

EXPOSURE DRAFT EXPLANATORY STATEMENT

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

Life Insurance Act 1995

Life Insurance Regulations 2023

Section 253 of the *Life Insurance Act 1995* (the 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 Act provides for the regulation of life insurance companies by the Australian Prudential Regulation Authority (APRA) and Australian Securities and Investments Commission (ASIC). The *Life Insurance Regulations 2023* (the Regulations) set out:

- a threshold for the term of a policy (i.e. an annuity) to be considered a life policy under the Act;
- provisions to facilitate foreign life insurance companies' operation of Australian branches, in accordance with treaties between Australia and the nations of such foreign companies;
- the administrative requirements associated with a company's application to Court for confirmation of a scheme for transfer or amalgamation of life insurance business (and requirements following that amalgamation.
- the maximum rate of interest which a company may apply to overdue premiums;
- mechanics relating to unclaimed money;
- the way in which the 'net claim value' of a policy should be calculated to determine whether a replacement policy exceeds the size that requires formal notification.

The purpose of the Regulations is to remake and improve the *Life Insurance Regulations 1995* (the 1995 Regulations) prior to the 1995 Regulations sunseting.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act.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 sunseting date for the 1995 Regulations, *Insurance Acquisitions and Takeovers*

(Notices) Regulations 1992, Insurance Regulations 2002 and Insurance Acquisitions and Takeovers Act 1991- Decision-Making Principles IDM 1/1992 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 Act, the *Insurance Acquisitions and Takeovers Act 1991* and the *Insurance Act 1973*, were also considered.

As part of the thematic review, Treasury found that the 1995 Regulations 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 Regulations implement these findings.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be satisfied.

Details of the Regulations are set out in Attachment A.

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

The Regulations commenced at the same time as Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023* and have effect from the date of commencement.

The 1995 Regulations are repealed by the *Treasury Laws Amendment (Insurance) Regulations 2023* which also commenced at the same time as Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023*.

The finding table in Attachment B represents the previous numbering of the 1995 Regulations and the updated numbering in the Regulations.

Details of the *Life Insurance Regulations 2023*

This attachment sets out further details of the *Life Insurance Regulations 2023* (the Regulations). All references are to the Regulations unless otherwise stated.

The Regulations improve the *Life Insurance Regulations 1995* (the 1995 Regulations) by removing redundant provisions, simplifying language and restructuring and renumbering provisions for ease of navigation. Several provisions have been moved into the Act due to their enduring nature and broad relevance.

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

Part 1—Preliminary

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Life Insurance Regulations 2023*.

Section 2 – Commencement

The Regulations commence at the same time as Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023*.

Section 3 – Authority

This section provides that the Regulations are made under the *Life Insurance Act 1995* (the Act).

Section 4 – Definitions

This section sets out the definitions for terms used in the Regulations. The note to this section directs the reader to a number of expressions used in the Regulations that are defined in the Act.

Part 2—Explanation of Key Concepts

Section 5 – Life Policy—minimum terms of annuities

The section remakes regulation 2.01 of the 1995 Regulations. It provides that, for the purposes of paragraph 9(1)(d) of the Act, the term of an annuity paid under a contract must exceed 10 years for that contract to constitute a life policy. This means that shorter duration annuities can be provided by both registered life companies and other providers. Where a life company wishes to issue term annuities for terms of up to 10 years, APRA must provide a declaration under section 12A of the Act that such short duration annuity business is life insurance business. Section 234 of the Act prohibits

life companies from carrying on any insurance business other than life insurance business.

Part 2B—Special provisions relating to Australian branches of foreign life insurance companies

Section 6 – Eligible foreign life insurance company

This section remakes regulation 2B.01 of the 1995 Regulations. It establishes the additional conditions necessary for a body corporate to be an eligible foreign life insurance company for the purposes of paragraph 16ZD(1)(e) of the Act. This provision of the Act allows foreign corporations that are authorised to conduct life insurance business in an overseas jurisdiction to apply for registration to operate in Australia as a branch. Section 6 of the Regulations designates the specific overseas jurisdictions to which this provision of the Act applies, in accordance with Australia's Treaty obligations.

Part 9—Transfers and Amalgamations of life insurance business

The intention of this Part is to provide greater detail on the administrative processes to be followed by a life company prior to undertaking a transfer or amalgamation of life insurance business. The essential purpose of the provisions is to ensure that policy owners affected by the proposed scheme for transfer or amalgamation, as well as the regulator, are given sufficient information and notice to properly evaluate it.

Regulation 9.02 of the 1995 Regulations requires an applicant to the Court for confirmation of a scheme to publish a notice of intention to make the application. A copy of the scheme must be open for public inspection. It is common to have a dispensation hearing before the confirmation hearing and dispense with the need for compliance with paragraph 191(2)(c) of the Act, that is, the need to give an approved summary of the scheme to every affected policy owner. Instead, policy owners may inspect the scheme as provided under regulation 9.02 of the 1995 Regulations. The provisions of regulation 9.02 have been simplified and moved to the Act by Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023* (see also under heading 'Regulations not being remade' below).

Section 7 – Application for confirmation of scheme

This section remakes regulation 9.03 of the 1995 Regulations. It establishes the requirements that must be fulfilled before an application is made to the Court for confirmation of a scheme for transfer or amalgamation. The requirement is that at least 15 days have passed since an approved summary of the scheme has been given to every policy holder as required by paragraph 191(2)(c) of the Act.

Subsection (2) provides that this section does not apply if the Court dispenses with the need for compliance with paragraph 191(2)(c) of the Act.

Section 191 of the Act was amended by the *Treasury Laws Amendment (Measures for Consultation) Act 2023* to insert new paragraph 191(2)(d) and new subsection 191(2F) which together require that an application for confirmation of a scheme may not be made unless a copy of the scheme has been published in a way that is

accessible to the public and reasonably prominent, for 15 days. All applications must comply with this requirement in relation to copies of the scheme in addition to complying with subsection 7(1) of the Regulations (unless subsection 191(5) of the Act applies and the need for compliance with paragraph 191(2)(c) of the Act is dispensed with).

Section 8 – Documents to be given to APRA

This section remakes regulation 9.04 of the 1995 Regulations. It prescribes the documents that must be provided to APRA by the company to which the business was transferred or amalgamated after the transfer or amalgamation has occurred. The documents required are intended to confirm that the transfer or amalgamation occurred in accordance with the scheme as amended by the Court.

Subsection 8(2) provides that the documents must be lodged within 30 days of the completion of the transfer or amalgamation. A company may, within the 30 day period, make written application for an extension of time under subsection (3). Subsection 8(4) provides for APRA to make a decision on an application for an extension of time within 14 days of receiving it and must give the company written notice of its decision.

Subsection 8(5) specifies that a decision made under subsection 8(4)(ii) is a reviewable decision for the purposes of section 236 of the Act.

Part 10—Provisions relating to policies

Section 9 – Interest on overdue premiums—prescribed terms

This section remakes regulation 10.05 of the 1995 Regulations. It prescribes the maximum rate of interest which a company may apply to an overdue premium on a life policy for the purposes of subsection 201(3) of the Act. The maximum interest rate is prescribed by a formula linked to the 10 year Commonwealth Government bond yield as published by the Reserve Bank of Australia and expressed as a percentage. The reference to the *10 year Treasury bond yield* in the former regulation has been updated to reflect the way this Australian government bond yield is currently referred to in Reserve Bank of Australia publications.

In line with current drafting practice, an alternative text has been included for images in the formula so the content of the images is accessible to anyone who relies on screen reading software to read the legislation. This alternative text is for assistance in readability only and does not form part of the Regulations because of the operation of subsection 13(3) of the *Acts Interpretation Act 1901*.

Section 10 – Unclaimed money—interest payable

This section remakes regulation 10.05AA of the 1995 Regulations. It sets out, for the purposes of paragraph 216(7A)(a) of the Act, the way in which interest is to be worked out in relation to unclaimed money paid to the Commonwealth by a life company under section 216 of the Act.

Subsections (3) and (4) provide that where the unclaimed money is paid in more than one payment, interest is to be determined separately for each payment. This prevents individuals from being either advantaged or disadvantaged by errors made by financial institutions.

Subsection (5) specifies the *interest period*; that is, the period over which interest is payable on the unclaimed money. Interest commences to be payable from either 1 July 2013 or the date the unclaimed money was paid to the Commonwealth, whichever is later. It ceases to be payable 14 days after payment of the unclaimed money was authorised.

The approach of having the interest period commence from the date the money was paid rather than the date it was legally required to be paid is necessary in the context of certain types of unclaimed money under the *Corporations Act 2001* which are not required to be paid by a fixed date.

It is not administratively feasible to vary amounts after payment has been authorised. For this reason, the period on which interest is payable is extended to 14 days after payment is authorised to reflect the anticipated time for the payments of these amounts.

Subsection (6) provides that the total amount of interest payable is to be worked out by adding together the amount of interest payable for each financial year wholly or partly within the interest period.

Subsection (7) provides the formula for calculating the interest payable in the financial year. Broadly, the amount of interest for a financial year will be the amount of unclaimed money (plus any interest payable in relation to prior financial years), multiplied by the interest rate and the number of days in the interest period in the financial year, then divided by the total number of days in the financial year.

Subsections (8) and (10) provide that the calculated interest rate is rounded up to the nearest multiple of 0.0001% and that the calculated amount in subsection (7) is rounded to the nearest cent.

In line with current drafting practice, an alternative text has been included for images in the formula in subsections (7) and (9) so the content of the images is accessible to anyone who relies on screen reading software to read the legislation. This alternative text is for assistance in readability only and does not form part of the Regulations because of the operation of subsection 13(3) of the *Acts Interpretation Act 1901*.

Subsections (8) and (10) provide that the calculated interest rate is rounded up to the nearest multiple of 0.0001% and that the calculated amount in subsection (7) is rounded to the nearest cent. Similarly, subsection (11) specifies that if the interest rate is below 0% it is rounded up to 0%.

Section 11 – Calculation of net claim value of policy

This section remakes regulation 10.06 of the 1995 Regulations while improving clarity. It provides for the calculation of the net claim value of a policy for the purposes of subsection 223(2) of the Act.

The section provides that the net claim value of a policy is determined as if a claim were being made against the policy. The amount of the net claim value is the amount to which the insured would have been entitled, with any debt deducted prior to payment.

Part 12—Application, transitional and saving provisions

Division 1—Provisions relating to this instrument as originally made

Section 12 – Application of section 7

This section clarifies that section 7 applies in relation to applications for confirmation of a scheme that are made after the commencement of the Regulations.

Section 13 – Application of section 8

This section clarifies that, despite the repeal of the 1995 Regulations, regulation 9.04 of the 1995 Regulations continues to apply to schemes for the transfer or amalgamation of life insurance business prior to the commencement of the Regulations. Subsection (2) clarifies that section 8 applies in relation to such schemes after the commencement of the Regulations.

This serves to ensure that there is no gap in continuity of the requirement to provide APRA with the relevant documentation in such cases.

Part 13—Dictionary

Section 14 – Definition of *allocated annuity policy*

This section defines the term *allocated annuity policy* for the purposes of Schedule 1 to the Act to mean a policy that provides an annuity paid, within a range of minimum and maximum payments, from an identifiable lump sum and arises under a contract that meets the standards of subsection 1.05(4) of the *Superannuation Industry (Supervision) Regulations 1994*.

Section 15 – Definition of *approved body*

This section provides that, for the definition of *approved body* in Schedule 1 to the Act, that term has the meaning given by Schedule 1 to the Regulations (which remakes Schedule 7 to the 1995 Regulations).

Section 16 – Definition of *derivative*

This section prescribes arrangements for the purposes of paragraph (d) of the definition of *derivative* in Schedule 1 to the Act.

The purpose of section 16 is to carve out from the definition of ‘derivative’ those arrangements that are not ‘eligible obligations’ under the *Payment Systems and Netting Regulations 2001*.

The note to the definition is intended to be a reminder that, while the term ‘derivative’ covers a variety of arrangements that financial markets might typically consider to be derivatives, not all are eligible obligations. The *Payment Systems and Netting Act 1998* provides for the enforcement of security over financial property given in respect of an eligible obligation, and subsection 6(2) of the *Payment Systems and Netting Regulations 2001* identifies those arrangements that are not eligible obligations (for example, credit facilities, repurchase agreements and sell-buyback arrangements).

Schedule 1

This Schedule remakes Schedule 7 of the 1995 Regulations. This Schedule provides a list of the relevant *approved bodies* for the purposes of the definition of approved bodies in Schedule 1 to the Act. As some of these bodies have ceased operation or

been renamed, this Schedule also updates the list so as to ensure that all relevant bodies are referred to correctly.

Regulations not being remade

Regulation 2A.01 and Schedule 5 to the 1995 Regulations provided for the modification of the Act in relation to friendly societies as set out in Schedule 5. These modifications have remained stable and have therefore been incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 2A.01 and Schedule 5 to the 1995 Regulations are redundant and were not remade.

Part 4 of the 1995 Regulations provided for the circumstances in which a life company may give a charge over an asset of a statutory fund including a charge over the assets for the purposes of engaging in derivatives transactions. Part 4 also provided for the circumstances in which a life company is prohibited from investing assets of a statutory fund in a subsidiary. The provisions of this Part (regulation 4.00 (Notice of establishment of statutory fund), regulation 4.00A (Charges over the assets of statutory funds: derivative contracts), regulation 4.00B (Charges over the assets of approved benefit funds) and regulation 4.01A (Prohibited investments) were considered to be more appropriate for inclusion in the Act and have been incorporated into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulations 4.00, 4.00A, 4.00B and 4.01A of the 1995 Regulations were not remade.

Regulation 9.01 of the 1995 Regulations specified that, for the purposes of paragraph 191(2)(a) of the Act, a copy of each actuarial report on which a scheme is based must be provided to APRA. Normally an actuarial report will be prepared by each of the transferring entity and the receiving entity. As this requirement clarified a provision in the Act to ensure that both reports were provided, it was incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 9.01 of the 1995 Regulations is redundant and was not remade.

Regulation 9.02 of the 1995 Regulations provided for the precise way a notice of intention to make an application for a scheme for the transfer and amalgamation of a life insurance business was to be made. The forms specified by regulation 9.02 were highly specific, but the purpose was to ensure that the relevant information was accessible to the public and reasonably prominent. This requirement has been simplified and incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 9.02 of the 1995 Regulations is redundant and was not remade.

Regulation 10.01 of the 1995 Regulations prescribed the specific form which a memorandum of transfer was required to take. This requirement has been replaced by a requirement that ASIC provide written approval for a given form of a memorandum of transfer. It was considered that it would be more appropriate for this new requirement to be incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 10.01 of the 1995 Regulations is redundant and was not remade.

Regulation 10.02 of the 1995 Regulations prescribed the specific form which a notice of change of trustee of a life policy was required to take. These requirements were simplified and incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 10.02 of the 1995 Regulations is redundant and was not remade.

Regulation 10.04 of the 1995 Regulations provided for how the Act applied to a class of life policies prescribed by Schedule 2 of the 1995 Regulations. Where such a life insurance policy is altered to increase the amount of the sum assured and each premium, Division 4 of Part 10 (surrender values, paid-up values and non-forfeiture provisions) is applied so as to treat the increase as if a new policy had been issued. Schedule 2 was incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently, regulation 10.04 and Schedule 2 of the 1995 Regulations are redundant and were not remade.

Regulation 10.05A of the 1995 Regulations provided for a number of requirements relating to the manner and form of statements under section 216 of the Act. The *Treasury Laws Amendment (Measures for Consultation) Act 2023* amended section 216 to include these requirements. Consequently, regulation 10.05A of the 1995 Regulations is redundant and was not remade.

Regulation 10.05B of the 1995 Regulations provided ASIC with authority to publish information relating to unclaimed moneys. It was considered more appropriate for the terms of this authority to be incorporated directly into the Act by the *Treasury Laws Amendment (Measures for Consultation) Act 2023*. Consequently regulation 10.05B of the 1995 Regulations is redundant and was not remade.

Regulation 11.01 of the 1995 Regulations provided for the fees payable to APRA for the inspection and copying of documents for the purposes of subsection 243(2) of the Act. As APRA advised that it does not make use of this provision, it was not remade.

Regulation 13.02 of the 1995 Regulations provided for certain kinds of life policies to be declared to be superannuation policies for the purposes of the definition of ‘superannuation policy’ in the Act. The kinds of policies listed in former regulation 13.02 have been stable and the list has not been amended since 1998. For this reason, the definition in the Act was amended by the *Treasury Laws Amendment (Measures for Consultation) Act 2023* to include the list. The power in the Act to prescribe additional kinds of policies has been retained. Consequently, regulation 13.02 of the 1995 Regulations is redundant and was not remade.

Regulation 14.01 of the 1995 Regulations provided for transitional arrangements relating to the *Financial System Legislation Amendment (Resilience and Collateral Protection) Regulation 2016*. As these transitional arrangements applied to provisions contained in Part 4 of the 1995 Regulations, and are no longer relevant, they were not remade.

Schedule 2 to the 1995 Regulations contained provisions that related to regulation 10.04 of the 1995 Regulations. As that provision has been incorporated into the Act, Schedule 2 to the 1995 Regulations is no longer relevant and was not remade.

FINDING TABLE—*Life Insurance Regulations 2023*

This Explanatory Statement includes a finding table to assist in identifying which provision in the *Life Insurance Regulations 2023* correspond to a provision in the *Life Insurance Regulations 1995* that has been rewritten or consolidated, and vice versa.

In the finding table:

- **No equivalent** means that this is a new provision in the *Life Insurance Regulations 2023* that has no equivalent in the *Life Insurance Regulations 1995*. These are typically guide material.
- **Omitted** means that the provision of the *Life Insurance Regulations 1995* has not been rewritten into the *Life Insurance Regulations 2023*. Omitted provisions are redundant or have been moved to the *Life Insurance Act 1995*.

<i>Old Law</i>	<i>New Law</i>
<i>Life Insurance Regulations 1995</i>	<i>Life Insurance Regulations 2023</i>
1	1
No equivalent	2
No equivalent	3
1.03	4
2.01	5
2A.01	Omitted
2B.01	6
4.00	Omitted
4.00A	Omitted
4.00A definition of <i>approved body</i>	15
4.00A definition of <i>derivative</i>	16
4.00B	Omitted
4.01A	Omitted
9.01	Omitted
9.02	Omitted

9.03	7
9.04	8
10.01	Omitted
10.02	Omitted
10.04	Omitted
10.05	9
10.05A	Omitted
10.05AA	10
10.05B	Omitted
10.06	11
11.01	Omitted
No equivalent	12
No equivalent	13
No equivalent	14
13.02	Omitted
14.01	Omitted
Schedule 2	Omitted
Schedule 4	Omitted
Schedule 5	Omitted
Schedule 7	Schedule 1