

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2012 No. 311**

### **Issued by authority of the Assistant Treasurer**

*Life Insurance Act 1995*

*Life Insurance Amendment Regulation 2012 (No. 1)*

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 Regulation amends the *Life Insurance Regulations 1995* to implement a commitment by Australia to allow New Zealand life insurance companies to seek approval to operate in Australia as a branch.

The *Life Insurance Act 1995* 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. Such a corporation is known as an eligible foreign life insurance company. At present, the *Life Insurance Regulations 1995* make access to the Australian market conditional on the applicant being incorporated and authorised to conduct life insurance business in the United States.

An eligible foreign life insurance company for the purposes of paragraph 16ZD(1)(e) of the *Life Insurance Act 1995* is defined in regulation 2B.01 of the *Life Insurance Regulations 1995*. The Regulation amends this regulation to include body corporates that are incorporated and authorised to carry on life insurance business in New Zealand.

Australia has worked closely with New Zealand to ensure implementation is consistent with the agreed Protocol on Investment. As the changes made by the two regulations replicated existing provisions already contained in the regulations (reflecting that New Zealand investors were to receive treatment equivalent to that already provided to United States investors), the changes were considered simple and minor, with no further public consultation necessary.

Public consultation on these instruments was also not required because the sole purpose was to implement the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement. The Government undertook significant consultation in relation to the Protocol.

In 2006, public submissions were invited via advertisements in major Australian newspapers. Submissions were received from Australian businesses with investments in New Zealand and from Australian business representatives. Officers from the Treasury and the Department of Foreign Affairs and Trade held face-to-face consultations with stakeholders in Sydney and Melbourne on the objectives and scope of the Protocol on Investment. These consultations suggested that:

- there was strong support from businesses and other stakeholders on both sides of the Tasman for reducing barriers to bilateral investment flows;
- the business communities of Australia and New Zealand considered that liberalisation of Australia's and New Zealand's respective foreign investment screening regimes was long overdue; and
- the objective of the Investment Protocol should be to minimise compliance costs associated with foreign investment screening.

Consultations with the states and territories regarding the Protocol on Investment commenced in 2006. At this time the states and territories were advised of aspects of the Investment Protocol that may affect their jurisdictions. In 2009 and 2010, further consultation with the states and territories occurred regarding the following issues:

- the Schedule of non-conforming measures: Consistent with Australia's preferred practice with free trade agreements, states and territories were asked to agree to Australia's market access offer, which envisaged all existing non-conforming measures at the state and territory level being dealt with in a single blanket listing in Annex I of the Protocol on Investment;
- most-favoured nation inconsistent measures: states and territories were asked to provide details of any measures in their jurisdiction that discriminated against New Zealand investors in favour of third country investors.

The outcome of these consultations was that the states and territories agreed to Australia's market access offer and undertook to provide details of most-favoured nation inconsistent measures. Consultation with the states and territories in relation to developing a list of non-conforming measures, required for the Parties' first meeting to review the Protocol, is ongoing.

The Protocol on Investment was tabled with the Joint Standing Committee on Treaties and considered at a hearing of the Committee. The Joint Standing Committee on Treaties recommended that binding treaty action be taken.

The Regulation will commence on a day notified by the Minister in an instrument, following the agreement between Australia and New Zealand of a start date for the Protocol on Investment.

## **Statement of Compatibility with Human Rights**

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

### **Life Insurance Amendment Regulation 2012 (No. 1)**

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 Regulation makes amendments to the *Life Insurance Regulations 1995* to implement a commitment by Australia to allow New Zealand life insurance companies to seek approval to operate in Australia as a branch.

The Regulation involves a minor amendment to the *Life Insurance Regulations 1995* to include body corporates that are incorporated and authorised to carry on life insurance business in New Zealand as eligible foreign life insurance companies. This would provide New Zealand life insurance companies with equivalent treatment to United States companies.

#### **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.