# EXPLANATORY STATEMENT

## Select Legislative Instrument No. 50, 2014

## Issued by authority of the Assistant Treasurer

*Insurance Contracts Act 1984*

*Insurance Contracts Amendment Regulation 2015 (No. 1)*

Section 78 of the *Insurance Contracts Act 1984* (Principle 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 *Insurance Contracts Amendment Act 2013* (2013 Amendment Act), which received Royal Assent on 28 June 2013, made several amendments to the Principle Act including to the duty of consumers to disclose matters to an insurer before entering into the contract (the duty of disclosure). For an insurer to rely on a consumer’s compliance with this duty, the insurer needs to inform the consumer, in writing, of the general nature and effect of the duty. The *Insurance Contracts Regulations 1985* (Principle Regulations) prescribe notices that insurers may use for this purpose.

The purpose of the Regulation is to amend the Principle Regulations to prescribe new notices which reflect the amendments made to the duty of disclosure by the 2013 Amendment Act.

In particular, the Regulation prescribes:

* Written notices in relation to:
  + contracts of general insurance, life insurance and eligible contracts of insurance;
  + the duty of disclosure in relation to a person who will be insured by others; and
* an oral notice in relation to eligible contracts of insurance.

Details of the Regulation are set out in the Attachment.

The Principle Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Sections 1 to 4 and Schedule 1 to the Regulation commence the day after registration. Schedule 2 to the Regulation commences on 28 December 2015.

An exposure draft of the Regulation was released for public consultation between 2 and 27 June 2014. Submissions were received from the Consumer Action Law Centre, Financial Rights Legal Centre, Insurance Council of Australia, National Insurance Brokers Association, Law Council of Australia and Financial Services Council. One confidential submission was also received.

Minor changes to the Regulation were made arising from this consultation.

**ATTACHMENT**

**Details of the *Insurance Contracts Amendment Regulation 2015 (No. 1)***

Section 1 – Name

The name of the Regulation is the *Insurance Contracts Amendment Regulation 2015(No. 1)* (Regulation).

Section 2 – Commencement

The Regulation will commence as below:

* Sections 1 to 4 and Schedule 1 – the day after the Regulation is registered; and
* Schedule 2 – 28 December 2015.

Section 3 – Authority

The Regulation would be made under the *Insurance Contracts Act 1984* (Principal Act).

Section 4 – Schedules

Schedule 1 amends the *Insurance Contracts Regulations 1985* (Principal Regulations) to prescribe words (notices) insurers may use to inform insureds about their duty of disclosure. Separate notices are prescribed for:

* contracts of general insurance (other than eligible contracts);
* contracts of life insurance;
* eligible contracts of insurance (including renewal notices); and
* oral notification of the duty of disclosure for eligible contracts of insurance.

Schedule 2 amends the Principal Regulations to prescribe notices that insurers may use to inform insureds about their duty of disclosure in relation to:

* contracts of life insurance;
* persons to be insured other than the insured; and
* reminding insureds about their duty of disclosure when an insurer’s acceptance of, or counter-offer to, a contract of insurance in made more than two months after the insured’s most recent disclosure.

Schedule 1 – Amendments commencing the day after registration

Item 1 inserts regulation 2B into the Principal Regulations. Regulation 2B provides a mechanism for insurers that have opted to make a contract an eligible contract under paragraph 2B(2)(c) of the Principal Regulations to opt-out of the eligible contract requirements under section 21B of the Principal Act.

In order to do this, insurers must meet the criteria in subregulation 2B(3).

Item 2 inserts subregulation 3(1) into the Principal Regulations. Subregulation 3(1) prescribes the form in Part 4 of Schedule 1 as the form of writing that may be used for the purposes of subsection 22(1) of the Principal Act in relation to the renewal of an eligible contract of insurance.

Item 3 inserts 42 into the Principal Regulations which, despite the repeal of Schedules 1 and 2 in the Principal Regulations, provides that until 28 December 2015 the repealed Schedules (current notices) or the Schedules substituted by item 2 of Schedule 1 and items 4 and 5 of Schedule 2 of the regulation (new notices) may be used for the purposes of regulation 3 of the Principal Regulations.

Therefore, until 28 December 2015, insurers may use either the current notices or the new notices.

This regulation will expire on 28 December 2015, with insurers required to use the new notices from that date.

Item 4 repeals the current notices and inserts new notices into the Principal Regulations as below:

* Schedule 1:
  + contracts of general insurance, other than eligible contracts (Part 1);
  + contracts of life insurance (Part 2);
  + eligible contracts of insurance (Part 3);
* Schedule 2 – words to inform insureds of the duty of disclosure for eligible contracts of insurance (oral notices).

Schedule 2 – Amendments commencing on 28 December 2015

Item 2 repeals regulation 3 in the Principal Regulations and substitutes:

* a new regulation 3, which provides that the new written notices in Parts 1, 2, 3 and 4 of Schedule 1 may be used by insurers for the purposes of subsection 22(1) of the Principal Act (as amended by the 2013 Amendment Act);
* regulation 3A, which provides that the new reminder notices in Parts 1, 2 and 3 of Schedule 1B may be used by insurers for the purposes of subsection 22(1) of the Principal Act (as amended by the 2013 Amendment Act); and
* regulation 3B, which provides that the oral notice in Schedule 2 may be used by insurers for the purposes of subsection 22(1) of the Principal Act (as amended by the 2013 Amendment Act).

Items 4 and 5 insert new written notices as below:

* Schedule 1 – renewal of eligible contracts of insurance (Part 4);
* Schedule1A – writing to inform persons to be insured by others;
* Schedule 1B – writing to remind of the duty of disclosure for:
  + contracts of general insurance (Part 1);
  + contracts of life insurance (Part 2); and
  + eligible contracts of insurance (Part 3).

Items 1, 3 and 6 make consequential changes to headings and notes required by the amendments made in items 2, 4 and 5.

### Statement of Compatibility with Human Rights

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

**Insurance Contracts Amendment Regulation 2015 (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 purpose of the Regulation is to amend the Principle Regulations to prescribe new notices which reflect the amendments made to the duty of disclosure by the 2013 Amendment Act.

#### 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.