

EXPLANATORY STATEMENT
Select Legislative Instrument 2012 No. 250

Issued by authority of the Minister for Financial Services and Superannuation

Insurance Contracts Act 1984

Insurance Contracts Amendment Regulation 2012 (No. 2)

Section 78 of the *Insurance Contracts Act 1984* (the Principal Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Insurance Contracts Amendment Act 2012* (the Amending Act) amended the Principal Act to provide a legislative framework to allow regulations to be established for the requirement for insurers to provide a prescribed one page key facts sheet for home building and home contents insurance contracts.

Section 33A of the Principal Act (as amended by the Amending Act), provides that regulation will declare the insurance contracts that are the prescribed contracts to which the Division applies.

Section 33B of the Principal Act (as amended by the Amending Act), provides that regulation will prescribe the information relating to the prescribed contract to which a key facts sheet is required and any other requirements to be compliant with the regulation in respect to the key facts sheet.

Section 33C of the Principal Act (as amended by the Amending Act), provides that regulation will, prescribe the circumstances and the manner in which an insurer must provide a key facts sheet and that regulations may prescribed circumstances which a key facts sheet may or must be provided by electronic means.

Section 33C of the Principal Act (as amended by the Amending Act) also provides that regulation may provide exceptions to the requirement to provide a key facts sheet in the circumstances and manner as prescribed by the regulation.

The purpose of the Regulation is to amend the Principal Regulations to require an insurer to provide a one page key facts sheet for home building and home contents insurance contracts, which includes particular content presented in a specified format and structure. The Regulation will provide consumers with easy access to key information in relation to home building and home contents insurance policies.

The key facts sheet will reduce consumer confusion regarding what is and is not included in insurance contracts and provide consumers with a mechanism to easily compare the key aspects of different insurance contracts.

In 2010-11 Queensland, New South Wales and Victoria experienced a number of severe flood events. These flood events coupled with other natural disasters including cyclone Yasi and the New Zealand earthquakes emphasised the important role the insurance industry plays in assisting individuals and communities return to normal after natural disasters. However, these natural disasters also highlighted the fact that many consumers lacked awareness regarding the content of their insurance policies and found it hard to access key information in relation to their insurance cover.

On 29 February 2012, following the introduction of Amending Act, the Government released the “Key Facts Sheet: Home Building and Home Contents Insurance Policies” discussion paper which sought stakeholder views on the format, content, structure and provision of the key facts sheet. A total of ten submissions were received in response to the discussion paper.

On 2, 3 and 4 May 2012, consumer testing of a prototype key facts sheet was undertaken. During the consumer testing process an alternate key facts sheet was developed and tested.

At the completion of the consultation process a final key facts sheet, which contained elements from both of the previous key facts sheets, was developed.

On 10 August 2012, the Government released an exposure draft Regulation outlining the content, format, structure and provision of key facts sheets for home building and home contents insurance policies.

A total of seven submissions were received from key stakeholders. As a result of the comments received, a number of minor refinements were made to the key facts sheet regulation.

Details of the Regulation are set out in the [Attachment](#).

The Principal Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence two years after it is registered. This delay will provide industry with sufficient time to ensure they can develop key facts sheets for all of their contracts to which the Regulation will apply.

Authority: Section 78 of the
Insurance Contracts Act 1984

ATTACHMENT

Details of the *Insurance Contracts Amendment Regulation 2012 (No. 2)*

Section 1 – Name of Regulation

This section will provide that the title of the Regulation is the *Insurance Contracts Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section will provide for the Regulation to commence two years after the day it is registered.

Section 3 – Amendment of *Insurance Contracts Regulations 1985*

This section will provide that the *Insurance Contracts Regulations 1985* (the Principal Regulations) will be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [5]

Item [5] will insert, after Regulation 4, Division 4 of Part 4, which relates to Key Facts Sheet's and inserts Regulation 4A *Application of this Division*, Regulation 4B *What is a Key Facts Sheet* and Regulation 4C *Insurer's obligation to provide Key Facts Sheet* of that Division.

Regulation 4A Application of this Division

Regulation 4A will prescribe the classes of contracts or potential classes of contracts of insurance to which Division 4 of Part IV will apply. These contracts or potential contracts will include:

- Home building insurance contracts - in accordance with regulation 9 of the Principal Regulations.
- Home contents insurance contracts - in accordance with regulation 9 of the Principal Regulations.

Regulation 9 provides that:

“The following class of contracts of insurance is declared to be a class of contracts in relation to which Division 1 of Part V of the Act applies, namely, 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 home building, where the insured or one of the insureds is a natural person.”

Regulation 13 provides that:

“The following class of contracts of insurance is declared to be a class of contracts in relation to which Division 1 of Part V of the Act applies, namely, contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of loss of or damage to the contents of a residential building where the insured or one of the insureds is a natural person, but does not include a contract that provides insurance cover only or primarily in respect of specified personal effects.”

Therefore, contracts that are the types of a contract to provide insurance cover (whether or not the cover is limited or restricted in any way) in respect to loss or damage to a home building or to the contents of a residential building will be subject to Division 4.

Regulation 4B What is a Key Facts Sheet

Regulation 4B of Division 4 will prescribe that the content, format and structure of the key facts sheet will be required to be consistent with Form 1 of Schedule 3, for home building insurance contracts, or Form 2 of Schedule 3, for home contents insurance contracts.

In addition to providing a key facts sheet consistent with Form 1 or Form 2 in Schedule 3, Regulation 4B will require the key facts sheet to be provided in an A4 size and be set out in Arial font.

The requirement to use Arial font throughout the document will provide consistency across all key facts sheets and will allow all of the required content to be effectively incorporated.

Particular font size will be required for each element of the key facts sheet and will be as follows:

- The heading of the key facts sheet, that is, the heading that starts with “KEY FACTS” will be required to be in size 18 font.

- The word “STEP” will be required to be in size 16 font.
- The number following the word “STEP” will be required to be in size 48 font.
- Footnotes are required to be in size 8 font.
- All other text will be required to be in size 10 font.

The requirement to provide certain text in the key facts sheet in a particular font size will provide consumers with a visual cue as to the purpose and intent of the different content throughout the key facts sheet.

Certain aspects of the key facts sheet will also be required to be set out in colour. Consistent with the requirement to provide certain text in the key facts sheet to be of a particular font size the requirement to incorporate colour into the key facts sheet (where possible) will provide consumers with a visual cue as to the importance of that information.

The colour requirements for the key facts sheet will be as follows:

- The headings, subheadings and policy name must be in blue type on a white background.
 - The top box in STEP 2, which includes the following information:
 - Event/Covers,
 - Yes/No/Optional; and
 - Some examples of specific conditions, exclusions and limits that apply to events/covers

must use white type on a blue background.
- The remaining boxes in STEP 2 are required to be black type on an alternating line by line white and light blue background.
- The box in STEP 3 must use white type on a blue background.
- All other type must be black on a white background.

In developing the key facts sheet insurers will be required to ensure that the incorporation of colour does not reduce the key facts sheet’s readability.

Regulation 4C Insurer’s obligation to provide Key Facts Sheet

Regulation 4C of Division 4 will require an insurer to provide a key facts sheet to a consumer for a contract to which this division applies at the following two points in time:

- when that consumer requests information about that contract; and

- when the consumer enters into the contract or potential contract (other than by an agreement to extend or vary the contract or a reinstatement of the contract).

The key facts sheet is required to be provided when a consumer requests information on a particular insurance contract to enable that consumer to easily access key information pertaining to that contract and compare the contract with similar contracts.

The consumer is also required to be provided with a key facts sheet before they enter into a contract. This additional requirement ensures that consumers are provided with a key facts sheet (where the consumer has directly entered into contract without asking for information) and ensures that the consumer has received the most recent version of the key facts sheet.

The requirement for the insurer to provide the key facts sheet in the above situations is dependent on whether an exemption to the requirement to provide a key facts sheet does or does not apply.

To ensure that a key facts sheet is not provided in situations where it would be inappropriate and ineffective to do so, the following exemptions will apply:

- an insurer will not be required to provide a key facts sheet to a person in respect to a class of contracts or a class of potential contracts to which Division 4 applies if:
 - The insurer has already provided the person with a key facts sheet at a previous time and the only difference is the date.
 - The insurer reasonably believes that the consumer has already been provided with a key facts sheet by another party and the only difference is the date.
 - The consumer informs the insurer that the consumer does not want the key facts sheet.
 - The consumer does not provide the insurer with the consumer's address (postal or electronic) to which the key facts sheet is to be sent.
 - The consumer seeks information on a contract from an insurance broker or the consumer enters into an insurance contract through an insurance broker acting as an agent of the consumer.

The provision of the key facts sheet will be required to take place as soon as reasonably practicable, but no later than 14 days after the key facts sheet is required to be provided.

The 14 day period for the provision of a key facts sheet is consistent with the current provision requirement in the *Insurance Contracts Act 1984* in respect to other disclosure documentation.

When an insurer is required to provide the consumer with a key facts sheet as a result of the consumer entering into a contract and it is not practicable to do so, the requirement to provide the key facts sheet as soon as reasonably practicable will be considered to be before or at the same time as the provision of other disclosure documentation such as the Product Disclosure Statement was provided (that is within 5 days).

The key facts sheet will be able to be provided by electronic means. This provides flexibility for both the insurer providing the key facts sheet and the consumer receiving it. For example an insurer may provide the key facts sheet via a link sent by email to the consumers email address, on a consumer request.

Insurers would, where possible, be required to provide access to the key facts sheet through their website. Where the insurer provides access to the key facts sheet through its website, the key facts sheet, will be required to be the most recent version and in a format which is able to be downloaded by a member of the public.

When demonstrating that the provision of a key facts sheet occurred, consideration will be given to:

- direct evidence of the provision, such as a copy of email correspondence and/or the recording of the email address provided by a consumer for the purpose of receiving a key facts sheet;
- the usual practices of the insurer in relation to the provision of key facts sheets, including information on the way the usual practices are monitored and enforced; and
- relevant training practices imposed on the staff of the insurer in relation to when a key facts sheet is required to be given to a consumer.

Items [1] – [4], Item [6] and Items [8]-[11]

Items [1]-[4] and Items [6]-[11] will amend the structure of the *Insurance Contracts Regulations 1985* to suitably incorporate the regulation.

Item [1] will provide that the heading Part I will be substituted with Part 1.

Item [2] will insert into subsection 2 (1) the terms home building insurance contracts and home contents insurance contract. In accordance with regulation 9 and 13 of the principal Regulations.

Item [3] will insert, after regulation 2A, Part 4 Disclosure and misrepresentations into the Principal Regulations and Division 1 of Part 4, which relates to an Insured's duty of disclosure.

Item [4] will insert, after Regulation 3, Division 3 of Part 4, which relates to Remedies for non-disclosure and misrepresentation by insureds.

Item [6] will provide that the heading Part II will be substituted with Part 5 The Contract – standard cover.

Item [8] will provide that the heading Part III will be substituted with Part 10 Miscellaneous.

Item [9] will provide that the heading Part 4 will be substituted with Part 11 Transitional arrangements.

Item [10] will provide that the section 40 heading will be substituted with 40 the purpose of this Part.

Item [11] will omit Part II from the note in sub regulation 41(1) and inserts Part 5.

Item [12]

Item [12] will insert, after Schedule 2, Schedule 3 Key Facts Sheets.

Schedule 3 Key Facts Sheets

Schedule 3 will provide two forms to be used when developing a key facts sheet for home building and home contents insurance policies. Form 1 will apply when a key facts sheet is developed in respect of a home building insurance contract. Form 2 will apply when a key facts sheet is developed in respect of a home contents insurance contract.

In developing key facts sheets for home building or home contents insurance policies, an insurer will be required to follow and comply with Form 1 or Form 2 in Schedule 3. In complying with Form 1 or Form 2 an insurer will be required to use

the format and structure of the relevant form including the standard wording provided in respect to each section of the key facts sheet and insert policy specific information where indicated.

General policy specific information

In both Form 1 and Form 2 an insurer will be required to:

- Insert the name of the policy.
 - If an insurer is providing the key facts sheet for a policy that contains a number of contracts, the name of the policy required to be inserted is the relevant section/part of the combined policy. For example, if the policy has six individual contracts of insurance that are listed as contracts A to F and the home contents insurance policy is contract D the insurer is required to insert contract D into the policy name section of the key facts sheet.
- The date of the preparation of the key facts sheet.
- The provider's or distributor's logo or brand.

Policy specific information in STEP 2

In STEP 2 of Form 1 and Form 2 in Schedule 3 an insurer will be required to:

- Include a description of the type of policy outlined in the key facts sheet in accordance with prescribed descriptions of types of cover as provided in STEP 3 of the KFS.
 - For example in respect to a sum insured policy the insurer is required to insert "you set the maximum level of cover and your payout is limited to that amount".
- In the table:
 - Insert whether the events/covers outlined in the table are covered, not covered or optional.
 - Insert an events/covers specific example of a condition, exclusion, or limit that applies to that particular event/cover contained in the first column of the table. The example is required to be a condition, exclusion or limit that is contained in the Product Disclosure Statement (PDS) of the contract to which the key facts sheet applies.
 - : For example: for the fire and explosion event/cover in the first column, an insurer may use as an example "not covered for damage caused by smoke or soot" as the example is specific to fire and explosion. An insurer will not however be able to use an example that is not specific to fire and explosion such as "an intentional act or omission by the insured is not covered".

- In addition to inserting the policy specific condition, exclusion or limit, in situations where the insurer inserts an exclusion, the insurer is required to preface that example with the words “not covered for”.
- Where the wording provided in respect to the events/covers in the first column of the table in STEP 2 is not consistent with the wording used in the policy’s PDS, an insurer is able to provide in the third column of STEP 2 an explanation of how the event/cover relates to the covered provided under the policy as outlined in the PDS.

When determining which condition, exclusion or limit should be inserted, insurers should give regard to:

- The type of policy to which the key facts sheet is being developed, and
- The potential detriment that may occur if a consumer was not aware of the condition, exclusion or limit.

Policy specific information in STEP 3

In STEP 3 of both Form 1 and Form 2 in Schedule 3 an insurer will be required to:

- Insert (when appropriate) a policy specific example of a limit that applies in relation to the policy for which the key facts sheet is being developed.
- Insert (when appropriate) a policy specific example of a common excess that applies to the policy to which the key facts sheet is being developed.
 - If no excesses apply to the contract of insurance, the insurer is not required to insert the second, third or fourth sentences and may add:

: However, under this policy no excesses apply.
- Insert the number of days provided for the cooling off period in respect to the policy to which the key facts sheet is being developed.
- Insert the amount of legal liability insurance cover provided in respect to the policy to which the key facts sheet is being developed.

Policy specific information in STEP 4

In STEP 4 of both Form 1 and Form 2 in Schedule 3 an insurer will be required to insert their contact information, or the contact information of the insurance representative.

General notes

As the key facts sheet is a prescribed document only the content as outlined in schedule 3 as clarified in this statement the general requirement for a company to set out its ACN and ABN in subsection of the 153(2) of the Corporations Act 2001 is not required.

Item [7]

Section 37A of the Principal Act, provides that regulation will declare contracts or classes of contracts to which the standard definition of flood will apply.

Regulation 29C(2) will provide that a contract will not be taken to be in the class of contracts as outlined in Regulation 29C(1) if the contract was arranged by an insurance broker who is acting as an agent of the insured.

This exemption has been provided on the recognition that as brokers provide insureds (consumers that have insurance cover under a contract of insurance) with tailored advice and ensure that insureds have access to all of the information required to make an effective decision.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Insurance Contracts Amendment Regulation 2012 (No. 2)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to require an insurer to provide a one page key facts sheet for home building and home contents insurance contracts, which includes particular content presented in a specified format and structure. The Regulation will provide consumers with easy access to key information in relation to home building and home contents insurance policies.

The key facts sheet will reduce consumer confusion regarding what is and is not included in insurance contracts and provide consumers with a mechanism to easily compare the key aspects of different insurance contracts

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.