



Insurance Contracts Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 116

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Insurance Contracts Act 1984*.

Dated 14 June 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL SHORTEN
Minister for Financial Services and Superannuation

1 Name of regulation

This regulation is the *Insurance Contracts Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Insurance Contracts Regulations 1985*

Schedule 1 amends the *Insurance Contracts Regulations 1985*.

Schedule 1 Amendments

(section 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 Definition 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 one 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; and

- (b) the total number of hours worked each week by the employees of the business is no more than 190 hours (whether or not the employees are employed on a full-time, part-time or casual basis).

Note 190 hours is the equivalent of 5 employees each working a 38 hour week.

(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 the number of hours worked each week by the employees of the business is no more than 190 hours (whether or not the employees are employed on a full-time, part-time or casual basis).

Note 190 hours is the equivalent of 5 employees each working a 38 hour week.

29C Prescribed contracts

- (1) 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;
 - (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 the loss of the equipment, stock, inventory or premises of a small business;

- (f) contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of damage to the equipment, stock, inventory or premises of a small business.

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

- (2) However, a contract is taken not to be in a class of contract mentioned in subregulation (1) if:
 - (a) the contract was arranged by an insurance broker, not being an insurance broker acting under a binder; and
 - (b) the contract was arranged in the course of the provision of financial advice by the broker or licensee.

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 of 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.

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).

- (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 business that would, at that time, be a small business.

Note The insurer is likely to rely on information provided by the insured to assess whether the business is a small business. The provision of false or misleading information is a serious matter.

- (3) Subregulation (2) does not apply to:

- (a) the making of an agreement to renew, extend or vary the contract; or
(b) the reinstatement of any previous contract of insurance.

Note See subsection 11 (9) of the Act.

[4] After Part III

insert

Part 4 Transitional arrangements

40 Purpose of Part 4

This Part makes transitional arrangements in relation to amendments of these Regulations.

41 Amendments made by *Insurance Contracts Amendment Regulation 2012 (No. 1)*

- (1) The amendments of these Regulations made by Schedule 1 to the *Insurance Contracts Amendment Regulation 2012 (No. 1)* do not apply for the period of 2 years commencing when this regulation commences.

Note Schedule 1 to the *Insurance Contracts Amendment Regulation 2012 (No. 1)* inserted Division 8 of Part II, which, among other things:

- (a) identifies certain contracts that provide insurance cover in respect of loss caused to a business; and
(b) deals with the use of the word ‘flood’ in those contracts; and
(c) explains whether a business is a small business.

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- (2) However, if, during that period, an insurer decides to rely on these Regulations, as amended by Schedule 1 to the *Insurance Contracts Amendment Regulation 2012 (No. 1)*, in relation to a contract that provides insurance cover, these Regulations, as amended by that Schedule, apply in relation to:
- (a) the insurer; and
 - (b) the contract.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.