

These Regulations are the *Insurance Regulations 2002*.

**2 Commencement**

These Regulations commence on 1 July 2002.

**3 *Insurance Regulations 1974* — repeal**

The following Statutory Rules are repealed:

- 1974 No. 141
- 1976 Nos. 90, 126, 139 and 288
- 1977 No. 213
- 1980 No. 107
- 1981 No. 209
- 1985 No. 189
- 1987 No. 340
- 1990 No. 446
- 1992 No. 177
- 1994 No. 277
- 1995 No. 140
- 1996 Nos. 45 and 302
- 1997 Nos. 172, 224, 235 and 369
- 1998 Nos. 80 and 189
- 2001 No. 71.

**4 Definitions**

In these Regulations:

*Act* means the *Insurance Act 1973*.

**Regulation 4**

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*unauthorised foreign insurer* means an insurer:

- (a) that is either:
  - (i) a body corporate incorporated in a foreign country;  
or
  - (ii) an unincorporated body established under a law of a foreign country that:
    - (A) under that law, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose; and
    - (B) does not have its head office or principal place of business in Australia; and
- (b) that immediately before 1 July 2008:
  - (i) was not, and was not required to be, authorised under the Act to carry on insurance business in Australia; and
  - (ii) was not exempt from subsection 9 (1), 10 (1) or 10 (2) of the Act by a determination made under subsection 7 (1) of the Act; and
- (c) to which subsection 9 (1), 10 (1) or 10 (2) of the Act would apply if Part 2 did not apply to the insurer; and
- (d) that is not an entity specified in regulation 12.

**Regulation 4A**

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**Part 2 Insurance contracts that are not insurance business****4A Application of Part 2**

This Part applies to a contract of insurance for which the insurer is, or is proposed to be, an unauthorised foreign insurer.

**4B Insurance contracts for high-value insured**

- (1) For subsection 3A (1) of the Act, a contract of insurance under which at least 1 of the policyholders is a high-value insured is specified.
- (2) For subregulation (1) a policyholder is a *high-value insured* if the policyholder, alone or as part of a related group, meets the requirements of subregulation (3), (4) or (5).
- (3) A policyholder meets the requirements of this subregulation if the operating revenue of the policyholder derived in Australia for a financial year is at least \$200 million, worked out by averaging the amount of its operating revenue derived in Australia for each of the previous 3 financial years.
- (4) A policyholder meets the requirements of this subregulation if the value of its gross assets in Australia at the end of a financial year is at least \$200 million, worked out by averaging the value of those assets at the end of each of the previous 3 financial years.
- (5) A policyholder meets the requirements of this subregulation if the number of the employees of the policyholder in Australia at the end of a financial year is at least 500, worked out by averaging the number of its employees in Australia at the end of each of the previous 3 financial years.
- (6) If the policyholder was not in existence at the end of each of the previous 3 financial years, its revenue, assets and employees are worked out for the purposes of subregulations (3), (4) and (5) by reference to the most recent completed financial years in which it was in existence.

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**Regulation 4C**

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(7) For this regulation:

***policyholder*** means a person that has or proposes to have a contract of insurance with an unauthorised foreign insurer.

***related group*** means:

- (a) 2 or more associated entities (within the meaning given by section 50AAA of the *Corporations Act 2001*); or
- (b) a partnership.

#### **4C Insurance contracts for atypical risks**

(1) For subsection 3A (1) of the Act, a contract of insurance for an atypical risk is specified.

(2) For subregulation (1), a ***contract of insurance for an atypical risk*** is a contract of insurance under which any of the following is insured against:

- (a) loss or liability arising from the hazardous properties (including radioactive, toxic or explosive properties) of nuclear fuel, nuclear material or nuclear waste;
- (b) loss or liability arising from the hazardous properties of biological material or biological waste;
- (c) loss or liability arising from war or warlike activities (within the meaning given by subregulation 2 (1) of the *Insurance Contracts Regulations 1985*);
- (d) loss or liability arising from a terrorist act (within the meaning given by section 5 of the *Terrorism Insurance Act 2003*);
- (e) liability arising from health-care related research;
- (f) loss of, or liability arising from the operation of, a space object (within the meaning given by section 8 of the *Space Activities Act 1998*);
- (g) liability arising from the ownership or operation of an aircraft (but not loss of the aircraft or its cargo);
- (h) liability and expenses arising from a person owning, chartering, managing, operating or being in possession of a vessel other than a pleasure craft (within the meaning given by subsection 9A (2) of the *Insurance Contracts Act 1984*);

**Regulation 4D**

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- (i) loss or liability arising from equine mortality or fertility and related risks;
  - (j) loss or liability incidental to a loss or liability mentioned in paragraphs (a) to (i).
- (3) However, a contract of insurance under which:
- (a) a loss or liability mentioned in subregulation (2); and
  - (b) a loss or liability of 1 or more other kinds;
- are insured against is only a contract of insurance for an atypical risk to the extent that it insures against the loss or liability mentioned in subregulation (2).
- (4) Also, an equestrian package is not a contract of insurance for an atypical risk.

*Note* An equestrian package is an insurance policy that covers risks such as personal injuries and veterinary fees associated with the ownership or use of a horse and loss of or damage to saddlery, tack and horse floats.

**4D Insurance contracts for other risks that cannot reasonably be placed in Australia**

- (1) For subsection 3A (1) of the Act, a contract of insurance is specified if an Australian insurance broker certifies in writing that the risk insured under that contract cannot reasonably be placed with an Australian insurer.
- (2) In deciding whether the risk insured under that contract cannot reasonably be placed with an Australian insurer, the Australian insurance broker must be satisfied, on reasonable grounds, that:
- (a) there is no Australian insurer that will insure against the risk; or
  - (b) the terms (including price) on which any Australian insurer will insure against the risk are substantially less favourable to the insured than the terms on which the unauthorised foreign insurer will insure against the risk; or
  - (c) insurance with an Australian insurer would be substantially less favourable to the insured than with an unauthorised foreign insurer because of other circumstances.



**Regulation 4E**

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*Example for paragraph (c)*

The insured and the unauthorised foreign insurer have a pre-existing relationship, and the maintenance of that relationship will have significant benefits for the insured.

- (3) The Australian insurance broker must make reasonable inquiries about the matters mentioned in subregulation (2).
- (4) The Australian insurance broker must keep written records of:
  - (a) its inquiries into the matters mentioned in subregulation (2); and
  - (b) its reasons for being satisfied of those matters.
- (5) If requested by the insured, the Australian insurance broker must give a copy of the certificate under subregulation (1) to the insured.

*Note* Failure by an Australian insurance broker to properly discharge the obligations in this regulation may be a matter affecting the financial services licence of that broker. See generally Part 7.6 of the *Corporations Act 2001*.

- (6) In this regulation:

***Australian insurance broker*** means a person that holds an Australian financial services licence (within the meaning given by the *Corporations Act 2001*), and who is permitted under section 923B of that Act to assume or use the expression ***insurance broker*** or ***general insurance broker*** in relation to the person's business or services.

***Australian insurer*** means a person authorised or permitted under the Act (including by way of a determination under subsection 7 (1) of the Act) to carry on insurance business in Australia.

**4E Insurance contracts required by foreign laws**

For subsection 3A (1) of the Act, a contract of insurance is specified if a law of a foreign country requires that the contract be issued by an insurer, or a kind of insurer, authorised or permitted under the laws of that country to issue that kind of contract.

**Regulation 5**

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**Part 3 Insurance business to which  
the Act does not apply****5 Prescribed bodies corporate**

For paragraph 5 (2) (b) of the Act, the bodies corporate mentioned in Schedule 1 are prescribed.

**6 Prescribed insurance business**

For paragraph 5 (2) (c) of the Act, the insurance business mentioned in Schedule 2 is prescribed.

## **Part 4                      Notice of commencement and cessation of insurance business**

### **7                      Notice of commencement and cessation of insurance business**

- (1) A body corporate authorised under the Act to carry on insurance business in Australia must tell APRA, in writing, of the date on which it started to carry on the business within 7 days after that date.

Penalty: 5 penalty units.

- (2) A body corporate authorised under the Act to carry on insurance business in Australia must tell APRA, in writing, of the date on which it ceases to carry on the business within 7 days after that date.

Penalty: 5 penalty units.

**Regulation 7A**

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**Part 4A Financial claims scheme****7A Definitions**

In this Part:

*family trust* has the meaning given by section 272-75 of Schedule 2 to the *Income Tax Assessment Act 1936*.

*non-profit body* means a body that:

- (a) is not carried on for the purposes of profit or gain to its individual members; and
- (b) by its constitution, is prohibited from making any distributions in money, property or otherwise, to its members.

*small business entity* has the meaning given by section 328-110 of the *Income Tax Assessment Act 1997*.

**7B Policies that are not protected policies**

For the purposes of paragraph (a) of the definition of *protected policy* in subsection 3 (1) of the Act, the following policies are not protected policies:

- (a) a policy:
  - (i) that is required to be held under a law of a State or Territory; and
  - (ii) that is protected through arrangements administered by the State or Territory;
- (b) a policy that is a pre-authorisation liability of a foreign general insurer;
- (c) a policy that is a reinsurance or a retrocession of another policy;
- (d) a policy that is an indemnification of another policy.

## Regulation 7C

## 7C Entitlement to payment of claimant under protected policy — period for making claim

### *Start day*

- (1) For subparagraph 62ZZF (1) (b) (i) of the Act, the day on which the period mentioned in paragraph 62ZZF (1) (b) of the Act starts in relation to:
- (a) a person who is entitled to claim under insurance cover provided under a protected policy issued by a general insurer, as described in paragraph 62ZZF (1) (a) of the Act; and
  - (b) the general insurer;
- is specified in the following table.

Item	If ...	the day on which the period starts is ...
1	the person did not make a claim under the insurance cover before the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer	the day on which the Minister made the declaration
2	the person made a claim under the insurance cover before the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer	the day on which the person made the claim

### *End day*

- (2) For subparagraph 62ZZF (1) (b) (ii) of the Act, the day on which the period mentioned in paragraph 62ZZF (1) (b) of the Act ends is the day that occurs 12 months after the day on which the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer.

*Note* APRA may extend the period within which a claim may be made — see subsection 62ZZA (1) of the Act.

**Regulation 7CA**

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**7CA Entitlement to payment of third party — period for making claim***Start day*

- (1) For subparagraph 62ZZG (1) (aa) (i) of the Act, the day on which the period mentioned in paragraph 62ZZG (1) (aa) of the Act starts in relation to:
- (a) a person who is entitled to make a claim in relation to a recoverable amount, as described in paragraph 62ZZG (1) (a) of the Act; and
  - (b) the general insurer;
- is specified in the following table.

Item	If ...	the day on which the period starts is ...
1	the person did not make a claim in relation to the recoverable amount before the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer	the day on which the Minister made the declaration
2	the person made a claim in relation to the recoverable amount before the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer	the day on which the person made the claim

*End day*

- (2) For subparagraph 62ZZG (1) (aa) (ii) of the Act, the day on which the period mentioned in paragraph 62ZZG (1) (aa) of the Act ends is the day that occurs 12 months after the day on which the Minister made the declaration, under subsection 62ZZC (1) of the Act, that Division 3 of Part VC of the Act applies in relation to the general insurer.

*Note* APRA may extend the period within which a claim may be made — see subsection 62ZZA (1) of the Act.

**Regulation 7E**

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**7D Conditions of eligibility**

For the purposes of paragraph 62ZZF (3) (b) of the Act, the prescribed conditions are that the person is:

- (a) an Australian citizen within the meaning of section 4 of the *Australian Citizenship Act 2007*; or
- (b) a permanent resident within the meaning of section 5 of the *Australian Citizenship Act 2007*; or
- (c) an individual not mentioned in paragraph (a) or (b) who has insured against a risk that is located in Australia; or
- (d) a small business entity that has its central management and control located in Australia; or
- (e) a person that is entitled to claim under insurance cover provided in relation to a small business entity, being an entity that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual; or
- (f) a trustee of a family trust that has its central management and control located in Australia; or
- (g) a non-profit body that has its central management and control located in Australia; or
- (h) a person that is entitled to claim under insurance cover provided in relation to a non-profit body, being a body that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual.

**7E Conditions of eligibility – third parties**

For the purposes of paragraph 62ZZG (3) (b) of the Act, the prescribed conditions are that the person is:

- (a) an Australian citizen within the meaning of section 4 of the *Australian Citizenship Act 2007*; or
- (b) a permanent resident within the meaning of section 5 of the *Australian Citizenship Act 2007*; or

**Regulation 7F**

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- (c) an individual not mentioned in paragraph (a) or (b) who is entitled to claim under insurance cover in relation to a risk that is located in Australia; or
- (d) a small business entity that has its central management and control located in Australia; or
- (e) a person that is entitled to claim under insurance cover provided in relation to a small business entity, being an entity that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual; or
- (f) a trustee of a family trust that has its central management and control located in Australia; or
- (g) a non-profit body that has its central management and control located in Australia; or
- (h) a person that is entitled to claim under insurance cover provided in relation to a non-profit body, being a body that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual.

**7F Recovery of overpayments**

- (1) This regulation is made for section 62ZZS of the Act.
- (2) If an amount is paid to, or applied for the benefit of, a person purportedly to meet a claim of the person under Division 3 of Part VC of the Act and the amount is in excess of the person's entitlement (if any) under that Division, the excess amount is a debt due to APRA.
- (3) APRA may recover the amount of the debt:
  - (a) by bringing proceedings for recovery of the debt in a court of competent jurisdiction; or
  - (b) by withholding the amount of the debt from another payment that would otherwise be paid to the person under Division 3 of Part VC of the Act; or



**Regulation 7F**

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- (c) from any amount payable to the person upon the winding up of a declared general insurer that provided insurance cover to the person under a protected policy.
- (4) Nothing in this regulation is intended to limit the way in which APRA may recover the debt.
- (5) APRA may, if it considers it appropriate to do so in the particular circumstances of the case, waive the whole or a part of the debt.



## Part 6 Transitional

### 11 Application of prudential standards during transition period

- (1) For item 11 of Schedule 2 to the Reform Act, this regulation applies to a body corporate that, within 14 days before commencement:
  - (a) was authorised under the old Act to carry on insurance business; or
  - (b) had been granted an exemption under section 37 of the old Act.
- (2) APRA may, on application by the body corporate, make a declaration in accordance with this regulation that applies to the body corporate for a specified period (the *exemption period*) in the transition period.
- (3) APRA may make a declaration only if APRA is satisfied that the consequences of the body corporate being required to comply with the standard or provision in the exemption period would be unreasonable.
- (4) A prudential standard or a provision of a prudential standard specified by a declaration does not apply to the body corporate during the exemption period.
- (5) For subregulation (2), an application must:
  - (a) be in writing; and
  - (b) state:
    - (i) that it is made for this regulation; and
    - (ii) the standard or provision for which the application is made; and
    - (iii) the reasons for the application.
- (6) APRA may withdraw a declaration if it ceases to be satisfied about the matter mentioned in subregulation (3).

**Regulation 12**

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- (7) A declaration or a withdrawal of a declaration must:
- (a) be in writing; and
  - (b) be given to the body corporate.
- (8) In this regulation:
- commencement* has the same meaning as in item 1 of Schedule 2 to the Reform Act.
- old Act* has the same meaning as in item 1 of Schedule 2 to the Reform Act.
- Reform Act* means the *General Insurance Reform Act 2001*.
- transition period* has the same meaning as in item 1 of Schedule 2 to the Reform Act.

**12 Transitional arrangements for entities seeking authorisation**

- (1) For subitem 7 (1) of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*, the following entities are specified for the period specified in subregulation (2):
- (a) an entity that:
    - (i) is a body corporate; and
    - (ii) was carrying on insurance business before 1 July 2008; and
    - (iii) applied for an authorisation under subsection 12 (1) of the Act, and paid any fees associated with the application, before 1 July 2008;
  - (b) a body corporate that is an associated entity (within the meaning given by section 50AAA of the *Corporations Act 2001*) of an entity described in paragraph (a).
- (2) For subregulation (1), the period starts on 1 July 2008 and ends on the earliest of:
- (a) if APRA authorises the entity mentioned in paragraph (1) (a) — the start of the day on which authorisation takes effect; and

**Regulation 12**

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- (b) if APRA decides not to authorise the entity mentioned in paragraph (1) (a) — the start of the day on which APRA’s decision takes effect; and
  - (c) the end of 31 December 2008.
- (3) For subparagraph (1) (a) (ii), *insurance business* has the meaning given in subsection 3 (1) of the Act as in force on and after 1 July 2008.

## **Schedule 1      Prescribed bodies corporate**

(regulation 5)

1. The Export Finance and Insurance Corporation established by the *Export Finance and Insurance Corporation Act 1991*.
2. Coal Mines Insurance Pty Limited, a company incorporated in New South Wales.
3. The Motor Vehicle Insurance Trust constituted under the *Motor Vehicle (Third Party Insurance) Act 1943* of Western Australia.
4. A body, not being a company, established or constituted under a law of the Commonwealth or of a State or Territory that is required under a law of the Commonwealth or of a State or Territory to carry on any business of insurance or to undertake liability under a contract of insurance.

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## Schedule 2 Prescribed insurance business

(regulation 6)

1. Workers compensation insurance business carried on by a company that is:
  - (a) licensed under Division 3 of Part 7 of the *Workers Compensation Act 1987* of New South Wales; and
  - (b) required under that Act to establish and maintain statutory funds.
2. The carrying on by the Municipal Association of Tasmania of the business of fidelity guarantee insurance.
3. The carrying on by the Municipal Association of Victoria of the following kinds of insurance business:
  - (a) fidelity guarantee insurance;
  - (b) personal accident insurance.
4. Insurance business carried on by an unauthorised foreign insurer relating to a contract of insurance that meets the following criteria:
  - (a) the contract was entered into before 1 July 2008;
  - (b) the contract has not been renewed or extended beyond its original term on or after 1 July 2008;
  - (c) the terms of the contract have not been varied on or after 1 July 2008.
5. Insurance business:
  - (a) that is carried on by an unauthorised foreign insurer that is an entity specified in subregulation 12 (1); and
  - (b) that relates to a contract of insurance that meets the following criteria:
    - (i) the contract was entered into before the end of the period under subregulation 12 (2) relating to the insurer;

- (ii) the contract has not been renewed or extended beyond its original term after the end of that period;
- (iii) the terms of the contract have not been varied after the end of that period.



**Table of Statutory Rules****Notes to the *Insurance Regulations 2002*****Note 1**

The *Insurance Regulations 2002* (in force under the *Insurance Act 1973*) as shown in this compilation comprise Statutory Rules 2002 No. 103 amended as indicated in the Tables below.

**Table of Statutory Rules**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
2002 No. 103	23 May 2002	1 July 2002	
2002 No. 127	14 June 2002	1 July 2002	—
2008 No. 125	23 June 2008 (see F2008L02169)	1 July 2008	—
2008 No. 281	18 Dec 2008 (see F2008L04646)	Rr. 1–3 and Schedule 1: 1 July 2008 R. 4 and Schedule 2: 19 Dec 2008	—
2009 No. 297	29 Oct 2009 (see F2009L04055)	Rr. 1–3 and Schedule 1: 15 Oct 2009 R. 4 and Schedule 2: 30 Oct 2009	—
2010 No. 234	22 July 2010 (see F2010L02124)	27 July 2010 (see r. 2)	—
2011 No. 48	8 Apr 2011 (see F2011L00588)	9 Apr 2011	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
Heading to Part 1 .....	ad. 2008 No. 125
Heading to r. 4 .....	rs. 2008 No. 125
R. 4 .....	am. 2008 Nos. 125 and 281
<b>Part 2</b>	
Heading to Part 2 .....	ad. 2008 No. 125
R. 4A .....	ad. 2008 No. 125
R. 4B .....	ad. 2008 No. 125
R. 4C .....	ad. 2008 No. 125
R. 4D .....	ad. 2008 No. 125
R. 4E .....	ad. 2008 No. 125
<b>Part 3</b>	
Heading to Part 3 .....	ad. 2008 No. 125
<b>Part 4</b>	
Heading to Part 4 .....	ad. 2008 No. 125
R. 7 .....	rs. 2008 No. 125
<b>Part 4A</b>	
Part 4A .....	ad. 2008 No. 281
R. 7A .....	ad. 2008 No. 281
R. 7B .....	ad. 2008 No. 281 am. 2009 No. 297
Heading to r. 7C .....	rs. 2011 No. 48
R. 7C .....	ad. 2008 No. 281 rs. 2009 No. 297
R. 7CA .....	ad. 2011 No. 48
R. 7D .....	ad. 2008 No. 281
R. 7E .....	ad. 2008 No. 281
R. 7EA .....	ad. 2009 No. 297 rep. 2010 No. 234
R. 7F .....	ad. 2008 No. 281
<b>Part 5</b>	
Heading to Part 5 .....	ad. 2008 No. 125
<b>Part 6</b>	
Heading to Part 6 .....	ad. 2008 No. 125
R. 11 .....	ad. 2002 No. 127
R. 12 .....	ad. 2008 No. 125

**Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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**Provision affected**

**How affected**

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**Schedule 2**

Schedule 2..... am. 2008 No. 125

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