EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Competition, Charities and Treasury

Insurance Act 1973

Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Amendment Declaration 2024

Part VC of the *Insurance Act 1973* (the Act) establishes the Government's Financial Claims Scheme (FCS) Policyholder Compensation Facility (PCF) by setting out arrangements for assisting policyholders in the event a general insurer fails. Subsections 62ZZC(1) to (3) of the Act provide that the Minister may declare the PCF applies in relation to a general insurer and that the declaration must specify amounts to be appropriated from the Consolidated Fund Revenue (CRF) via amounts credited to the Financial Claims Scheme Special Account (FCSS Account) and Australian Prudential and Regulation Authority (APRA) Special Account (APRA Special Account) for specified purposes in connection with the declared general insurer. Subsection 62ZZC(4) of the Act provides that the Minister may amend a declaration made under subsection 62ZZC(1) to change the specified amounts credited to the FCSS Account and APRA Special Account.

By way of background, the FCS is a scheme that was established by the Government during the 2008 global financial crisis to provide protection for consumers in the unlikely event of a failure of a bank, credit union, building society or general insurer. As part of the FCS, the PCF facilitates the efficient management of a general insurance failure by covering claims of up to $5,000 from policyholders and claimants against general insurers in Australia, as well as providing protection for eligible claimants for claims above that.

The PCF can be activated by a Ministerial declaration and includes a standing appropriation to enable funds to be drawn from the CRF for up to $20 billion for payments to policyholders, via amounts credited to the FCSS Account, and $100 million for administration purposes, via amounts credited to the APRA Special Account. Once activated, APRA is responsible for administering the PCF and ensuring eligible claimants are paid the full amount of a claim for which the declared general insurer is liable. The claimant's rights in relation to the declared general insurer are assigned to APRA to allow APRA to recover the costs of operating the PCF, both in terms of the payouts to claimants and the administration costs, through the liquidation process. Amounts recovered by APRA are to be returned to the CRF.

In 2009, the PCF was activated to assist claimants following the liquidation of Australian Family Assurance Limited (ABN 78 003 044 862) (Austfam), a general insurer that was operating in Australia. An amount of $1,524,030, which was subsequently increased to $1,724,030, was specified to be credited to the FCSS Account to enable payments to be made to eligible claimants of Austfam, and an amount of $490,000 was specified to be credited to the APRA Special Account.

Since 2009, APRA has made payments with a combined total of $1,531,558.92 to eligible claimants from the FCSS Account in connection with Austfam, with the final payment being made in May 2021. Consequently, an amount of $192,471.08 remains credited to the FCSS Account. The APRA Special Account had a combined total of $490,000.00 debited to cover APRA's costs in connection with the administration of the matter and consequently has a balance of nil. On 10 July 2022, Austfam was deregistered as all affairs in relation to the liquidation had been finalised. Throughout the liquidation process, APRA received $777,806.48 in dividends from the appointed liquidator of Austfam, which APRA transferred to the CRF on 23 November 2023. APRA has advised that all claims in relation to Austfam have now been settled and there is no longer any intention to use the outstanding amounts credited to the FCSS Account in connection with Austfam.

The purpose of the *Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Amendment Declaration 2024* (the Instrument) is to amend the *Declaration that Division 3 of Part VC of the Insurance Act 1973 applies to AFA Pty Ltd* (the Principal Instrument) to decrease the amount specified to be credited to the FCSS Account in connection with Austfam to ensure the account has a balance of nil. The Instrument also makes minor and technical amendments to clarify the operation of certain provisions and ensure the Principal Instrument conforms with modern drafting practices.

By decreasing the amount specified to be credited to the FCSS Account and ensuring it has a balance of nil, the amendments made by the Instrument clarify, for accounting purposes, that no further money can be drawn from the CRF in connection with Austfam unless future amendments are made to the Principal Instrument. As the APRA Special Account has a balance of nil, no amendments to the Principal Instrument are required to reflect this.

Consultation on the Instrument was undertaken with APRA. Public consultation was not undertaken on the Instrument as it is minor and mechanical in nature.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. In accordance with subsection 44(2) of the *Legislation Act 2003*, the Instrument is not subject to disallowance (see subsection 62ZZC(6) of the Act). Further, the Instrument is not subject to sunsetting under the *Legislation Act 2003* (see item 34 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). This is on the grounds that a declaration or amendment made under section 62ZZC of the Act relates to providing certainty to eligible policy holders in the event that a general insurer fails and that disallowance or automatic sunsetting may create uncertainty or disrupt the conduct of insurance claims covered by the declaration or amendment.

The Instrument commenced on the day the Instrument was made. Subsection 62ZZC(7) of the Act provides that a declaration or amendment made under subsections 62ZZC(1) or (4) of the Act commences from the time it is made, despite subsection 12(1) of the *Legislation Act 2003* (which provides that a legislative instrument commences at the start of the day after the day the instrument is registered), and has effect according to its terms. This is on the grounds that a declaration or amendment made under subsections 62ZZC(1) or (4) is often needed promptly in response to a financial institution failure and from a need to ensure those with an entitlement to a claim are paid without delay.

Details of the Instrument are set out in <u>Attachment A.</u>

A statement of Compatibility with Human Rights is at <u>Attachment B.</u>

The Office of Impact Analysis has been (OIA) has been consulted (OIA24-07613) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

<u>ATTACHMENT A</u>

Details of the *Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Amendment Declaration 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Amendment Declaration 2024* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commenced on the day the instrument was made.

Section 3 – Authority

The Instrument was made under the *Insurance Act 1973* (the Act).

Section 4 – Schedule

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

Schedule 1—Amendments

Schedule 1 to the Instrument makes amendments to the *Declaration that Division 3 of Part VC of the Insurance Act 1973 applies to AFA Pty Ltd* (the Principal Instrument). Part VC of the Act establishes the Government's Financial Claims Scheme (FCS) Policyholder Compensation Facility (PCF) by setting out arrangements for assisting policyholders in the event a general insurer fails. The Principal Instrument declares that the PCF applies in relation to Australian Family Assurance Limited (ABN 78 003 044 862) (Austfam) and specifies amounts to be credited to the Financial Claims Scheme Special Account (FCSS Account) and Australian Prudential and Regulation Authority (APRA) Special Account (APRA Special Account) for that purpose.

Item 1

Item 1 inserts standard form sections, namely name, authority and definitions, to the Principal Instrument to align it with modern drafting practices and support its readability and operation:

- New section 1 provides the name of the Principal Instrument is the *Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Declaration 2009*. This updates the name of the Principal Instrument from the *Declaration that Division 3 of Part VC of the Insurance Act 1973 applies to AFA Pty Ltd* to reflect modern naming conventions for legislative instruments. To assist readers, an explanatory note is inserted to new section 1 to provide that the name of the Principal Instrument has been amended.

- New section 1A provides that the Principal Instrument is made under the *Insurance Act 1973*.
- New section 1B provides the general definitions used in the Principal Instrument. New section 1B includes two new definitions:
  - **ABN** has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*, which specifies ABN for an entity means the entity's ABN as shown in the Australian Business Register.
  - **the Act** means the *Insurance Act 1973*.
- To assist readers, an explanatory note is inserted to new section 1B to provide that, consistent with paragraph 13(1)(b) of the *Legislation Act 2003*, expressions have the sane meaning in the Principal Instrument as in the Act.

Item 1 also repeals section 2 and replaces it with new section 2 to provide that under subsection 62ZZC(1) of the Act, Division 3 of Part VC of the Act is declared to apply in relation to Austfam. This updates section 2 to ensure that it aligns with modern drafting practices by removing the first-person reference and using the correct tense.

<u>Items 2 and 3</u>

Item 2 amends section 3 of the Principal Instrument by reducing the amount specified to be credited to the FCSS Account from $1,724,030 to $1,531,558.92 in relation to the application of Division 3 of Part VC of the Act to Austfam. This reflects a reduction of $192,471.08 in the amount specified.

Since 2009, APRA has made payments with a combined total of $1,531,558.92 to eligible claimants from the FCSS Account in connection with Austfam, with the final payment being made in May 2021. Consequently, an amount of $192,471.08 remained credited to the FCSS Account.

Section 54D of the *Australian Prudential Regulation Authority Act 1998* (APRA Act) provides that where an amount specified to be credited to the FCSS Account is amended to reduce the amount, an amount equal to the reduction must be debited from the account. The effect of the reduction in the amount specified to be credited to the FCSS Account by $192,471.08 is that, consistent with section 54D of the APRA Act, the balance of the account is now nil. Therefore, no further money can be drawn from the Consolidated Revenue Fund (CRF) for the purposes of making payments to eligible claimants in connection with Austfam unless future amendments are made to the Principal Instrument to increase that balance. This reflects that all claims in relation to Austfam have now been settled and there is no longer any intention to use the outstanding amounts credited to the FCSS Account for further payments.

To assist readers, item 3 inserts an explanatory note to section 3 to explain the effect of reducing the amounts credited to the FCSS Account because of section 54D of the APRA Act.

Item 3 inserts a second explanatory note to section 3 to provide that section 3 was amended in 2024 to reduce the amounts credited to the FCSS Account. This refers readers to the amendment made by this Instrument to provide context on why the amount specified to be credited is $1,531,558.92.

Section 4 of the Principal Instruments specifies an amount of $490,000.00 to be credited to the APRA Special Account. No amendments are required to section 4 of the Principal Instrument to change the specification of amounts credited to the APRA Special Account as the account already has a balance of nil following debits of a combined total of $490,000.00 to cover APRA's costs in connection with the administration of Part VC of the Act in relation to Austfam. Consequently, no further money can be drawn from the CRF for the purposes of APRA's administration costs in connection with Austfam unless future amendments are made to the Principal Instrument to increase that balance.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Insurance (Financial Claims Scheme for General Insurers—Australian Family Assurance Limited) Amendment Declaration 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 legislative instrument amends the *Declaration that Division 3 of Part VC of the Insurance Act 1973 applies to AFA Pty Ltd* (the Principal Instrument) to decrease the amount to be appropriated from the Consolidated Fund Revenue (CRF) for the Financial Claims Scheme Special Account (FCSS Account) in connection with the application of Division 3 of Part VC of the *Insurance Act 1973* (the Act) in relation to Australian Family Assurance Limited (ABN 78 003 044 862) (Austfam). The Instrument also makes minor and technical amendments to clarify the operation of certain provisions and ensure the Principal Instrument conforms with modern drafting practices.

Part VC of the Act establishes the Government's Financial Claims Scheme (FCS) Policyholder Compensation Facility (PCF) by setting out arrangements for assisting policyholders in the event a general insurer fails. The FCS was established by the Government during the 2008 global financial crisis to provide protection for consumers in the unlikely event of a failure of a bank, credit union, building society or general insurer. As part of the FCS, the PCF facilitates the efficient management of a general insurance failure by covering claims of up to $5,000 from policyholders and claimants against general insurers in Australia, as well as providing protection for eligible claimants for claims above that.

The PCF can be activated by a Ministerial declaration and includes a standing appropriation to enable funds to be drawn from the CRF for up to $20 billion for payments to policyholders, via amounts credited to the FCSS Account, and $100 million for administration purposes, via amounts credited to the Australian Prudential and Regulation Authority (APRA) Special Account (APRA Special Account).

In 2009, the PCF was activated to assist claimants following the liquidation of Austfam, a general insurer that was operating in Australia. An amount of $1,524,030, which was subsequently increased to $1,724,030, was specified to be credited to the FCSS Account to enable payments to be made to eligible claimants of Austfam, and an amount of $490,000 was specified to be credited to the APRA Special Account to cover APRA's costs in connection with the administration of the matter.

Since 2009, APRA has made payments with a combined total of $1,531,558.92 to eligible claimants from the FCSS Account in connection with Austfam, leaving the account with an outstanding balance of $192,471.08. A combined total of $490,000.00 has been debited from the APRA Special Account to cover APRA's costs in connection with the administration of the matter, leaving the account with an outstanding balance of nil. On 10 July 2022, Austfam was deregistered as all affairs in relation to the liquidation had been finalised. APRA has advised that all claims in relation to Austfam have now been settled and there is no longer any intention to use the outstanding amounts credited to the FCSS Account in connection with Austfam.

By decreasing the amount specified to be credited to the FCSS Account to ensure the account has a balance of nil, the amendments made by the legislative instrument clarify, for accounting purposes, that no further money can be drawn from the CRF in connection with Austfam unless future amendments are made to the Principal Instrument to increase the amount. This reflects that all claims in relation to Austfam have now been settled and there is no longer any intention to use the outstanding amount credited to the FCSS Account for further payments. As the APRA Special Account has been depleted and already has a balance of nil, no amendments to the Principal Instrument are required to reflect this.

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.