

# **Insurance Contracts Amendment Regulations 2000 (No. 1)**

## **2000 No. 118**

### EXPLANATORY STATEMENT

#### Statutory Rules 2000 No. 118

Issued by the authority of the Minister for Financial Services and Regulation

*Insurance Contracts Act 1984*

Insurance Contracts Amendment Regulations 2000 (No. 1)

Section 78 of the *Insurance Contracts Act 1984* (the Act) empowers the Governor-General to make **regulations not inconsistent** with the Act, prescribing matters which are required or permitted by the Act to be prescribed by regulations, or are necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Act.

Section 2 1 A of the Act provides that in respect of eligible contracts of insurance and before such a contract is entered into, an insurer must ask a prospective insured specific questions or seek disclosure regarding exceptional circumstances that are relevant to the insurer's decision whether to accept the risk and on what terms. By complying with section 2 1 A, the insurer is taken to have waived compliance with the duty of disclosure in relation to the matters about which the insurer has sought information. Failure to seek the information in the manner specified in the section means that the insurer is taken to have waived compliance with the duty of disclosure in relation to the contract.

Subsection 2 1 A(9) of the Act provides that "eligible contract of insurance" means a contract of insurance that is specified in the regulations.

Subsection 22(1) of the Act provides that an insurer, before entering a contract of insurance, must clearly inform the insured in writing of the general nature and effect of the duty of disclosure and, if section 2 1 A applies, clearly inform the insured in writing of the general nature and effect of section 21A.

Subsection 22(2) of the Act provides that if the regulations prescribe a form of writing to be used for the purposes of subsection 22(1), the writing to be used may be in accordance with the form so prescribed.

Section 53 of the Act provides that where a provision in an insurance contract (other than a class of insurance contracts declared in the regulations as a class to which section 53 does not apply) authorises or permits the insured to vary the contract to the prejudice of a person other than the insurer, the provision is void.

The purpose of the regulations is to amend the Insurance Contracts Regulations 1985 (the Principal Regulations) to:

- amend the definition of "eligible contracts of insurance";
- exempt export payments insurance contracts from the provisions of section 53 of the Act; and
- make minor technical amendments.

The Principal Regulations define "eligible contracts of insurance" for the purposes of section 2 1 A of the Act. A number of insurers and the Insurance Council of Australia asked that regulations

be drafted to re-define "eligible contracts of insurance". Their main concern was that the former subregulation 2B(b) of the definition extended the ambit of section 2 1 A beyond domestic lines of insurance to commercial lines.

The definition has been amended to confine its scope to domestic lines of insurance while allowing for its extension to other insurance contracts if and when an insurer, prior to entering a contract of insurance, gives the insured a section 2 1 A written or oral notice or otherwise a notice complying with subsection 22(1) and section 21A of the Act.

A technical amendment has also been made to subregulations 3(1) and 3(2) which does not alter the meaning of the relevant provisions but removes superfluous verbiage.

The regulations exempt export payments insurance contracts from the provisions of section 53 of the Act. Export payments insurance contracts provided by the Export Finance and Insurance Corporation (EFIC) and as defined by subsection 14(2) of the *Export Finance and Insurance Corporation Act 1991* fall within the scope of the Act. An essential feature of many export payments insurance contracts (such as those used by EFIC) is that they allow for the variation or withdrawal of credit limits by an insurer as a matter of course. As it would not be commercially feasible for an export payments insurer to forgo this feature, this class of insurance contract is exempted from the application of section 53 of the Act by declaring it as an exemption in the regulations.

Details of the regulations are in the attachment.

#### *Commencement*

The regulations commence as follows:

Regulations 1 to 3 and Schedule 1 -- on gazettal; and

Schedule 2 -- on the same day as Item 4 of Schedule 2 to the *Export Finance and Insurance Corporation Amendment Act 1999* (the Amendment Act). Item 4 of Schedule 2 is expressed in the Amendment Act to commence on a day to be fixed by Proclamation or, if not before .1 July 2000, on that day.

## **Attachment**

### **INSURANCE CONTRACTS AMENDMENT REGULATIONS 2000 (No.1)**

#### **Regulation 1: Name of Regulations -**

Regulation 1 provides that the name of the Regulations is the Insurance Contracts Amendment Regulations 2000 (No.

#### **Regulation 2: Commencement**

Regulation 2 provides that Regulations 1 to 3 and Schedule 1 commence on gazettal and Schedule 2 is to commence on the same day as Item 4 of Schedule 2 of the Export *Finance and Insurance Corporation Amendment Act 2000*.

#### **Regulation 3: Amendment of Insurance Contracts Regulations 1985**

Regulation 3 provides that Schedules 1 and 2 amend the Insurance Contracts Regulations 1985.

##### **Schedule 1: Amendments commencing on gazettal**

##### **Item 1: Regulation 211 Eligible contracts of insurance (Act s 21A(9))**

Item 1 of Schedule 1 substitutes a new Regulation 213 for the existing regulation. For the purposes of subsection 2 1 A(9), the definition of "eligible contract of insurance" is defined in the regulations. Subregulation 2B(1) provides a revised definition that an "eligible contract of insurance" is:

for new business; and

is wholly in a class of contracts declared to be a class of contracts to which Division 1 of Part V of the Act applies. These contracts are for domestic lines of insurance as follows:

- motor vehicle insurance;
- home buildings insurance;
- home contents insurance;
- sickness and accident insurance;
- consumer credit insurance; and
- travel insurance.

Subregulation 2B(2) enables an insurer to extend the meaning of "eligible contract of insurance" so that it includes a contract for new business in respect of which the insurer gives the insured:

- \* a section 2 1 A notice in accordance with the written notice in Part 3 of Schedule 1;
- \* the oral notice in Schedule 2; or
- \* a combined notice complying with subsection 22(1) and section 2 1 A of the Act.

This subregulation is intended to cater for insurers who find it more cost-efficient and administratively practicable to provide all insured with section 2 1 A notices or notices combining the required elements of section 2 1 A and subsection 22(1).

Regulation 2B as a whole confines the scope of the definition of "eligible contract of insurance" to new business contracts for certain domestic lines of insurance. The definition no longer applies to commercial lines of insurance. However, an insurer may extend the application of the definition by complying with the disclosure requirements of section 2 1 A either by itself or in combination with subsection 22(1) of the Act.

**Item 2: Paragraph 3(1)(a)**

Item 2 of Schedule 1 substitutes subregulation 3(1)(a) for subregulations 3(1)(a)(i) and 3(1)(a)(ii). Subregulation 3(1)(a) provides that the form of writing that may be used to inform an insured of the matters mentioned in subsection 22(1) of the Act, for the purposes of a contract of general insurance that is not an eligible contract of insurance, can be found in Part 1 of Schedule 1.

The former subregulation 3(1)(a)(ii) provided that section 22(1) applied to an "eligible contract of insurance that is entered into by renewing the contract". As the former subregulation 3(1)(a)(i) already provided that section 22(1) applied to "a contract of general insurance that is not an eligible contract of insurance" (namely, not a contract for new business, among other things) subparagraph (ii) was considered superfluous and has been omitted.

**Item 3: Paragraph 3(1)(c) and subregulation 3(2)**

Item 3 of Schedule 1 omits "(except a contract that is entered into by renewing the contract)" from subregulations 3(1)(c) and 3(2). The omitted words are superfluous because "eligible contract of insurance" is already defined as a contract for new business and therefore is understood not to be a contract of renewal.

**Schedule 2: Amendments commencing on the commencement of item 4 of Schedule 2 to the *Export Finance and Insurance Corporation Amendment Act 2000***

**Item 1: Paragraph 31(e)**

Regulation 31 of the Insurance Contracts Regulations 1985 contains the classes of contracts to which section 53 of the Act does not apply. Item 1 of Schedule 2 makes a grammatical, amendment to subregulation 3 1 (e) to provide for the insertion of subregulation 3 1 (f).

**Item 2: After paragraph 31(e)**

Subregulation 3 1 (f) adds export payments insurance contracts as defined by subsection 14(2) of the *Export Finance and Insurance Corporation Act 1991* to the list of classes of contracts under regulation 31 that are exempted from the operation of section 53 of the Act.

Subsection 14(2) of the *Export Finance and Insurance Corporation Act 1991* defines an export payments insurance contract as a contract of insurance against risk of direct or indirect monetary loss or other detriment resulting from failure to receive payment in connection with or otherwise arising out of acts or transactions in the course of, or for the purposes of, Australian export trade.

In such contracts, insurers are generally entitled to vary the terms or withdraw altogether, upon the giving of notice to the other party, on the happening of certain events including those connected with political risk, pre-shipment, diversion and exporting costs. These events go further than the "debt" referred to in subregulation 3 1 (e).

It is essential that insurers retain the flexibility to include variation or withdrawal clauses in export payments insurance contracts as it would not be commercially feasible to dispense with them.