

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Corporations Act 2001

Insurance (Acquisitions and Takeovers) Act 1991

Insurance Act 1973

Life Insurance Act 1995

Terrorism and Cyclone Insurance Act 2003

Treasury Laws Amendment (Insurance) Regulations 2024

Section 1364 of the *Corporations Act 2001*, section 253 of the *Life Insurance Act 1995* and section 43 of the *Terrorism and Cyclone Insurance Act 2003* provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the respective Acts.

Section 82 of the *Insurance (Acquisitions and Takeovers) Act 1991* and section 132 of the *Insurance Act 1973* provide that the Governor-General may make regulations not inconsistent with the respective Acts, prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the respective Acts.

The *Corporations Act 2001* provides for the regulation of corporations and financial services providers, including in relation to insurance claims handling and settling, licensing, conduct and product disclosure.

The *Insurance (Acquisitions and Takeovers) Act 1991* establishes rules for the compulsory notification and screening of proposals in relation to the acquisition of interests in Australian-registered insurance companies.

The *Insurance Act 1973* provides for the regulation and prudential supervision of general insurance companies by the Australian Prudential Regulation Authority.

The *Life Insurance Act 1995* provides for the regulation and supervision of life insurance companies by the Australian Prudential Regulation Authority and the Australian Securities and Investment Commission.

The *Terrorism and Cyclone Insurance Act 2003* provides a framework for the Australian Reinsurance Pool Corporation to provide reinsurance cover to insurers in relation to terrorism risks and cyclone risks.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. The Attorney-General may defer sunseting in certain circumstances, pursuant to section 51 of the *Legislation Act 2003*. 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 *Legislation (Insurance Instruments) Sunset-altering Declaration 2018* aligned the sunset date for the *Insurance Regulations 2002*, *Insurance Acquisitions and Takeovers (Notices) Regulations 1992*, *Life Insurance Regulations 1995* and *Insurance Acquisitions and Takeovers Act 1991- Decision-Making Principles IDM 1/1992* (the Insurance Instruments) to 1 October 2023 to enable Treasury to conduct a comprehensive thematic review of regulation imposed on the insurance industry. Relevant provisions of the enabling Acts; that is, the *Insurance Act 1973*, *Insurance Acquisitions and Takeovers Act 1991* and *Life Insurance Act 1995*, were also considered as part of the review. The *Legislation (Deferral of Sunsetting—Insurance Instruments) Certificate 2023* further deferred the sunset date for the Insurance Instruments to 1 October 2024 to allow for the passage of the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*, which amended the enabling Acts to implement certain findings of the thematic review.

As part of the thematic review, Treasury found that the *Insurance Regulations 2002* and *Life Insurance Regulations 1995* are still required to support the operation of the Act, subject to the removal of redundant provisions and drafting improvements. Some provisions were also found to be more suitable for inclusion in the primary law. The *Treasury Laws Amendment (Insurance) Regulations 2024* (the Regulations) facilitate the transition to the *Insurance Regulations 2024* and *Life Insurance Regulations 2024* which implement these findings.

The purpose of the Regulations is to:

- repeal the sunseting *Insurance Regulations 2002*, *Insurance Acquisitions and Takeovers (Notices) Regulations 1992* and *Life Insurance Regulations 1995* and ensure a smooth transition to the new *Insurance Regulations 2024* and *Life Insurance Regulations 2024*, which commenced at the same time as the Regulations;
- make consequential amendments to the *Corporations Regulations 2001* to transition from the *Insurance Regulations 2002* to the *Insurance Regulations 2024*;
- make consequential amendments to the *Terrorism and Cyclone Insurance Regulations 2003* to support technical amendments to the *Terrorism and Cyclone Insurance Act 2003* made under the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*, and to transition from the *Insurance Regulations 2002* to the *Insurance Regulations 2024*.

An exposure draft of the Regulations and the accompanying explanatory materials were released for public consultation from 11 April to 26 April 2023.

The *Corporations Act 2001*, *Insurance (Acquisitions and Takeovers) Act 1991*, *Insurance Act 1973*, *Life Insurance Act 1995* and the *Terrorism and Cyclone Insurance Act 2003* do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

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

A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis (OIA) has been consulted (OIA ref: OIA23-04962) and agreed that an Impact Analysis is not required.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 March 2024.

Details of the Treasury Laws Amendment (Insurance) Regulations 2024

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Insurance) Regulations 2024* (the Regulations).

Section 2 – Commencement

The Regulations commence on 1 March 2024.

Section 3 – Authority

This section provides that the Regulations are made under the *Corporations Act 2001*, the *Insurance (Acquisitions and Takeovers) Act 1991*, the *Insurance Act 1973*, the *Life Insurance Act 1995* and the *Terrorism and Cyclone Insurance Act 2003*.

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Repeals

Item 1

Item 1 of Schedule 1 repeals the *Insurance Acquisitions and Takeovers (Notices) Regulations 1991*.

The *Insurance Acquisitions and Takeovers (Notices) Regulations 1991* prescribed the form of a notice and supporting documents that must accompany the notice. The Minister may now approve the manner and form of such a notice in writing under section 17A of the *Insurance Acquisitions and Takeovers Act 1991*, following amendments by the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*. This made the *Insurance Acquisitions and Takeovers (Notices) Regulations 1991* redundant and appropriate to be repealed.

Item 2

Item 2 of Schedule 1 repeals the *Insurance Regulations 2002* to facilitate the commencement of their replacement, the *Insurance Regulations 2024*.

Item 3

Item 3 of Schedule 1 repeals the *Life Insurance Regulations 1995* to facilitate the commencement of their replacement, the *Life Insurance Regulations 2024*.

Schedule 2 – Amendments

Amendments to the Corporations Regulations 2001

Item 1

Item 1 of Schedule 2 amends subregulation 1.0.02(1) of the *Corporations Regulations 2001* to insert a new definition of **unauthorised foreign insurer**. The definition provides that ‘unauthorised foreign insurer’ has the same meaning as in the *Insurance Regulations 2024*. This is inserted to replace the definition in regulation 7.6.08A which is being repealed as it relies on the *Insurance Regulations 2002*, a sunset instrument which was replaced by the *Insurance Regulations 2024* (see Item 3 of Schedule 2).

Item 2

Item 2 of Schedule 2 amends paragraph 7.6.01AAAB(b) of the *Corporations Regulations 2001* to remove the reference to the repealed *Insurance Regulations 2002*.

Item 3

Item 3 of Schedule 2 repeals the definition of unauthorised foreign insurer from regulation 7.6.08A of the *Corporations Regulations 2001*, as it relies on the repealed *Insurance Regulations 2002*. The definition of unauthorised foreign insurer will now be located in subregulation 1.0.02(1) (see Item 1 of Schedule 2).

Item 4

Item 4 of Schedule 2 amends the note to subregulation 7.6.08E(1) of the *Corporations Regulations 2001* to remove the word ‘2002’ and replace it with ‘2024’, so that the note correctly references the *Insurance Regulations 2024*.

Items 5 and 6

Items 5 and 6 of Schedule 2 amend paragraph 7.7.20A(1)(a) of the *Corporations Regulations 2001* to remove the reference to regulations 4C and 4D of the repealed *Insurance Regulations 2002* and replace it with references to the equivalent subparagraphs 8(2)(b)(ii) and (iii) of the *Insurance Regulations 2024*.

Item 7

Item 7 of Schedule 2 inserts a note to subregulation 7.7.20A(1) of the *Corporations Regulations 2001* which explains that subparagraphs 8(2)(b)(ii) and (iii) of the *Insurance Regulations 2024* apply in relation to insurance contracts for atypical risks and risks that cannot reasonably be placed in Australia.

Item 8

Item 8 of Schedule 2 repeals subregulation 7.7.20A(2) *Corporations Regulations 2001*. Subregulation 7.7.20A(2) relates to regulation 12 of the repealed *Insurance Regulations 2002* which sets out transitional arrangements for unauthorised foreign insurers, or an associated entity of an unauthorised foreign insurer, seeking authorisation from the Australian Prudential Regulation Authority before 1 July 2008. As the transitional time has passed, regulation 12 is now redundant and is not being remade in the *Insurance Regulations 2024*, and therefore subregulation 7.7.20A(2) can be repealed.

Item 9

Item 9 of Schedule 2 amends Form 701 of Schedule 2 to the *Corporations Regulations 2001* to remove the reference to the repealed *Insurance Regulations 2002* and replace it with the *Insurance Regulations 2024*.

Amendments to the *Terrorism and Cyclone Insurance Regulations 2003*

Item 10

Item 10 of Schedule 2 inserts regulation 3B into the *Terrorism and Cyclone Insurance Regulations 2003* to define ***unauthorised foreign insurer*** as having the same meaning as in the *Insurance Regulations 2024*. This definition is inserted for the purposes of section 3 of the *Terrorism and Cyclone Insurance Act 2003*, which was amended by the *Treasury Laws Amendment (Measures for Consultation) Act 2023* to provide that an unauthorised foreign insurer has the meaning prescribed by the *Terrorism and Cyclone Insurance Regulations 2023*, rather than the repealed *Insurance Regulations 2002*.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Insurance) Regulations 2024

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 *Treasury Laws Amendment (Insurance) Regulations 2024* (the Regulations) is to:

- repeal the sunseting *Insurance Regulations 2002*, *Insurance Acquisitions and Takeovers (Notices) Regulations 1992* and *Life Insurance Regulations 1995* and ensure a smooth transition to the new *Insurance Regulations 2024* and *Life Insurance Regulations 2024*, which commenced at the same time as the Regulations;
- make consequential amendments to the *Corporations Regulations 2001* to transition from the repealed *Insurance Regulations 2002* to the *Insurance Regulations 2024*;
- make consequential amendments to the *Terrorism and Cyclone Insurance Regulations 2003* to support technical amendments to the *Terrorism and Cyclone Insurance Act 2003* made under the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*, and to transition from the repealed *Insurance Regulations 2002* to the *Insurance Regulations 2024*.

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.