

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 48

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

Insurance Act 1973

Insurance Legislation Amendment Regulations 2011 (No. 1)

Schedule 1 – Amendments to *Insurance Regulations 2002*

Section 132 of the *Insurance Act 1973* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010* (FSLA Act) amended section 62ZZG of the Act to insert a provision for the prescribing by regulations, of a period within which a third party must claim recoverable amounts under the Financial Claims Scheme (FCS).

Under the *Insurance Regulations 2002*, regulation 7C prescribes the period within which a claim has to be made in order to be covered by the FCS. Regulation 7C specifies a ‘start day’ and ‘end day’ for policyholders entitled under subsection 62ZZF(1)(b) of the Act. Currently under Regulation 7C, there is no period prescribed for the making of a third party claim under subsection 62ZZG(1).

The Regulation amends regulation 7C to include a ‘start day’ and ‘end day’ for the purposes of third parties claims under subsection 62ZZG(1)(aa).

Schedule 2 – Amendment of *Life Insurance Regulations 1995*

Section 253 of the *Life Insurance Act 1995* (the LI Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Regulation 4.01 of the *Life Insurance Regulations 1995* prescribes that for the purposes of subsection 38(4) the principal outstanding under unsecured borrowings must not exceed 50 per cent of the free assets of the fund.

The FSLA Act replaced the reference to ‘regulations’ in subsection 38(4) of the LI Act with a reference to ‘prudential standards’.

Subsection 38(4) of the LI Act formally provided that a life insurer must not borrow money, for the purposes of the business of a statutory fund, by means of an unsecured borrowing if the result would be that the total amount of principal outstanding under unsecured borrowings for the purposes of the fund would exceed an amount ascertained in accordance with the regulations.

Because its content is now dealt with in prudential standards, regulation 4.01 is now redundant.

The Regulation omits regulation 4.01 from the *Life Insurance Regulations 1995*.

Schedule 3 – Amendment of *Financial Sector (Collection of Data) Regulations 2008*

Section 30 of the *Financial Sector (Collection of Data) Act 2001* (FSCODA) provides, in part, that the Governor-General may make regulations prescribing all matters that are required or permitted by the FSCODA to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the FSCODA.

The *Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010* amended section 3 of the FSCODA to ensure that the Australian Prudential Regulation Authority (APRA) can collect data under the FSCODA to assist another financial sector agency to perform its functions, and to assist the Minister to formulate financial policy.

Under section 31 of the FSCODA, a financial sector agency is defined to mean: ASIC; the RBA; or a Commonwealth, State or Territory authority prescribed by the regulations.

The Regulation amends the *Financial Sector (Collection of Data) Regulations 2008* to prescribe the Australian Bureau of Statistics (ABS) to be a financial sector agency for the purpose of section 31. This will assist APRA's data collecting and sharing capabilities.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered.