



# Insurance Amendment Regulations 2008 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2008 No. 281**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Insurance Act 1973*.

Dated 12 December 2008

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

WAYNE SWAN  
Treasurer

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**1 Name of Regulations**

These Regulations are the *Insurance Amendment Regulations 2008 (No. 2)*.

**2 Commencement**

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 1 July 2008 — regulations 1 to 3 and Schedule 1;
- (b) on the day after they are registered — regulation 4 and Schedule 2.

**3 Amendment of *Insurance Regulations 2002***

Schedule 1 amends the *Insurance Regulations 2002*.

**4 Amendment of *Insurance Regulations 2002***

Schedule 2 amends the *Insurance Regulations 2002*.

## **Schedule 1      Amendment taken to have commenced on 1 July 2008**

(regulation 3)

**[1]      Regulation 4, definition of *unauthorised foreign insurer*, paragraph (c)**

*omit*

    this Part

*insert*

    Part 2

## Schedule 2      Amendment commencing on day after registration

(regulation 4)

### [1]      After Part 4

*insert*

## Part 4A              Financial claims scheme

### 7A      Definitions

In this Part:

*family trust* has the meaning given by section 272-75 of Schedule 2 to the *Income Tax Assessment Act 1936*.

*non-profit body* means a body that:

- (a) is not carried on for the purposes of profit or gain to its individual members; and
- (b) by its constitution, is prohibited from making any distributions in money, property or otherwise, to its members.

*small business entity* has the meaning given by section 328-110 of the *Income Tax Assessment Act 1997*.

### 7B      Policies that are not protected policies

For the purposes of paragraph (a) of the definition of *protected policy* in subsection 3 (1) of the Act, the following policies are not protected policies:

- (a) a policy:
  - (i) that is required to be held under a law of a State or Territory; and
  - (ii) that is protected through arrangements administered by the State or Territory;
- (b) a policy that is a pre-authorisation liability;

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- (c) a policy that is a reinsurance or a retrocession of another policy;
  - (d) a policy that is an indemnification of another policy.

### **7C Period for making claim**

- (1) For the purposes of subparagraph 62ZZF (1) (b) (i) of the Act, the prescribed day in relation to a specified general insurer is the day on which the Minister makes a declaration in relation to the insurer under subsection 62ZZC (1) of the Act.
- (2) For the purposes of subparagraph 62ZZF (1) (b) (ii) of the Act, the prescribed day in relation to the insurer is the day that ends 12 months after the day mentioned in subregulation (1).

*Note* APRA may extend the period within which a claim may be made — see subsection 62ZZA (1) of the Act.

### **7D Conditions of eligibility**

For the purposes of paragraph 62ZZF (3) (b) of the Act, the prescribed conditions are that the person is:

- (a) an Australian citizen within the meaning of section 4 of the *Australian Citizenship Act 2007*; or
- (b) a permanent resident within the meaning of section 5 of the *Australian Citizenship Act 2007*; or
- (c) an individual not mentioned in paragraph (a) or (b) who has insured against a risk that is located in Australia; or
- (d) a small business entity that has its central management and control located in Australia; or
- (e) a person that is entitled to claim under insurance cover provided in relation to a small business entity, being an entity that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual; or
- (f) a trustee of a family trust that has its central management and control located in Australia; or
- (g) a non-profit body that has its central management and control located in Australia; or

- (h) a person that is entitled to claim under insurance cover provided in relation to a non-profit body, being a body that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual.

## **7E Conditions of eligibility – third parties**

For the purposes of paragraph 6ZZZG (3) (b) of the Act, the prescribed conditions are that the person is:

- (a) an Australian citizen within the meaning of section 4 of the *Australian Citizenship Act 2007*; or
- (b) a permanent resident within the meaning of section 5 of the *Australian Citizenship Act 2007*; or
- (c) an individual not mentioned in paragraph (a) or (b) who is entitled to claim under insurance cover in relation to a risk that is located in Australia; or
- (d) a small business entity that has its central management and control located in Australia; or
- (e) a person that is entitled to claim under insurance cover provided in relation to a small business entity, being an entity that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual; or
- (f) a trustee of a family trust that has its central management and control located in Australia; or
- (g) a non-profit body that has its central management and control located in Australia; or
- (h) a person that is entitled to claim under insurance cover provided in relation to a non-profit body, being a body that:
  - (i) has its central management and control located in Australia; and
  - (ii) is not a corporation or an individual.

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**7F Recovery of overpayments**

- (1) This regulation is made for section 62ZZS of the Act.
- (2) If an amount is paid to, or applied for the benefit of, a person purportedly to meet a claim of the person under Division 3 of Part VC of the Act and the amount is in excess of the person's entitlement (if any) under that Division, the excess amount is a debt due to APRA.
- (3) APRA may recover the amount of the debt:
  - (a) by bringing proceedings for recovery of the debt in a court of competent jurisdiction; or
  - (b) by withholding the amount of the debt from another payment that would otherwise be paid to the person under Division 3 of Part VC of the Act; or
  - (c) from any amount payable to the person upon the winding up of a declared general insurer that provided insurance cover to the person under a protected policy.
- (4) Nothing in this regulation is intended to limit the way in which APRA may recover the debt.
- (5) APRA may, if it considers it appropriate to do so in the particular circumstances of the case, waive the whole or a part of the debt.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.