

# **Insurance Contracts Amendment Regulations 2002 (No. 2)**

## **2002 No. 147**

### **EXPLANATORY STATEMENT**

#### **STATUTORY RULES 2002 No. 147**

Minute No of 2002 - Parliamentary Secretary to the Treasurer

Subject - *Insurance Contracts Act 1984*

Insurance Contracts Amendment Regulations 2002 (No. 2)

Section 78 of the Insurance Contracts Act (the Act) provides that the Governor-General may make regulations for the purposes of that Act.

Following the terrorist attacks in the United States on 11 September 2001, insurers withdrew their cover to the aviation sector for third party liability arising out of war and other perils (including terrorism). Currently only limited commercial insurance cover is available, and as a result the Commonwealth is providing "top up" indemnity cover so that the aviation industry can continue to operate.

From 1 July 2002 the Commonwealth will levy a fee for its indemnity. As a result, the Commonwealth's indemnity will become subject to the requirements of the Act.

Section 53 of the Act states that a clause in an insurance contract which permits the insurer to unilaterally amend its insurance policy during its life is void unless the insurance contract falls within a class of insurance contracts, specified in regulations, as not being subject to this section.

It is proposed that the Commonwealth indemnity will contain a variation clause, enabling it to decrease the level of the Government indemnity as the amount of available commercial cover increases. This variation clause will be void by virtue of section 53 of the Act, unless a regulation is made to exempt the Commonwealth indemnity from the application of this provision.

Regulation 31 of the Insurance Contracts Regulations 1985 sets out the classes of contracts which are excluded from the operation of section 53 of the IC Act.

The purpose of the Regulations is to amend the Insurance Contracts Regulations 1985 so that after the Government starts to levy a fee for indemnities to the aviation industry for third party liability arising out of war and other perils it will be able to vary the indemnities when the amount of commercial insurance cover increases.

The Government indemnity will be described in the regulation as those contracts of insurance under which the Commonwealth provides indemnities to airlines, airports and other aviation service providers for claims against them by third parties for property damage and/or bodily injury (other than to aircraft passengers and employees of the insured travelling as passengers in the course of their duties) arising as a consequence of:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, martial law, military law, military or usurped power or attempts at usurpation of power; or
- (b) strikes, riots, civil commotions or labour disturbances; or

(c) an act of one or more persons (whether or not as agent of a sovereign power) for political or terrorist purposes (whether the resulting loss or damage is accidental or intentional); or

(d) a malicious act or act of sabotage; or

(e) hi-jacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including an attempt at such seizure or control) made by any person acting without the consent of the insured; or

(f) confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition or use by or under the order of any government (civil, military or de facto) or public or local authority..

The Regulations commence on gazettal.

Authority: Section 78 of the *Insurance Contracts Act 1984*