

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 342**

#### **Issued by authority of the Minister for Revenue and Assistant Treasurer**

*Life Insurance Act 1995*

*Life Insurance Amendment Regulations 2007 (No. 1)*

Section 253(1) of the *Life Insurance Act 1995* (the Life 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 Life Act provides for the prudent management of life companies. The Life Regulations are the core regulations considered essential to the operation of the Life Act.

The purpose of the amendments to the Life Regulations is to support amendments being made by the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* (the Amendment Act). The Amendment Act implements a range of measures to streamline and simplify prudential regulation in the prudential Acts (*Banking Act 1959*, *Insurance Act 1973*, Life Act and *Superannuation Industry (Supervision) Act 1993*) and other associated legislation.

The amendments to regulations are put in place now to ensure that amendments made by the Amendment Act operate as intended. The practical effect of changes is to support the measures in the Amendment Act. Life companies will be affected by the changes.

Details of the amendments to the Regulations are set out in the **Attachment**.

The Life Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Minute recommends that the amendments to the Regulations be made in the approved form proposed.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Amendments to the Regulations in Schedule 2 which relate to prudential standards replacing actuarial standards and prudential standards replacing prudential regulation commence from 1 January 2008. All other amendments to Life Regulations which are in Schedule 1 commence from the date the Amendment Act receives Royal Assent.

No consultation was undertaken in relation to amendments to the Regulations as the changes are minor in nature and consequential as a result of the Amendment Act.

## ATTACHMENT

### **Details of the *Life Insurance Amendment Regulations 2007 (No. 1)***

**Regulation 1** specifies the name of the Regulations as the *Life Insurance Amendment Regulations 2007 (No. 1)*.

**Regulation 2** provides that regulations 1 to 3 and Schedule 1 commence on commencement of the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* (the Amendment Act) and Schedule 2 commences on 1 January 2008.

**Regulation 3** provides that Schedules 1 and 2 amend the *Life Insurance Regulations 1995*.

### **Schedule 1 Amendments**

#### **Items 1, 2 and 4**

*The Life Insurance Act 1995* (Life Act) and Life Insurance Regulations 1995 (Life Regulations) currently contain detailed and prescriptive requirements in relation to the registration of life insurers. The Amendment Act repeals section 20 of the Life Act which requires an application for registration to be made in accordance with the Life Regulations. In order to provide a more flexible approach, these requirements will be provided under APRA's non binding prudential practice guides or under binding prescribed forms.

Item 1 repeals regulations 2A.02 and 2A.03, relating to section 20 of the Life Act, because that section is being repealed by the Amendment Act.

Item 2 repeals Part 3 of the Life Regulations, relating to sections 20 and 25, because these sections are being repealed by the Amendment Act.

Item 4 repeals Schedule 1 to the Life Regulations as it relates to section 20 which is repealed by the Amendment Act and sub-regulation 3.01, which is repealed by item 2.

#### **Items 3 and 5**

The Life Act replaced the *Life Insurance Act 1945*. When the Life Act was written, various transitional arrangements were inserted into it to ensure a smooth transition from the previous Act. These transitional arrangements are currently located in Part 12 of the Life Act and most are now obsolete. Measures in the Amendment Act repeal obsolete sections 256 to 263 of the Life Act and, as a result, amendments are required to the Life Regulations to reflect these changes.

Item 3 repeals Part 12 of the Life Regulations as it relates to section 261 of the Life Act which is being repealed. Item 5 repeals Schedule 3 to the Life Regulations as it relates to Part 12, which is repealed by item 3.

## **Item 6, 7 and 8**

Section 16ZC of the Life Act allows the Life Regulations to modify the Life Act and insert new sections in certain circumstances. The Amendment Act creates new sections or subsections with the same number as a sections or subsections that had already been created under the Life Regulations. Therefore, it is necessary to renumber the sections created in the Life Regulations so they do not overlap with the sections created in the Amendment Act.

Item 6 amends Schedule 6, Item 4 of the Life Regulations to renumber section 133A as section 133B. Item 7 amends Schedule 6, Item 13 of the Life Regulations to renumber section 156A as section 156G. Item 8 amends Schedule 6, Item 45 of the Life Regulations to renumber subsection 230(5A) as subsection 230A(5B).

## **Schedule 2 Amendments**

### **Items 1, 4, 6, 7 and 8**

The Life Act provides that APRA may determine standards on prudential matters for life companies under section 230A, but grants actuarial standards making powers to the Life Insurance Actuarial Standards Board (LIASB) under section 101.

As APRA has developed its own capacity to determine standards dealing with actuarial matters, amendments in the Amendment Act abolish the LIASB and remove the concept of actuarial standards from the Life Act from 1 January 2008.

The Amendment Act repeals Part 5 of the Life Act which deals with solvency and capital standards. Matters previously dealt with under Part 5 will now be dealt with under APRA's prudential standards making power in section 230A of the Life Act. As a result, the Life Regulations require updating to ensure referencing and numbering remains correct.

Item 1 amends the definition of "free assets" in regulation 4.01, Part 4 of the Life Regulations by removing "of Division 2 of Part 5 of the Act" and replacing it with "of the prudential standards".

Item 4 substitutes a new definition of "relevant actuarial standard" in Schedule 2 to the Life Regulations to reflect that relevant actuarial standards are prudential standards made by APRA.

Item 6 repeals items 11 to 13 of Schedule 5, as subsections 68(8), 73(8) and 73F(9) referred to in those respective items are being repealed by the Amendment Act.

Item 7 removes 'the solvency standard' in item 17 of Schedule 6, sub-paragraph 159(a)(ii)(A) and replaces it with 'the prudential standards in relating to solvency made by APRA under section 230A of the Act' to reflect that solvency standards are being replaced by prudential standards relating to solvency.

Item 8 removes 'section 68' in item 17, Schedule 6, sub-paragraph 159(a)(ii)(B) and replaces it with 'section 230B in relation to solvency', to reflect that a direction relating to solvency standards is being replaced with a direction under section 230B.

**Item 2**

The Amendment Act replaces prudential regulations with prudential standards to remove prescriptive declarations made under prudential regulations and to enable APRA to set more flexible requirements under prudential standards. As a result, amendments are required to the Life Regulations to ensure that requirements which will be dealt with in prudential standards are removed from the regulations.

Item 2 repeals regulation 4.01B from the Life Regulations as the requirements contained in this regulation would be dealt with in prudential standards.

**Items 3, 5 and 6**

Current requirements in the Life Act with respect to actuaries will be replaced by the Amendment Act which introduces principles based requirements that focus on the functions and duties of actuaries. Where detailed requirements are necessary, they are more appropriately addressed through prudential standards or non-binding prudential practice guides. The Amendment Act repeals Divisions 5 and 6 of Part 6 of the Life Act and as a result, the Life Regulations require updating to ensure referencing and numbering remains correct.

Item 3 repeals Part 6 of the Life Regulations, as it relates to section 120 of the Life Act which is repealed by the Amendment Act.

Item 5 repeals Form 1 of Schedule 4 to the Life Regulations as it relates to sub-regulation 6.01 which is being repealed by item 3.

Item 6 repeals items 18 to 21 of Schedule 5 to the Life Regulations which relate to sections 113, 115, 118 and 119 of the Life Act, as these sections are repealed by the Amendment Act.