

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Insurance Act 1973
Insurance Contracts Act 1984
Terrorism Insurance Act 2003

Insurance Contracts Regulations 2017
Insurance Contracts and Other Laws (Repeal and Consequential Amendments)
Regulations 2017

Section 132 of the *Insurance Act 1973*, section 78 of the *Insurance Contracts Act 1984* and section 43 of the *Terrorism Insurance Act 2003* provides that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of the *Insurance Contracts Regulations 2017* (the Regulations) is to remake and improve the *Insurance Regulations 1985* prior to their ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in the 1980s registered on the Federal Register of Legislation on 1 January 2005, such as the *Insurance Contracts Regulations 1985*, will be automatically repealed on 1 April 2018. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the *Insurance Contracts Regulations 1985*, by simplifying language and restructuring provisions for ease of navigation. The changes include:

- making language and formatting changes to reflect contextual changes and align with current drafting practices, such as referring to ‘sections’ rather than ‘regulations’;
- restructuring provisions and using more headings to improve readability;
- simplifying some definitions to improve clarity (for example ‘warlike activities’);
- removing redundant provisions that refer to periods of time that have passed; and
- providing appropriate transitional arrangements to allow a notice or a document given or made for the purposes of the *Insurance Contracts Regulations 1985* to continue to apply as intended once that instrument is repealed and replaced with the Regulations.

These changes do not alter the substantive meaning or operation of the provisions.

Further details of the Regulations are set out in the Attachment – Item A.

The purpose of the *Insurance Contracts and Other Laws (Repeal and Consequential Amendments Regulations) 2017* (the Consequential Regulations) is to support the Regulations by:

- updating the *Insurance Regulations 2002* to refer to the appropriate provisions in the Regulations instead of the *Insurance Contracts Regulations 1985*;
- updating the *Terrorism Insurance Regulations 2003* to refer to the appropriate provisions in the Regulations instead of the *Insurance Contracts Regulations 1985*; and
- repealing the *Insurance Contracts Regulations 1985* as it is being remade by the Regulations.

Further details of the Consequential Regulations are set out in the Attachment - Item C.

The Acts do not specify any conditions that need to be met before the power to make the Regulations and the Consequential Regulations are exercised.

Exposure drafts of the Regulations and the Consequential Regulations and accompanying explanatory materials were released for public consultation from 23 October 2017 to 10 November 2017. Four submissions were received during the consultation process. The submissions raised concerns in relation to changes in drafting for some provisions. The concerns have been addressed and are reflected in the Regulations. The submissions also raised a number of policy issues that were not within the scope of the sunset review. No changes were made to the Consequential Regulations.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's (OBPR) Guidance Note on sunset instruments, the Department of the Treasury self-assessed that the *Insurance Contracts Regulations 1985* were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft of the Regulations and Consequential Regulations. This assessment will be published by OBPR for transparency purposes (OBPR ID 22984).

The Regulations and the Consequential Regulations are legislative instruments for the purposes of the *Legislation Act 2003*.

The Regulations and Consequential Regulations both commence on 1 April 2018.

Statement of Compatibility with Human Rights

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

Insurance Contracts Regulations 2017

Insurance Contracts and Other Laws (Repeal and Consequential Amendments) Regulations 2017

The Legislative Instruments are 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 *Insurance Contracts Regulations 2017*

The Regulations remakes and improves the *Insurance Contracts Regulations 1985* by simplifying language and restructuring provisions for ease of navigation.

The key changes are:

- making language and formatting changes to reflect contextual changes and align with current drafting practices;
- restructuring provisions and using more headings to improve readability;
- simplifying some definitions to improve clarity;
- removing redundant provisions;
- providing appropriate transitional arrangements.

These changes are not intended to change the current operation of the equivalent provisions.

Overview of the *Insurance Contracts and Other Laws (Repeal and Consequential Amendments) Regulations 2017*

The *Insurance Contracts and Other Laws (Repeal and Consequential Amendments) Regulations 2017* (the ‘Consequential Regulations’) support the Regulations by:

- updating the *Insurance Regulations 2002* and *Terrorism Insurance Regulations 2003* to refer to the appropriate provisions in the Regulations rather than the *Insurance Contracts Regulations 1985*; and
- repealing the *Insurance Contracts Regulations 1985* as it is being remade by the Regulations.

These changes are not intended to change the current operation of the equivalent provisions.

Human rights implications

The Legislative Instruments do not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instruments are compatible with human rights as they do not raise any human rights issues.

ATTACHMENT – ITEM A

Details of the Insurance Contracts Regulations 2017

This Item sets out further details of the Regulations. All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Insurance Contracts Regulations 1985*, as identified by the Finding Table at Attachment – Item B.

Changes of a minor or machinery nature, such as updating section numbers, the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

Part 1 – Preliminary

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Insurance Contracts Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 April 2018.

Section 3 – Authority

This section provides that the Regulations are made under the *Insurance Contracts Act 1984* (the ‘Act’).

Sections 4 and 5 – Definitions

These sections contain defined terms used in the Regulations. Section 4 has been updated to simplify and provide greater clarity on terms like ‘home building’, ‘personal belongings’, ‘residential building’, and ‘warlike activities’. Section 4 also creates a separate definition for ‘residing family member’ instead of incorporating the meaning within other definitions.

Part 2 – Disclosures and misrepresentations

Division 1 – Insured’s duty of disclosure

Sections 6 to 9 (inclusive) replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B). The language used in these sections has been updated to reflect current drafting practices and more closely align with the relevant provision in the Act. A redundant provision that refers to past dates has also been removed.

Division 2 – Remedies for non-disclosure and misrepresentations by insured

Section 10 – Prescribed rate of interest

This section replicates the corresponding provision in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with a minor change to the title by removing the legislative reference, as it is already mentioned in the section, to simplify and improve readability of the section.

Division 3 – Key Facts Sheets

Sections 11 to 13 (inclusive) replicate the corresponding provision in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with some minor wording and structural changes to make the provisions clearer and to improve readability.

Part 3 – The contract

Division 1 – Standard cover

Section 14 – Purpose of Division

This section has been added to indicate that the overall purpose of the division is to prescribe the ‘minimum amount’, ‘prescribed contract’ and ‘prescribed event’ applicable as standard cover for various types of insurance contracts.

Sections 15 to 32

These sections replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with some minor wording and structural changes to make the provisions clearer and to improve readability.

Division 2 and 3

Sections 33 to 37 (inclusive) replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with some minor changes that are not intended to change its effect.

Part 4 – Claims

Sections 38 and 39 replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with some minor changes that are not intended to change its effect.

Part 5 – Transitional matters

Sections 40 and 41 provides for transitional arrangements to deal with the change from the *Insurance Contracts Regulations 1985* to these Regulations. Under the transitional rules if a notice or a document was given or made for the purposes of the

Insurance Contracts Regulations 1985, it will continue to apply as intended once that instrument is repealed and replaced with the Regulations.

Any document given to a person before 1 April 2018 that refers to a provision in the *Insurance Contracts Regulations 1985* is taken to be a reference to the corresponding provision in the Regulations.

Schedules 1 to 5

The disclosure statements, fact sheets and forms in these schedules replicate the corresponding provisions in the *Insurance Contracts Regulations 1985* (please refer to the Finding Table at Attachment – Item B), with some minor changes that are not intended to change their effect.

ATTACHMENT - ITEM B

Finding Table

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Insurance Contracts Regulations 1985*. References to the new law are to the *Insurance Contracts Regulations 2017*. Also, in the finding table, 'no equivalent' means that this is a new provision that has no equivalent in the old law.

| <i>Old Law</i> | <i>New Law</i> |
|---|---|
| <i>Insurance Contracts Regulations 1985</i> | <i>Insurance Contracts Regulations 2017</i> |
| 1 | 1 |
| no equivalent | 2 |
| no equivalent | 3 |
| 2 | 4 |
| 2A | 5 |
| 2B | 6 |
| 3 | 7 |
| 3A | 8 |
| 3B | 9 |
| 4 | 10 |
| 4A | 11 |
| 4B | 12 |
| 4C | 13 |
| no equivalent | 14 |
| 5 | 15 |
| 6 | 16 |
| 7 | 16 |
| 8 | 17 |
| 9 | 18 |
| 10 | 19 |
| 11 | 19 |
| 12 | 20 |
| 13 | 21 |
| 14 | 22 |
| 15 | 22 |
| 16 | 23 |
| 17 | 24 |
| 18 | 25 |
| 19 | 25 |
| 20 | 26 |
| 21 | 27 |
| 22 | 28 |
| 23 | 28 |

| <i>Old Law</i> | <i>New Law</i> |
|--|--|
| <i>Insurance Contracts Regulations 1985</i> | <i>Insurance Contracts Regulations 2017</i> |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 31 |
| 28 | 32 |
| 29 | This provision has been removed as it duplicates subsection 35(2) of the <i>Insurance Contracts Act 1984</i> |
| 29A | 33 |
| 29C | 33 |
| 29D | 34 |
| 29B | 35 |
| 30 | 36 |
| 31 | 37 |
| 32 | 38 |
| 33 | 39 |
| no equivalent | 40 |
| no equivalent | 41 |
| 40 | Transitional provisions have been removed as they are no longer required |
| 41 | Transitional provisions have been removed as they are no longer required |
| Schedule 1 (Writing to inform of duty of disclosure) | Schedule 1 (Writing to inform of duty of disclosure) |
| Schedule 1A (Writing to inform persons to be insured by others) | Schedule 2 (Writing to inform persons to be insured by others) |
| Schedule 1B (Writing to remind of duty of disclosure) | Schedule 3 (Writing to remind of duty of disclosure) |
| Schedule 2 (Words to inform of duty of disclosure for eligible contracts of insurance) | Schedule 4 (Words to inform of duty of disclosure for eligible contracts of insurance) |
| Schedule 3 (Key Facts Sheets) | Schedule 5 (Key Facts Sheets) |

ATTACHMENT - ITEM C

Details of the *Insurance Contracts and other Laws (Repeal and Consequential Amendments) Regulations 2017*

Section 1 – Name of Regulations

This section provides that the title of the Consequential Regulations is the *Insurance Contracts and other Laws (Repeal and Consequential Amendments) Regulations 2017*.

Section 2 – Commencement

This section provides that the Consequential Regulations commence at the same time as the *Insurance Contracts Regulations 2017* on 1 April 2018.

Section 3 – Authority

This section provides that the instrument is made under the *Insurance Act 1973*, *Insurance Contracts Act 1984* and the *Terrorism Insurance Act 2003*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Consequential Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other items in a Schedule to this instrument has effect according to its terms.

Schedule 1

Part 1 – Repeals

Section 1 repeals the *Insurance Contracts Regulations 1985* as it is being remade by the *Insurance Contracts Regulations 2017*.

Part 2 – Amendments

Sections 2 and 3 updates the *Insurance Regulations 2002* and the *Terrorism Insurance Regulations 2003* to refer to the appropriate provisions in the *Insurance Contracts Regulations 2017* rather than the *Insurance Contracts Regulations 1985*.