

## **EXPOSURE DRAFT 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 2023*

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 purpose of the *Treasury Laws Amendment (Insurance) Regulations 2023* (the Regulations) is to:

- repeal the sunsetting *Insurance Acquisitions and Takeovers (Notices) Regulations 1992*, *Insurance Regulations 2002* and *Life Insurance Regulations 1995* concurrent to the commencement of the new insurance framework, including the *Insurance Regulations 2023* and *Life Insurance Regulations 2023*;
- make consequential amendments to the *Corporations Regulations 2001* to transition from the *Insurance Regulations 2002* to the *Insurance Regulations 2023*;
- make consequential amendments to the *Terrorism and Cyclone Insurance Regulations 2003* to support amendments to the *Terrorism and Cyclone Insurance Act 2003* made pursuant to Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023*, required to transition from the *Insurance Regulations 2002* to the *Insurance Regulations 2023*.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable in section 50 of that Act. The Attorney-General may defer sunsetting 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 sunsetting 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* 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. The Regulations implement relevant findings of the thematic review by repealing redundant regulations and making consequential amendment necessary to transition to the new framework of insurance instruments replacing those due to sunset.

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](#).

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.

**Details of the Treasury Laws Amendment (Insurance) Regulations 2023**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Insurance) Regulations 2023* (the Regulations).

**Section 2 – Commencement**

This section provides that 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 *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*. This ensures that the *Insurance Acquisitions and Takeovers (Notices) Regulations 1991* are repealed and are no longer in force.

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 (Measures for Consultation) 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*. This ensures that the *Insurance Regulations 2002* are repealed and are no longer in force, to allow for the commencement of their replacement, the *Insurance Regulations 2023*.

**Item 3**

Item 3 of Schedule 1 repeals the *Life Insurance Regulations 1995*. This ensures that the *Life Insurance Regulations 1995* are repealed and are no longer in force, to allow for the commencement of their replacement, the *Life Insurance Regulations 2023*.

## **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 the same as in the *Insurance Regulations 2023*. 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 2023* (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 *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 *Insurance Regulations 2002*, a sunset instrument which was replaced by the *Insurance Regulations 2023*. 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 ‘2023’, so that the note correctly references the *Insurance Regulations 2023*.

#### 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 *Insurance Regulations 2002* and replace it with references to the equivalent subparagraphs 8(2)(b)(ii) and (iii) of the *Insurance Regulations 2023*.

#### Item 7

Item 7 of Schedule 2 inserts a note into subregulation 7.7.20A(1) of the *Corporations Regulations 2001* which explains that subparagraphs 8(2)(b)(ii) and (iii) of the *Insurance Regulations 2023* 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 *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 2023*, and therefore subregulation 7.7.20A(2) can be repealed.

#### Item 9

Item 9 of Schedule 2 amends Form 701 of Schedule 2 of the *Corporations Regulations 2001* to remove the reference to the *Insurance Regulations 2002* and replace it with the *Insurance Regulations 2023*.

#### 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 2023*. 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*.