

---

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL  
2023

---

EXPOSURE DRAFT EXPLANATORY MEMORANDUM



# Table of Contents

Glossary ..... 1  
Chapter 1: Sunsetting Review of Insurance Instruments..... 3





## Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Bill	Treasury Laws Amendment (Measures for Consultation) Bill 2023
Decision Making Principles	<i>Insurance Acquisitions and Takeovers Act 1991 – Decision Making Principles IDM 1/1992</i>
Insurance Act	<i>Insurance Act 1973</i>
Insurance Instruments	<i>Insurance Acquisitions and Takeovers (Notices) Regulations 1992, Insurance Acquisitions and Takeovers Act 1991 – Decision Making Principles IDM 1/1992, Insurance Regulations 2002 and Life Insurance Regulations 1995</i>
IAT Act	<i>Insurance Acquisitions and Takeovers Act 1991</i>
Life Insurance Act	<i>Life Insurance Act 1995</i>
NOHCs	Non-operating holding companies
1995 Regulations	<i>Life Insurance Regulations 1995</i>
2002 Regulations	<i>Insurance Regulations 2002</i>



---

# Chapter 1: Sunsetting Review of Insurance Instruments

---

## Table of Contents:

Outline of chapter .....	3
Context of amendments .....	3
Detailed explanation of new law .....	4
Commencement and application .....	32

## Outline of chapter

- 1.1 Schedule 1 to the Bill primarily amends the IAT Act, Life Insurance Act, and Insurance Act to implement relevant findings of the thematic review of Insurance Instruments that are due to sunset on 1 October 2023.

## Context of amendments

- 1.2 The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable in section 50 of that Act.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.
- 1.3 The *Legislation (Insurance Instruments) Sunset-altering Declaration 2018* aligned the sunsetting date for the Insurance Instruments to 1 October 2023 to enable Treasury to conduct a comprehensive thematic review of regulation imposed on the insurance industry.
- 1.4 Treasury carried out the review of the Insurance Instruments and relevant provisions of the enabling Acts in 2022, in consultation with APRA and ASIC. As part of Treasury's review, a number of provisions in the enabling Acts and Insurance Instruments were identified as inoperative, spent, or necessary to clarify in order to ensure the law operates as intended. A number of provisions contained in the Insurance Instruments

were also identified as being more appropriately incorporated into the primary law.

- 1.5 Schedule 1 to the Bill primarily makes minor and technical amendments to the enabling Acts to implement the findings of the thematic review. This is necessary to transition to the new framework of instruments proposed to replace the Insurance Instruments due to sunset on 1 October 2023.

## Detailed explanation of new law

### Part 1 – Public Interest

#### *Decision Making Principles and the public interest test*

- 1.6 The IAT Act establishes a framework for the control and compulsory notification of certain acquisitions and agreements relating to Australian-registered insurance companies. The Minister has various decision-making powers for these purposes.
- 1.7 Subsection 65(1) of the IAT Act allows the Minister to formulate principles to be complied with by him or her in making decisions under Part 3 or 4 of the Act. The Decision Making Principles were made for the purpose of this provision. In making a decision under Part 3 or 4 of the IAT Act, the Minister is required to comply with any relevant decision-making principle.
- 1.8 The IAT Act also requires the Minister to consider whether a matter is contrary to the public interest (referred to as the ‘public interest test’ in this document) when making certain decisions. For example, section 57 of the IAT Act allows the Minister to make a permanent restraining order if the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest. Section 5 of the IAT Act prescribes when a matter is contrary to the public interest. Subsection 5(1) of the IAT Act provides that that for the purposes of the application of the Act to an Australian-registered insurance company, a particular matter is taken to be contrary to the public interest if it is:
- likely to adversely affect the prudential conduct of the affairs of the company; or
  - likely to result in an unsuitable person being in a position of influence over the company; or
  - likely to unduly concentrate economic power in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; or



- contrary to the national interest.

The above criteria are referred to as ‘primary public interest criteria’ in this document.

- 1.9 The thematic review of Insurance Instruments found that while the Decision Making Principles are still required in some form, their application is unclear, and the IAT Act should be amended to clarify their intended operation and purpose; that is, to inform the public interest test pursuant to section 5 of the IAT Act

- 1.10 To give effect to the findings of the review, Part 7 of the IAT Act containing the enabling provision for the Decision Making Principles is repealed. This also results in the repeal of the Decision Making Principles. This is replaced with new subsection 5(2) of the IAT Act, which provides the Minister with the power to determine, by legislative instrument, matters which inform the public interest test. Specifically, the Minister may determine matters to which regard must or may be had in determining whether a particular matter (such as the result of a trigger proposal under section 57 of the IAT Act) is:

- contrary to the public interest (in addition to the primary public interest criteria prescribed in subsection 5(1) of the IAT Act);
- likely to have the effect or result mentioned in the primary public interest criteria prescribed in subsection 5(1) of the IAT Act.

***[Schedule 1, item 4 and 15, Part 7 and subsection 5(2) of the IAT Act]***

- 1.11 As Part 7 of the IAT Act is being repealed, the reference to ‘Part 7’ in section 69 of the Act is omitted and replaced with reference to ‘subsection 5(2)’.

***[Schedule 1, item 166, section 69 of the IAT Act]***

- 1.12 A determination is proposed to be made pursuant to new subsection 5(2) of the IAT Act to replace the sunseting Decision Making Principles. This instrument is proposed to commence at the same time as Schedule 1 to the Bill. Section 5 of the IAT Act is subject to additional amendments to refine the public interest test in light of the new instrument-making power.
- 1.13 One of the primary public interest criteria (in paragraph 5(1)(b) of the IAT Act) is whether a matter is likely to result in an ‘unsuitable person’ being in a position of influence over the company. Subsections 5(2) and (3) of the IAT Act provide further detail on when a matter is likely to result in an unsuitable person being in a position of influence over the company. Subsection 5(2) of the IAT Act provides that a person was taken to be an unsuitable person to be in a position of influence over a company if the person is not a fit and proper person to be in such a position of influence. Subsection 5(3) of the IAT Act provides when a person is taken to be in a position of influence over a company.

- 1.14 The thematic review of Insurance Instruments found that the two-step test, whereby a person is an unsuitable person if the person is not a fit and proper person, is not necessary as the reference to an unsuitable person is redundant. To implement these findings, subsection 5(2) of the IAT Act is repealed, and paragraph 5(1)(b) of the IAT Act is amended to provide that a particular matter is taken to be contrary to the public interest if it is likely to result in a person who is not a fit and proper person to be in a position of influence over an Australian-registered insurance company being in such a position of influence.  
***[Schedule 1, items 3 and 4, paragraph 5(1)(b) and subsection 5(2) of the IAT Act]***
- 1.15 Subsection 5(3) of the IAT Act is repealed for flexibility and consistency with other matters that have the effect or result mentioned in one of the primary public interest criteria. The matters that result in a person who is not a fit and proper person to be in a position of influence over an Australian-registered insurance company being in such a position of influence, are instead proposed to be prescribed in a determination made pursuant to new subsection 5(2) of the IAT Act.  
***[Schedule 1, item 4, subsection 5(3) of the IAT Act]***
- 1.16 The reference to unsuitable persons in section 3 of the IAT Act, which explains the objects and simplified outline of the Act, is replaced with a reference to ‘unfit’ persons. This amendment reflects the change to the primary public interest criteria explained above.  
***[Schedule 1, item 1, section 3 of the IAT Act]***
- 1.17 Subsection 5(1) of the IAT Act is amended to clarify that the primary public interest criteria specified in subsection 5(1) of the Act do not limit when a matter may be taken to be contrary to the public interest. This provides flexibility for the Minister when making decisions to which the public interest test relates.  
***[Schedule 1, item 2, subsection 5(1) of the IAT Act]***

***Clarification of decisions to which public interest test relates***

- 1.18 The thematic review of Insurance Instruments found that the IAT Act should be amended to clarify the intended operation of the Decision Making Principles. This includes clarification of the decisions in the IAT ACT to which the public interest test relates.
- 1.19 To implement the findings of the thematic review, subsection 41(1) of the IAT Act is repealed and replaced. New subsection 41(1) of the IAT Act provides that the Minister may decide that the Minister has no objection to a trigger proposal if the Minister is satisfied that it is not likely to be contrary to the public interest if the trigger proposal is carried out. A decision made under this provision is a ‘go-ahead decision’ for the purposes of Part 3 of the IAT Act.

- 1.20 New subsection 41(1A) of the IAT Act provides that the Minister may decide that the Minister has no objection to a trigger proposal as long as the person concerned complies with specified conditions, if the Minister is satisfied that the trigger proposal, if carried out, is not likely to be contrary to the public interest if the person concerned complies with those conditions. A decision made under this provision is a ‘conditional go-ahead decision’ for the purposes of Part 3 of the IAT Act.
- 1.21 The amendment to subsection 41(1) of the IAT Act clarifies that the Minister must give consideration to the public interest test when making an unconditional ‘go-ahead decision’, as well as a conditional ‘go-ahead decision’. The Minister must be satisfied in either case that the trigger proposal, if carried out, is not likely to be contrary to the public interest. As such, the Minister will be required for all decisions made under new subsections 41(1) and (1A) of the IAT Act to have regard to the public interest test under section 5 of the Act.  
***[Schedule 1, item 7, subsections 41(1) and 41(1A) of the IAT Act]***
- 1.22 To clarify when a decision is a conditional go-ahead decision, paragraphs 41(3)(c) and (d) of the IAT Act are amended to make clear that:
- the reference to a ‘decision subject to conditions’ in paragraph 41(3)(c) of the Act is a decision which is a conditional go-ahead decision;
  - the reference to ‘the conditions’ in paragraph 41(3)(d) of the Act is a reference to the conditions to which the conditional go-ahead decision is subject.
- [Schedule 1, item 8, paragraphs 41(3)(c) and (d) of the IAT Act]***
- 1.23 The definition of ‘conditional go-ahead decision’ in section 35 of the IAT Act is also amended to specify that it means a go-ahead decision that is made under subsection 41(1A) for the purposes of Part 3 of the Act.  
***[Schedule 1, item 5, section 35 of the IAT Act]***
- 1.24 The definition of ‘go-ahead decision’ in section 35 of the IAT Act is also amended to provide that this type of decision can be made under new subsection 41(1A) of the Act, in addition to new subsection 41(1) of the Act.  
***[Schedule 1, item 6, section 35 of the IAT Act]***
- 1.25 The amendments to section 41 of the IAT Act described above apply in relation to a decision made by the Minister on or after the commencement of item 9 of Schedule 1 to the Bill.  
***[Schedule 1, item 9]***
- 1.26 Subsection 55(1) of the IAT Act is also repealed and replaced to implement the findings of the thematic review. New subsection 55(1) of the IAT Act provides that the Minister may decide that the Minister has no objection to a trigger proposal if the Minister is satisfied that it is not

likely to be contrary to the public interest if the trigger proposal is carried out. A decision made under this provision is a ‘go-ahead decision’ for the purposes of Part 4 of the IAT Act.

- 1.27 New subsection 55(1A) of the IAT Act provides that the Minister may decide that the Minister has no objection to a trigger proposal as long as the person concerned complies with specified conditions, if the Minister is satisfied that the trigger proposal, if carried out, is not likely to be contrary to the public interest if the person or company complies with those condition. A decision made under this provision is a ‘conditional go-ahead decision’ for the purposes of Part 4 of the IAT Act.
- 1.28 The amendment to subsection 55(1) of the IAT Act clarifies that the Minister must give consideration to the public interest when making an unconditional ‘go-ahead decision’, as well as a conditional ‘go-ahead decision’. As such, the Minister will be required for all decisions made under new subsections 55(1) and (1A) of the IAT Act to have regard to the public interest test under section 5 of the Act.  
***[Schedule 1, item 12, subsection 55(1) of the IAT Act]***
- 1.29 To clarify when a decision is a conditional go-ahead decision, paragraphs 55(3)(c) and (d) of the IAT Act are amended to make clear that:
- the reference to a ‘decision subject to conditions’ in paragraph 55(3)(c) of the Act is a decision which is a conditional go-ahead decision;
  - the reference to ‘the conditions’ in paragraph 55(3)(d) of the Act is a reference to the conditions to which the conditional go-ahead decision is subject.
- [Schedule 1, item 13, paragraphs 55(3)(c) and (d) of the IAT Act]***
- 1.30 The definition of ‘conditional go-ahead decision’ in section 49 of the IAT Act is also amended to specify that it means a go-ahead decision that is made under subsection 55(1A) for the purposes of Part 4 of the Act.  
***[Schedule 1, item 10, section 49 of the IAT Act]***
- 1.31 The definition of ‘go-ahead decision’ in section 49 of the IAT Act is also amended to specify that this type of decision can be made under new subsection 55(1A) of the Act in addition to new subsection 55(1) of the Act.  
***[Schedule 1, item 11, section 49 of the IAT Act]***
- 1.32 The amendments to section 55 of the IAT Act apply in relation to a decision made by the Minister on or after the commencement of item 14 in Schedule 1 to the Bill.  
***[Schedule 1, item 14]***

***Additional matters***

- 1.33 Subsection 80(2) of the IAT Act is amended so that in addition to a decision made by the Commonwealth, a decision made by a Minister under the Act or the *Foreign Acquisitions and Takeovers Act 1975* has effect only for the purposes of the Act concerned.  
***[Schedule 1, item 17, subsection 80(2) of the IAT Act]***

## Part 2 – Forms of notices etc.

- 1.34 A number of provisions in the IAT Act and Life Insurance Act provide for the form of a notice or application to be prescribed by regulations. The thematic review of sunseting Insurance Instruments found that the manner and form of a notice or application should instead be approved administratively, to increase flexibility and align with modern drafting practices.
- 1.35 Schedule 1 to the Bill amends the IAT Act and Life Insurance Act to allow either the Minister or a regulator to approve the manner and form of a notice or application, in accordance with the findings of the thematic review.

### *Insurance Acquisitions and Takeovers Act 1991*

- 1.36 The requirements for giving certain notices under the IAT Act are prescribed in a specific form in the *Insurance Acquisitions and Takeovers (Notices) Regulations 1992*, which are proposed to be repealed when Schedule 1 to the Bill commences as an outcome of the thematic review. New section 17A of the IAT Act sets out the general requirements for giving notices to replace the *Insurance Acquisitions and Takeovers (Notices) Regulations 1992*.
- 1.37 The amendments allow the Minister to approve the manner or form for giving a notice, rather than relying on a prescriptive form. This allows existing policy to continue whilst reducing legislative complexity and increases administrative flexibility. As per section 6 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, instruments prescribing or approving a form are not legislative instruments.  
***[Schedule 1, item 18, subsection 17A(3) of the IAT Act]***
- 1.38 The general requirements for giving notices in new section 17A of the IAT Act apply to any provision in the Act which refers to giving notice in accordance with section 17A of the Act.  
***[Schedule 1, item 18, subsection 17A(1) of the IAT Act]***
- 1.39 A notice is given in accordance with new section 17A of the IAT Act if the notice:
- is given in the manner approved in writing by the Minister (or if no manner has been so approved, is given in writing);

- if the Minister has approved, in writing, a form for giving the notice—is given in the approved form, and includes the information required by the form and is accompanied by any documents required by the form;
- includes the information (if any) prescribed by the regulations; and
- is accompanied by any documents prescribed by the regulations.

***[Schedule 1, item 18, subsections 17A(2) of the IAT Act]***

1.40 The approved manner for giving a notice could, for example, include giving notice electronically. An approved form may be in the form of a statutory declaration, a form that requires a matter to be verified by a statutory declaration, or another form.

***[Schedule 1, item 18, subsections 17A (4) of the IAT Act]***

1.41 Consequential to the amendments described above, the reference to ‘the prescribed form’ in paragraph 38(b) of the IAT Act are omitted and replaced with ‘accordance with section 17A’.

***[Schedule 1, item 19, paragraph 38(b) of the IAT Act]***

1.42 The amendments to section 38 of the IAT Act described above apply to notices given on or after the commencement of item 20 of Schedule 1 to the Bill. To allow for flexibility in relation to compliance, a written notice given during the 2 months starting on the commencement of this amendment and in the form that, immediately before that commencement, was prescribed for the purposes of paragraph 38(b) of the IAT Act is taken to meet the requirements of new section 17A of the Act.

***[Schedule 1, item 20]***

1.43 The references to ‘the prescribed form’ in paragraphs 52(b) and (c) of the IAT Act are also omitted and replaced with ‘accordance with section 17A’.

***[Schedule 1, item 21, paragraphs 52(b) and (c) of the IAT Act]***

1.44 The amendments to section 52 of the IAT Act described above apply to notices given on or after the commencement of item 22 of Schedule 1 to the Bill. To allow for flexibility in relation to compliance, a written notice given during the 2 months starting on the commencement of this amendment and in the form that, immediately before that commencement, was prescribed for the purposes of paragraphs 52(b) or (c) of the IAT Act is taken to meet the requirements of section 17A of that Act.

***[Schedule 1, item 22]***

#### ***Life Insurance Act 1995***

1.45 The requirements for giving certain notices and making applications under the Life Insurance Act are detailed in the 1995 Regulations. These provisions are not proposed to be remade in accordance with the thematic review. New section 8A of the Life Insurance Act sets out the general

requirements for the manner and form of making applications or giving notices to replace the requirements in the 1995 Regulations.

***[Schedule 1, item 23, subsection 8A(1) of the Life Insurance Act]***

- 1.46 The amendments allow APRA to approve the manner and form of an application or notice, rather than relying on a prescriptive form. This allows existing policy to continue whilst reducing legislative complexity and increases administrative flexibility. As per section 6 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, instruments prescribing or approving a form are not legislative instruments.

***[Schedule 1, item 23, subsection 8A(3) of the IAT Act]***

- 1.47 The general requirements for making applications and giving notices in new section 8A of the Life Insurance Act apply to any provision in the Act which refers to giving notice or making an application in accordance with section 8A of the Act.

***[Schedule 1, item 23, subsection 8A(1) of the Life Insurance Act]***

- 1.48 An application is made, or a notice is given, in accordance with section 8A of the Life Insurance Act if the application or notice:

- is given in the manner approved in writing by APRA (or if no manner is so approved, is given in writing); and
- if APRA has approved, in writing, a form for making the application or giving the notice—is given in the approved form, and includes the information required by the form and is accompanied by any documents required by the form; and
- includes the information (if any) prescribed by the regulations; and
- is accompanied by any documents prescribed by the regulations.

***[Schedule 1, item 23, subsections 8A(2) of the Life Insurance Act]***

- 1.49 The approved manner for giving a notice or application could, for example, include the ability to give notice or make an application electronically. An approved form may be in the form of a statutory declaration, a form that requires a matter to be verified by a statutory declaration or another form.

***[Schedule 1, item 23, subsections 8A(4) of the Life Insurance Act]***

- 1.50 The requirements for an application for registration to be in the form approved by APRA and include information requested by APRA in paragraphs 20(2)(a) and (b) of the Life Insurance Act are omitted and replaced with new paragraph 20(2)(a), which provides that applications for registration must be made in accordance with the new general requirements for making applications outlined in new section 8A of the Act.

***[Schedule 1, item 24, paragraph 20(2)(a) of the Life Insurance Act]***

- 1.51 The amendments to section 20 of the Life Insurance Act described above apply to applications made on or after the commencement of item 25 of

Schedule 1 to the Bill. To allow for flexibility in relation to compliance, an application made during the 2 months starting on the commencement of this amendment and in the form that, immediately before commencement, was approved by APRA and accompanied by any information requested by APRA for the purposes of paragraph 20(2)(a) of the Life Insurance Act prior to the amendments, is taken to meet the requirements of new section 8A of the Act.

***[Schedule 1, item 25]***

- 1.52 The reference to ‘written’ in subsection 33(1) of the Life Insurance Act is omitted. Further, the reference to ‘the regulations’ in subsection 33(2) of the Life Insurance Act is omitted and replaced with ‘section 8A’. These amendments update the legislation to provide that the general requirements for giving notice to APRA when a fund is established is in accordance with new section 8A of the Life Insurance Act.

***[Schedule 1, items 26 and 27, section 33 of the Life Insurance Act]***

- 1.53 The amendments to section 33 of the Life Insurance Act described above apply to notices given on or after the commencement of item 28 of Schedule 1 to the Bill. To allow for flexibility in relation to compliance, a written notice given during the 2 months starting on the commencement of this amendment and made in accordance with the regulations in force immediately before that commencement, and that is made for the purposes of subsection 33(2) of the Life Insurance Act prior to the amendments, is taken to meet the requirements of new provision 8A of the Act.

***[Schedule 1, item 28]***

- 1.54 Subsections 76A(3) and (4) of the Life Insurance Act are amended to clarify the way a life company may notify APRA of the address where its company records are kept.

- 1.55 A life company must notify APRA of where company records are kept in accordance with the requirements under section 8A of the Life Insurance Act. The life company must notify APRA within 28 days after the day on which it becomes registered.

***[Schedule 1, item 29, subsections 76A(3) and (3A) of the Life Insurance Act]***

- 1.56 Where a life company has given APRA notice of the address where its records are kept and the company moves the financial records to a new address, the company must notify APRA of this in accordance with the requirements for giving notice under new section 8A of the Life Insurance Act and within 28 days after the date on which the records were moved to the new address. This requirement applies to a life company that is registered under the Life Insurance Act.

***[Schedule 1, item 29, subsection 76A(4) of the Life Insurance Act]***



- 1.57 Subsection 76A(5) of the Life Insurance Act is also amended to refer to a notice under subsection 76A(4) of the Act as amended.  
***[Schedule 1, item 30, subsection 76A(5) of the Life Insurance Act]***
- 1.58 The amendments to subsection 76A(3) of the Life Insurance Act described above apply to a company that is registered under the Act on or after the commencement of item 32 of Schedule 1 to the Bill. The amendments also apply to a company that is registered within 28 days before the commencement of the amendments, where the company did not notify APRA, before that commencement, of the address where the records are kept.  
***[Schedule 1, item 32]***
- 1.59 To allow for flexibility in relation to compliance, a written notification given during the 2 months after the commencement of these amendments in the approved form for the purposes of subsection 76A(3) of the Life Insurance Act prior to the amendments, is taken to meet the notice requirements under new section 8A of the Act.  
***[Schedule 1, item 32]***
- 1.60 Where a life company moves its financial records to a new address, it must notify APRA of this new address in accordance with the requirements under section 8A of the Life Insurance Act. The life company must notify APRA within 28 days after the day on which the records are moved to the new address.  
***[Schedule 1, item 29, subsection 76A(4) of the Life Insurance Act]***
- 1.61 To allow for flexibility in relation to compliance, a written notification given during the 2 months after the commencement of the amendments to subsection 76A(4), and in a form that was the approved form for the purposes of subsection 76A(4) of the Life Insurance Act prior to the amendments, is taken to meet the notice requirements under new section 8A of the Act.  
***[Schedule 1, item 32]***
- 1.62 The reference to ‘notification’ in subsection 76A(5) of the Life Insurance Act is omitted and replaced with ‘notice under subsection’ to align the provision with new notification requirements under subsection 76A(4) of the Act.  
***[Schedule 1, item 30, subsection 76A(5) of the Life Insurance Act]***
- 1.63 The amendments to subsections 76A(4) and (5) of the Life Insurance Act apply to a company moving its records to a new address on or after the commencement of these amendments. The amendments also apply to a company moving its financial records to a new address within 28 days before the commencement of these amendments, if the company did not notify APRA, before that date, of the new address where the records are kept.  
***[Schedule 1, item 32]***

- 1.64 New subsection 76A(7) of the Life Insurance Act provides that a life company commits an offence if it fails to notify APRA of the address of where the company's records are kept as outlined under subsection subsections 76A(3) or (4) of the Act. The penalty imposed for such a contravention is 100 penalty units.  
***[Schedule 1, item 31, subsection 76A(7) of the Life Insurance Act]***
- 1.65 The reference to 'written notice' in subsection 179C(1) of the Life Insurance Act is substituted with 'notice', in accordance with new section 8A of the Act. This amendment updates this provision to ensure it aligns with new approved manner and form for giving notices under new section 8A of the Life Insurance Act, and reflects the greater administrative flexibility created by the amendments.  
***[Schedule 1, item 33, subsection 179C(1) of the Life Insurance Act]***
- 1.66 The above amendment to subsection 179C(1) of the Life Insurance Act applies to a notice given on or after the commencement of item 35 of Schedule 1 to the Bill.  
***[Schedule 1, item 35]***
- 1.67 To allow for flexibility in relation to compliance, a written notification given during the 2 months after the commencement of these amendments, that is in the approved form for the purposes of subsection 179C(1) of the Life Insurance Act prior to the amendments, is taken to meet the notice requirements under new section 8A of Act.  
***[Schedule 1, item 35]***
- 1.68 Subsection 179C(2) of the Life Insurance Act provides that where there is an approved form for a notice for the purposes of section 179C, the notice must be given in the approved form. This provision is repealed as it is redundant due to new section 8A of the Life Insurance Act which provides the new approved manner and form for giving notices for the purposes of section 179C of the Act.  
***[Schedule 1, item 34, subsection 179C(2) of the Life Insurance Act]***
- 1.69 Subsection 179C(6) of the Life Insurance Act provides that a person (other than APRA) commits an offence where a person makes an application or appointment without APRA's consent and does not provide APRA with notice. The amendment to paragraph 179C(6)(c) of the Life Insurance Act updates the notice requirements. It provides that a person commits an offence for the purposes of subsection 179C(6) of the Life Insurance Act if the person does not give APRA notice at least one week before making the application or appointment, and in accordance with new section 8A of the Act.  
***[Schedule 1, item 36, paragraph 179C(6)(c) of the Life Insurance Act]***
- 1.70 The amendment to paragraph 179C(6)(c) of the Life Insurance Act applies to a notice given on or after the commencement of item 37 of Schedule 1

to the Bill.

***[Schedule 1, item 37]***

- 1.71 To allow for flexibility in relation to compliance, a written notification given during the 2 months after the commencement of these amendments, that is in the approved form for the purposes of subsection 179C(6) of the Life Insurance Act prior to the amendments, is taken to meet the notice requirements under new section 8A of Act.

***[Schedule 1, item 37]***

- 1.72 Section 197 of the Life Insurance Act requires documents to be lodged with APRA in accordance with the regulations in the case of the transfer or amalgamation of a life insurance business.
- 1.73 Section 197 of the Life Insurance Act is amended to allow APRA to approve a manner for giving the documents (rather than this being prescribed in regulations). Documents are given in accordance with new subsection 197(3):
- if the documents are given in the approved manner (in circumstances where APRA has approved a manner for giving the documents under new subsection 197(4) of the Act); or
  - if the documents are given in any other manner (in circumstances where APRA has not approved a manner for giving the documents).

***[Schedule 1, items 39 and 41, subsections 197(1), (3) and (4) of the Life Insurance Act]***

- 1.74 A number of consequential amendments are made to implement the amendments to section 197 described above.

***[Schedule 1, items 38 and 40, section 197 and subsection 197(2) of the Life Insurance Act]***

- 1.75 The amendments to section 197 of the Life Insurance Act apply in relation to a transfer or amalgamation of a life insurance business that occurs on or after the commencement of item 42 of Schedule 1 to the Bill.

***[Schedule 1, item 42]***

- 1.76 Paragraph 200(2)(a) of the Life Insurance Act is amended to provide that an assignment of policy must be by memorandum of transfer in accordance with the form requirements outlined in new subsection 200(2A) of the Act, rather than in the form prescribed by regulations.

***[Schedule 1, item 43, paragraph 200(2)(a) Life Insurance Act]***

- 1.77 New subsection 200(2A) of the Life Insurance Act provides that a memorandum of transfer referred to in paragraph 200(2)(a) of the Act is in accordance with subsection 200(2A) of the Act if it is in the form approved by ASIC under subsection 200(2B) of the Act, and any other requirements set out in regulations which have been made for the purposes of paragraph 44(2A)(b) of the Act in relation to a memorandum

of transfer are satisfied.

***[Schedule 1, item 44, subsection 200(2A) of the Life Insurance Act]***

- 1.78 The form of a memorandum of transfer is prescribed by regulation 10.01 of the 1995 Regulations; this provision is proposed to be repealed when Schedule 1 to the Bill commences and is not proposed to be remade. Instead, new subsection 200(2A) requires ASIC to approve the manner and the form of the assignment, which increases flexibility and simplifies the legislation.

***[Schedule 1, item 44, subsection 200(2A) of the Life Insurance Act]***

- 1.79 These amendments of section 200 of the Life Insurance Act in relation to memorandum registered under paragraph 200(2)(d) of that Act apply on or after the commencement of item 45 of Schedule 1 to the Bill.

- 1.80 However, if a written memorandum of transfer is registered under paragraph 200(2)(d) of the Life Insurance Act within two months of the commencement of the amendments and is in the form that was prescribed by paragraph 200(2)(a) of the Act before the amendments commenced, then the memorandum is taken to be in accordance with new subsection 200(2A) of the Act.

***[Schedule 1, item 45]***

- 1.81 Subsections 203(2) and (3) of the Life Insurance Act are amended to provide that ASIC may approve the manner and form of the notice given for the purposes of subsection 203(1) of the Act. Subsection 203(1) of the Life Insurance Act requires a person who previously had a policy vested in them as trustee but who is no longer trustee to provide the life company with notice of that fact. This replaces the form of this notice prescribed in the 1995 Regulations, which are proposed to be repealed when Schedule 1 to the Bill commences.
- 1.82 A notice is given in accordance with subsection 203(1) of the Life Insurance Act if the notice:
- is given in the manner approved in writing by ASIC (or if no manner is so approved, is given in writing); and
  - if ASIC has approved, in writing, a form giving the notice—is given in the approved form, and includes the information required by the form and is accompanied by any documents required by the form; and
  - includes the information (if any) prescribed by the regulations; and
  - is accompanied by any documents prescribed by the regulations.
- 1.83 The approved manner for giving a notice could, for example, include the ability to give notice electronically. An approved form may be in the form of a statutory declaration, a form that requires a matter to be verified by a statutory declaration or another form.

***[Schedule 1, item 47, subsections 203(2), (3) and (3A) of the Life Insurance Act]***

- 1.84 Subsection 203(1) of the Life Insurance Act is amended to provide that a person giving a life company notice for the purposes of section 203 of the Act must give that notice in accordance with subsection 203(2) of the Act.  
***[Schedule 1, item 46, subsection 203(1) of the Life Insurance Act]***
- 1.85 The amendments to section 203 of the Life Insurance Act made by this Part apply in relation to a notice given on or after the commencement of item 48 to Schedule 1 to the Bill.
- 1.86 However, if a written notice is given for the purposes of subsection 203(1) of the Life Insurance Act within two months of the commencement of the amendments, and it is in accordance with the regulations made for the purposes of subsection 203(2) of the Act which were in force immediately before the commencement of the amendments, then that written notice is taken to be in accordance with subsection 203(2) of the Act as amended.  
***[Schedule 1, item 48]***
- 1.87 New subsection 216(6A) of the Life Insurance Act provides that a statement given by a life company to ASIC under subsections 216(1) or (4) of the Act is in accordance with the subsections if it is given in writing, is in a form approved by ASIC, includes the information required by the form and is accompanied by any required documents. It must also be accompanied by any information or documents required by regulations made for the purposes of subsection 216(6A) of the Act.
- 1.88 ASIC may, in writing, approve a manner or form for giving the statement. These may take the form of a statutory declaration, a form that requires a matter to be verified by a statutory declaration, or another form.  
***[Schedule 1, item 50, subsections 216(6A), (6B) and (6C) of the Life Insurance Act]***
- 1.89 Subsections 216(1) and (4) of the Life Insurance Act are amended to provide that the required form of a statement for the purposes of these subsections is prescribed in new subsection 6A, where previously the form was prescribed by the regulations. This amendment increases flexibility and simplifies the legislation.  
***[Schedule 1, item 49, subsections 216(1) and (4) of the Life Insurance Act]***
- 1.90 The amendments to section 216 of the Life Insurance Act made by this Part apply in relation to a statement given on or after the commencement of item 51 to Schedule 1 to the Bill.
- 1.91 However, if a written statement is given under subsections 216(1) or (4) of the Life Insurance Act within two months of the commencement of the amendments, and is in in a form which that was, immediately before the commencement of the amendments, prescribed for the purposes of those subsections, then that written statement is taken to be in accordance with

subsection 216(6A) of the Act as amended.

***[Schedule 1, item 51]***

- 1.92 The definition of ‘approved form’ in the Schedule to the Life Insurance Act is repealed as it is redundant. The definition provided that an approved form was a form which was approved in writing by APRA.  
***[Schedule 1, item 52, Schedule to the Life Insurance Act]***

## Part 3 – Friendly Societies

### *Life Insurance Act 1995*

- 1.93 Friendly Societies are frequently prudentially regulated as life insurance companies; however, they operate with certain structural differences compared to other life insurance companies. As such, certain provisions of the Life Insurance Act were not properly adapted for the regulation of Friendly Societies, and their application in relation to these entities needed to be modified. These modifications are set out in Schedule 5 of the 1995 Regulations. However, as they modify the Life Insurance Act and have remained relatively stable, the thematic review of insurance found that it would be preferable for the modifications to be contained in primary legislation. Schedule 1 to the Bill implements the findings of the review by incorporating the modifications directly into the Life Insurance Act.  
***[Schedule 1, items 53 and 54, section 16A of the Life Insurance Act]***
- 1.94 Section 35 of the Life Insurance Act outlines the requirements for policy documents. Friendly societies do not issue a policy document to members as the benefit fund product (or policy). That is, a common set of benefit fund rules forms the basis of the contract between all members of that fund and the friendly society. Therefore, the Life Insurance Act concept of a policy document is not relevant to friendly societies. As such the requirements in subsections 35(1), (3), (4) and (5) of the Life Insurance Act as well as those in subsections 36(b), 229(2) and Division 7 of Part 10 of the Act do not apply to friendly societies.  
***[Schedule 1, items 56 and 61, sections 16HA, 16 HB, 16ZAA and 16ZAAF of the Life Insurance Act]***
- 1.95 As references to policy documents are not relevant to friendly societies the following provisions are modified when applying to friendly societies:
- subsection 35(2) of the Life Insurance Act—so that approved benefit fund rules do not make provisions that are inconsistent with section 31 of the Life Insurance Act,
  - subsection 198(1) and paragraph 201(1)(b) of the Life Insurance Act—so that references which relate to policy documents are omitted,

- subsections 213(2) and 213(3) of the Life Insurance Act—so that the requirement that the policy be endorsed is changed to a requirement that the approved benefit fund rules be followed when registering the applicant.

***[Schedule 1, items, 56, 60 and 61, sections 16HA, 16ZAB, 16ZAAA and 16ZAAB of the Life Insurance Act]***

- 1.96 Section 15 of the Life Insurance Act establishes that all policies issued by life companies are either participating or non-participating benefits. A non-participating benefit is a benefit that does not include any entitlement to share in any distribution of profit and a participating benefit is any other benefit. These concepts apply to the requirements in Divisions 5 and 6 of Part 4 of the Life Insurance Act.
- 1.97 However, in the context of benefit funds provided by friendly societies, products are classified as either defined contribution or defined benefit funds. In defined contribution funds, the benefit is a function of the contributions made by the member and the investment performance of the funds (e.g. declared bonuses). These funds could not be classed as participating in terms of section 15 of the Life Insurance Act because the society may exercise discretion as to what portion of the generated surplus is to be distributed to members and what portion is to remain unallocated. In defined benefit funds, the amount of the benefit is specified in the benefit fund rules. As such, friendly societies require more flexibility to decide how much of the surplus is distributed in any period. In particular, it is not necessary for the friendly society to distribute all surplus within the period. Therefore, the provisions in Divisions 5 and 6 of Part 4 of the Life Insurance Act are modified so as not to apply to friendly societies.  
***[Schedule 1, items 57 and 62, section 16KA and Schedule 2 Part 1 of the Life Insurance Act]***
- 1.98 These provisions are replaced by requirements that are more adapted to the circumstances of friendly societies. The requirements in section 30 of the Life Insurance Act are modified so as to enable a society to pay, apply or allocate all or part of the surplus to the members of the approved benefit fund, or transfer all or part of the surplus to another approved benefit fund or to the management fund if the rules of the society so provide. The appointed actuary must advise the friendly society that there is a surplus before the distribution can take place. The distribution must comply with any applicable prudential standard.  
***[Schedule 1, items 55 and 62, section 16GA and Schedule 2 Part 1 of the Life Insurance Act]***
- 1.99 Sections 226 and 227 of the Life Insurance Act require a life company to maintain a register of policies for each jurisdiction in which it carries on life insurance business and set out the requirements for the register. In comparison, friendly societies maintain registers of benefit members of each benefit fund. Therefore, the requirements in section 226 of the Life

Insurance Act are modified to require that such registers are kept in parts for each State or Territory and include individuals' membership details. The requirements in section 227 of the Life Insurance Act are modified so as not to apply to friendly societies.

***[Schedule 1, item 61, sections 16ZAAD and 16ZAAE of the Life Insurance Act]***

**1.100** Section 242 of the Life Insurance Act provides for postal voting by members of a mutual life insurance company, which includes friendly societies. However, other requirements in the Life Insurance Act and the *Corporations Act 2001* serve to involve members in the governance of friendly societies. As there are other processes that achieve a similar outcome to section 242 of the Life Insurance Act, section 242 of the Act is modified so as not to apply to friendly societies.

***[Schedule 1, item 61, section 16ZAAG of the Life Insurance Act]***

**1.101** The Life Insurance Act establishes the requirements for a life insurance company's financial records to be divided into various classes. As friendly societies generally adopt a single product benefit fund structure it is not possible to further divide the financial records of each benefit fund in the same way. For this reason, the requirements in sections 75 and 75 of the Life Insurance Act are modified when applying to friendly societies so as to simply require records that properly record the affairs and transactions of the society in respect of each fund.

***[Schedule 1, items 63 and 58, Schedule 2 Part 2 of the Life Insurance Act]***

**1.102** The addition of new Divisions and a new Schedule to the Life Insurance Act results in a degree of renumbering and the renaming of the Schedule to Schedule 1.

***[Schedule 1, items 59, 63, 64, 65, 66 and 67, subsections 7(2), 8(1), 16F(3), 179AQ(1), Division 6 and Schedule 1 of the Life Insurance Act]***

## Part 4 – Statutory funds of life companies

### *Life Insurance Act 1995*

**1.103** Part 4 of the 1995 Regulations provides for the circumstances in which a life company may give a charge over an asset of a statutory fund including a charge over the assets for the purposes of engaging in derivatives transactions. Part 4 also provides for the circumstances in which a life company is prohibited from investing assets of a statutory fund in a subsidiary. As part of the thematic review, these provisions of the 1995 Regulations (regulation 4.00 (Notice of establishment of statutory fund), regulation 4.00A (Charges over the assets of statutory funds: derivative contracts), regulation 4.00B (Charges over the assets of approved benefit funds) and regulation 4.01A (Prohibited investments)) were considered to be more appropriate for inclusion in the Life Insurance Act.



- 1.104 The terms of these provisions of the 1995 Regulations are incorporated directly into the Life Insurance Act while retaining the same regulatory effect in relation to a charge over an asset of a statutory fund. Any update to language and structure to reflect current drafting practice is not intended to change the substantive effect of the provisions. Similarly, it is intended that these provisions continue to operate in the same manner as equivalent provisions of the *Superannuation Industry (Supervision) Regulations 1994*.
- 1.105 Subsection 33(1) of the Life Insurance Act provides that whenever a life company establishes a statutory fund otherwise than under an approval given under section 52 of the Act, the company must give APRA written notice of certain matters in relation to the fund.
- 1.106 New subsection 33(3) of the Life Insurance Act provides that this written notice must be given on or before the time prescribed by the regulations or where there is no time period prescribed, at the end of 14 days after the establishment of the fund.  
***[Schedule 1, item 116, subsection 38(3) of the Life Insurance Act]***
- 1.107 This replaces the requirement set out in subsection 4.00(2) of the 1995 Regulations, which is not proposed to be remade.
- 1.108 The notice requirements outlined in new subsection 33(3) of the Life Insurance Act applies to statutory funds established on or after the commencement of this item.  
***[Schedule 1, item 117]***
- 1.109 Section 38 of the Life Insurance Act provides that a life company must not apply, or deal with, assets of a statutory fund, whether directly or indirectly, except for limited purposes prescribed by the Life Insurance Act. New paragraph 38(3)(aa) of the Life Insurance Act provides a new exception to the prohibition on a life company mortgaging or charging any of the assets of a statutory fund. A life company may do so if it is in accordance with new section 38A or 38B of the Life Insurance Act.  
***[Schedule 1, item 68, paragraph 38(3)(aa) of the Life Insurance Act]***
- 1.110 New section 38A of the Life Insurance Act deal with circumstances in which life companies may give a charge over the assets for the purposes of engaging in derivatives transactions. A life company may give a charge over the assets of a statutory fund of the purposes of engaging in such transactions subject to the following conditions:
- the charge relates to an investment;
  - the life company has in place a risk management statement setting out:
    - policies for use of derivatives (including analysis of risks); and
    - controls on the use of derivatives and compliance processes to ensure that they are effective; and

- that the investment to which the charge relates is made in accordance with that risk management statement.

***[Schedule 1, item 69, subsection 38A(1) of the Life Insurance Act]***

- 1.111 The charge must also comply with subsections 38A (2), (3) or (4) of the Life Insurance Act.

***[Schedule 1, item 69, paragraph 38A(1)(a) of the Life Insurance Act]***

*Charges given to comply with rules and laws*

- 1.112 New subsection 38A(2) of the Life Insurance Act sets out the circumstance that the performance of obligations in relation to the derivatives contract be secured in either:
- rules governing the operation of the approved body; or
  - a law of the Commonwealth, a State a Territory or a foreign country (including a part of a foreign country) that applies to dealings in the derivatives contract.

- 1.113 The reference to ‘law’ should be interpreted broadly to include legislation, regulations, legislative instruments, delegated legislation, prudential standards, capital requirements and any other requirements imposed by domestic or foreign financial market regulators and central banks (such as APRA, ASIC and the Reserve Bank of Australia (RBA) and similar foreign regulators). This subsection remakes regulation 4.00A(1A) of the 1995 Regulations.

***[Schedule 1, item 69, subsection 38A(2) of the Life Insurance Act]***

- 1.114 The approved bodies are proposed to be prescribed in regulations replacing the 1995 Regulations, for the purposes of the definition of ‘approved body’ in Schedule 1 to the Life Insurance Act.

***[Schedule 1, item 77, Schedule 1 to the Life Insurance Act]***

*Charges given to agents etc*

- 1.115 New subsection 38A(3) of the Life Insurance Act remakes subregulation 4.00A(1B) of the 1995 Regulations. A charge will satisfy subsection 38A(3) of the Life Insurance Act in relation to a derivative if the charge is given in favour of a person who is a party to the derivative on behalf of, on the instructions of, on account of, or for the benefit of the life company. This wording is intended to reflect the various ways in which an agent may act for a person. The charge must be given for the purposes of securing the performance of an obligation in relation to the derivative. Further, the agent must:

- be obliged to keep the property separate from the property of the agent under rules governing the operation of the approved body or a law of the Commonwealth, a State, a Territory or a foreign country

(including a part of a foreign country) that applies to dealings in the derivatives contract; and

- be obliged (or but for a netting-off, be obliged) to transfer property to another entity in relation to the derivative if particular circumstances arise.

***[Schedule 1, item 69, subsection 38A(3) of the Life Insurance Act]***

*Charges over financial property*

1.116 A charge will satisfy new subsection 38A(4) of the Life Insurance Act if:

- the asset over which the charge is given is financial property; and
- the obligations secured by the financial property are any of the following:
  - an obligation of the life company that relates to a derivatives contract;
  - an obligation of the life company to pay interest on an obligation of the life company that relates to a derivatives contract;
  - an obligation of the life company to pay costs and expenses incurred in connection with enforcing a charge given in respect of an obligation of the life company that relates to a derivatives contract or obligation to pay interest on such an obligation; and
- either:
  - the financial property is transferred or otherwise dealt with so as to be in the possession or under control of the secured party or another person (who is not the life company), who acknowledges in writing that he, she or it has that possession or control of the financial property on behalf of the secured party; or
  - the financial property is intermediated financial property in relation to an account and there is an agreement in force between the intermediary (who is not the life company) and one or more other persons, one of whom is the secured person or the life company where the agreement has the effect that:
    - : the person in whose name the account is maintained is not able to deal with the property; or
    - : the intermediary must not comply with instructions of the life company in relation to the property without the

consent of the secured person or someone who has agreed to act on the instructions of the secured person; or

- : the intermediary must comply (or must comply in a specified circumstance or circumstances) with the instructions of the secured person in relation to the intermediated financial property without the consent of the life company or anyone who has agreed to act on the instructions of the life company.

New subsections 38A(4), (5) and (9) of the Life Insurance Act remake subregulations 4.00A(1C) and (1F) of the 1995 Regulations.

***[Schedule 1, item 69, subsections 38A (4), (5) and (9) of the Life Insurance Act]***

- 1.117 New subsections 38A(6), (7) and (8) of the Life Insurance Act set out a range of circumstances in respect of which the possession and control test would, or would not, be satisfied. These subsections remake subregulations 4.00A(1D), (1E) and (1G) of the 1995 Regulations.  
***[Schedule 1, item 69, subsections 38A (6), (7) and (8) of the Life Insurance Act]***
- 1.118 This provision uses similar concepts and safeguards to those used in the *Payment Systems and Netting Act 1998* (the PSN Act) in respect of facilitating the enforcement of security in respect of financial property given in respect of certain financial market transactions. It is intended that the concepts of possession and control are applied in a similar way to the way in which those concepts are applied in respect of the PSN Act. More information about how these subsections work is provided in the Explanatory Memorandum to the Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016.
- 1.119 Subsections 38A(2), (3) and (4) of the Life Insurance Act are not mutually exclusive, and in some circumstances more than one may be satisfied by a particular arrangement. For example, this may occur where a charge is given by a life company over financial property in order to comply with the requirements of an approved body.
- 1.120 New section 38B of the Life Insurance Act provides that for the purposes of new paragraph 38(3)(aa) of the Act, a friendly society may mortgage or charge an asset of an approved benefit fund for the purposes of advantaging the approved benefit fund if this is in accordance with the benefit fund rules of the friendly society. This is subject to subsection 38(8) of the Life Insurance Act which provides that section 38 of the Act does not authorise a friendly society to mortgage or charge assets of an approved benefit fund otherwise than as provided by the approved benefit fund rules.  
***[Schedule 1, item 69, section 38B of the Life Insurance Act]***

- 1.121 Subsection 40(1) of the Life Insurance Act is amended to provide that, subject to various conditions, a life company may mortgage or charge an asset of a statutory fund for purposes other than those mentioned in paragraph 38(3)(a), (aa) or (c) of the Act, where previously the provision mentioned only paragraphs 38(3)(a) and (c) of the Act.  
***[Schedule 1, item 70, subsection 40(1) of the Life Insurance Act]***
- 1.122 Subsection 43(3) of the Life Insurance Act is amended by adding new paragraph 43(3)(c), which provides that a life company must not contravene new subsections 43A(1) or (4) of the Act. The operation of these subsections are explained below.  
***[Schedule 1, item 71, subsection 43(3) of the Life Insurance Act]***
- 1.123 Subsections 43(4) and (5) of the Life Insurance Act are both amended to include references to new paragraph 43(3)(ca), alongside the existing references to paragraphs 43(3)(c) and (d) of the Act in each subsection.  
***[Schedule 1, item 72, subsections 43(4) and (5) of the Life Insurance Act]***
- 1.124 New section 43A of the Life Insurance Act prescribes the circumstances in which an investment, or the retention of an investment, of assets of a statutory fund in a subsidiary of the life company is prohibited.
- 1.125 It prohibits any investment in a subsidiary of the life company where the statutory funds of the company (considered in aggregate) do not hold the majority interest in the subsidiary.
- 1.126 The purpose of the provision is to ensure the ‘control’ of the asset being included as an asset of the statutory fund is, in fact, held by the statutory fund. Where the ‘control’ of the subsidiary is effectively held by the shareholders funds (that is, the assets of the company other than assets of a statutory fund) – then the instrument is prohibited as an investment of the statutory fund.
- 1.127 Further, to facilitate that same purpose, the provision prevents reinvestment of the assets of the subsidiary, either directly or indirectly, in another related (non-subsidiary) company.
- 1.128 The test of majority interest for the purpose of this section is measured relative to the total interest of the life company in the subsidiary. In other words, the interest of the life company in the subsidiary to the extent it is held in the shareholders’ funds must exceed the interest of the life company in the subsidiary to the extent it is held in the statutory funds.
- 1.129 Subsection 43A(2) of the Life Insurance Act gives APRA discretion to determine whether an investment by a life insurer that has a branch in Australia is consistent with the intent of the legislation.
- 1.130 In line with current drafting practice, an alternative text has been included for images in the formula in subsection 43A(1) of the Life Insurance Act so the content of the images is accessible to anyone who relies on screen

reading software to read the legislation. This alternative text is for assistance in readability only and does not form part of the Regulations because of the operation of subsection 13(3) of the *Acts Interpretation Act 1901*.

- 1.131 This prohibition replaces section 4.01A of the 1995 Regulations.  
*[Schedule 1, item 73, section 43A of the Life Insurance Act]*

## Part 5 – References to Treasurer

### *Insurance Act 1973*

- 1.132 References to the ‘Treasurer’ in the Insurance Act are omitted and replaced with references to the ‘Minister’. These changes accord with current drafting practices to allow for greater flexibility in the event that more than one Minister has responsibility for administering provisions of the Act.  
*[Schedule 1, items 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89, subsection 3(1) paragraph (c) of the definition of ‘securities exchange’, subsections 3(2) and 8(3), section 62ZOZA (heading), subsection 62ZOZA(1) (heading), subsections 62ZOZA(1) and (2), subsection 106(3) (heading), subsection 106(3), subsection 106(4) (heading), subsection 106(4), subsection 106(5) (heading) and subsection 106(5) of the Insurance Act]*

### *Insurance Contracts Act 1984*

- 1.133 A reference to the ‘Treasurer’ in the Insurance Contracts Act is omitted and replaced with a reference to the ‘Minister’. This change accords with current drafting practices to allow for greater flexibility in the event that more than one Minister has responsibility for administering provisions of the Act.  
*[Schedule 1, item 90, section 11A of the Insurance Contracts Act]*

### *Life Insurance Act 1995*

- 1.134 References to the ‘Treasurer’ or ‘Treasurer’s’ in the Life Insurance Act are omitted and replaced with references to the ‘Minister’ or ‘Minister’s’, as required. These changes accord with current drafting practices to allow for greater flexibility in the event that more than one Minister has responsibility for administering provisions of the Act.  
*[Schedule 1, items 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104, section 179AZA (heading), subsection 197AZA(1) (heading), subsections 179AZA(1) and (2), subsections 216(7) and (7A), subsection 216(14B), paragraph 216(14B)(a), subsection 230D(3) (heading), subsections 230D(3), (4) and (5), subsection 230D(4) (heading) and subsection 230D(5) (heading) of the Life Insurance Act]*

## Part 6 – Other amendments

### *Insurance Acquisitions and Takeovers Act 1991*

- 1.135 Certain references to ‘time’ within the IAT Act are omitted and replaced with references to ‘period’. These amendments clarify in each instance that the Act is not referring to a moment in time, but rather a period of time.  
***[Schedule 1, items 105, 106, 108 and 111, paragraphs 44(1)(c) and (d), subsection 44(2), subsection 58(1) and paragraphs 73(1)(a), (b) and (c) of the IAT Act]***
- 1.136 Subsection 44(2) of the IAT Act grants the Minister a power to vary a divestment order which the Minister has made under subsection 44(1) of the Act for the purposes of Part 3 of the Act. The order may be varied by notifiable instrument extending the period of time allowed to the person to whom the divestment order applies, before the time period has expired.
- 1.137 Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make, grant or issue an instrument of a legislative or administrative character includes the power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary such an instrument.
- 1.138 New subsection 44(2A) of IAT Act is added to clarify that the Minister’s power to vary a divestment order under subsection 44(2) of the Act does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to the divestment order. This addition clarifies the law and ensures that it continues to reflect legislative intent which provides for greater administrative flexibility.  
***[Schedule 1, item 107, section 44 of the IAT Act]***
- 1.139 New subsection 58(2) of the IAT Act grants the Minister a power to vary a divestment order which the Minister has made under subsection 58(1) of the Act for the purposes of Part 4 of the Act. The order may be varied by notifiable instrument extending the period of time allowed to the person to whom the divestment order applies, before the time period has expired.
- 1.140 New subsection 58(2A) of the IAT Act is added to clarify that the Minister’s power to vary a divestment order under subsection 44(2) of the Act does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to the instrument. The operation of subsection 33(3) of the *Acts Interpretation Act 1901* is explained above. This addition clarifies the law and ensures that it continues to reflect legislative intent which provides for greater administrative flexibility.  
***[Schedule 1, item 109, section 58 of the IAT Act]***
- 1.141 New subsection 58(2) of the IAT ACT applies in relation to a divestment order made before the commencement of this item if the order was not revoked before the item commenced, and the period of time specified in

the divestment order did not end before that commencement, or if the divestment order was made on or after the commencement of this item.  
***[Schedule 1, item 110]***

### ***Insurance Act 1973***

- 1.142 Subsection 3A(1) of the Insurance Act provides that for the purposes of the Act, insurance business does not include undertaking liability under a contract of insurance, or a kind of contract of insurance, which is either specified in the regulations or is in circumstances specified in the regulations for the purposes of the subsection.
- 1.143 New subsection 3A(3) of the Insurance Act provides that the regulations may specify a contract of insurance, a kind of contract of insurance, or circumstances, by reference to a decision of APRA or a person, or a certificate or other documents issued by APRA or a person. If the regulations do so, they may also impose obligations on APRA or the person in relation to the decision.  
***[Schedule 1, item 112, subsection 3A(3) of the Insurance Act]***
- 1.144 New section 28A of the Insurance Act introduces two offences into the Act to replace offences in the 2002 Regulations. The section provides that a person commits an offence if the person is a general insurer that becomes aware that the person has started to carry on insurance business in Australia, or that the person has ceased to carry on insurance business in Australia, and does not inform APRA in writing within 7 days after the date on which the person becomes aware that the insurance business has started or ceased. The penalty for either offence is 50 penalty units.
- 1.145 These offences were moved from the 2002 Regulations into the Insurance Act to simplify the legislation and provide certainty and visibility to persons who may be affected. The penalty units applicable for each offence has been increased to 50 to bring the penalty in line with other equivalent offences in the Act. For example, section 114 of the Insurance Act provides that a person commits an offence if the person carries on a business using the word “insurance” or “insurer”, for a product that is not insurance and could be mistakenly believed to be insurance. The penalty for this offence in the case of an individual is 50 penalty units.  
***[Schedule 1, item 113, section 28A of the Insurance Act]***
- 1.146 Section 28A of the Insurance Act applies in relation to a person starting or ceasing to carry on an insurance business in Australia on a particular date if the date occurs on or after the commencement of this item, or within 7 days before the commencement if the person did not tell APRA of that date under subregulation 7(1) or (2) respectively of the 2002 Regulations.  
***[Schedule 1, item 114]***
- 1.147 Section 123 of the Insurance Act is repealed. Section 123 of the Insurance Act provided that a person may, on application in accordance with the



regulations and on payment of the prescribed fee, may inspect the Register of General Insurers and Authorised NOHCs or an auditor's certificate lodged with APRA under section 49L of the Insurance Act (Lodgement of auditor's certificate and actuary's reports).

- 1.148 Section 123 of the Insurance Act is repealed as it is no longer necessary because:
- APRA publishes the Register of General Insurers and Authorised NOHCs on their website; and
  - a person can request an auditor's certificate administratively or in accordance with the *Freedom of Information Act 1982*.

***[Schedule 1, item 115]***

#### ***Life Insurance Act 1995***

- 1.149 The 1995 Regulations specify that notice of the establishment of a statutory fund must be given in writing within 14 days of the establishment of the fund. As this period has remained consistent it has been incorporated directly into the Life Insurance Act while retaining the ability for that period to be varied by regulation as necessary.  
***[Schedule 1, item 116, subsection 33(3) of the Life Insurance Act]***
- 1.150 Subsection 35(6) of the Life Insurance Act provides for transitional arrangements which were applicable only during the period of 15 months after the commencement of the Act. As that period has passed, the subsection is redundant and is repealed.  
***[Schedule 1, item 118, subsection 35(6) of the Life Insurance Act]***
- 1.151 Paragraph 191(2)(a) of the Life Insurance Act is amended to clarify that for the purposes of the paragraph, a copy of each actuarial report on which a scheme is based must be provided to APRA. Prior to amendment, the paragraph specified that any report could be provided. Normally an actuarial report will be prepared by each of the transferring entity and the receiving entity. The requirements under paragraph 191(2)(a) of the Life Insurance Act replace regulation 9.01 of the 1995 Regulations. As this regulation clarifies a provision in the Act to ensure that both reports were provided, it was incorporated directly into the Life Insurance Act.  
***[Schedule 1, item 119, paragraph 191(2)(a) of the Life Insurance Act]***
- 1.152 The 1995 Regulations provide for the requirements for a notice of intention to make an application for a scheme for the transfer and amalgamation of a life insurance business to be made. These provisions have been incorporated directly into the Life Insurance Act. The requirements specify that a copy of the scheme has been published for 15 days in a manner which results in it being accessible to the public and reasonably prominent, necessary documents are provided to APRA and any other requirements set out in regulations as necessary.

***[Schedule 1, items 120, 121, 122 and 123, subsections 191(2), 191(2A)(b) and 191(2D) of the Life Insurance Act]***

- 1.153 The amendments to section 191 of the Life Insurance Act apply in relation to an application made on or after the commencement of this item.  
***[Schedule 1, item 124]***
- 1.154 Section 210 of the Life Insurance Act provides for when non-payment of premiums will not result in the forfeiture of a policy. Schedule 2 to the 1995 Regulations provides for a modification of section 210 of the Life Insurance Act in its application to ordinary policies where the sum assured and premiums thereof have been increased at the request of the policy owner. These provisions have been incorporated directly into the Life Insurance Act for transparency in the way section 210 of the Act operates in relation to these kinds of policies. The provisions provide that increases in the sum assured and premiums at the request of the policy owner are treated for the purposes of the section 210 of the Life Insurance Act non-forfeiture provisions as a separate life policy issued at the date of the increase.  
***[Schedule 1, item 127, subsections 210(6), (7), (8) and (9) of the Life Insurance Act]***
- 1.155 As a consequence of incorporating this modification into section 210 of the Life Insurance Act, minor changes have been made to subsections 210(1) and (5) of the Act to align the language of the subsections and to clarify the operation of new subsection (8) of the Act.  
***[Schedule 1, items 125 and 126, subsections 210(1) and (5) of the Life Insurance Act]***
- 1.156 The 1995 Regulations provide ASIC with authority to publish information relating to the unclaimed money register. Subsection 10.05B of the 1995 Regulations has been incorporated into the Life Insurance Act. New section 216AA of the Life Insurance Act provides that ASIC may authorise information on the unclaimed moneys register to be made available to the public or to a particular person in a way that ASIC determines. This authority excludes making tax file numbers available.  
***[Schedule 1, items 128 and 129, subsections 216A(3) and 216AA of the Life Insurance Act]***
- 1.157 Subsection 216A(3) of the Life Insurance Act is amended to provide that the prohibitions against disclosure of certain details located in 216A(2) of the Act do not apply if the disclosure is authorised under section 216AA of the Act, in addition to disclosures authorised under section 216 of the Act.  
***[Schedule 1, item 129, subsection 216A(3) of the Life Insurance Act]***
- 1.158 Subsections 246(2) and 246(3) of the Life Insurance Act provide transitional arrangements regarding principal executive officers which were applicable only during the period of 3 months after the

commencement of the Life Insurance Act. As such, these provisions are no longer applicable and are repealed. Subsection 246(1) of the Life Insurance Act is amended to reflect these repeals.

***[Schedule 1, items 130, 131, 132 and 133, subsections 246(1), 246(2) and 246(3) of the Life Insurance Act]***

- 1.159 These amendments to section 246 of the Life Insurance Act do not apply in relation to nomination made under subsection 246(2) of Act that is made before the commencement of item 133 of Schedule 1 to the Bill.  
***[Schedule 1, item 133]***
- 1.160 Industrial policies are a specific form of life policy where the premiums are made payable at intervals of less than two months and are contracted to be received, or are usually received, by means of collectors. These policies were regulated by provisions of the *Life Insurance Act 1945* which have been repealed. In order to ensure that the remaining industrial policies which were created under the *Life Insurance Act 1945* before the commencement of the Life Insurance Act are regulated in the same way, specific provisions which applied to these policies remain applicable.
- 1.161 New section 265 of the Life Insurance Act therefore provides that section 210 of the Act does not apply to an ordinary policy that existed before the Act commenced and was an industrial policy within the meaning as defined in the *Life Insurance Act 1945*. Further, that despite the repeal of section 101 of the *Life Insurance Act 1945* by the Life Insurance Act, that section continues to apply to those specific policies as it applied immediately before its repeal.  
***[Schedule 1, item 134, section 265 of the Life Insurance Act]***
- 1.162 Regulation 13.02 of the 1995 Regulations provide for certain kinds of life policies to be declared to be superannuation policies for the purposes of the definition of ‘superannuation policy’ in the Life Insurance Act. The kinds of policies listed in regulation 13.02 have been stable and the list has not been amended since 1998. For this reason, the definition of ‘superannuation policy’ in Schedule 1 to the Life Insurance Act as amended is clarified to include this list: immediate annuity policies, deferred annuity policies, allocated annuity policies, life policies that are owned by the trustee of an approved deposit fund or pooled superannuation trust, and RSAs when those life policies are maintained for the purposes of superannuation or retirement. The power to prescribe additional kinds of policies has been retained.  
***[Schedule 1, item 136, Schedule 1 to the Life Insurance Act]***
- 1.163 The definitions of ‘deferred annuity policy’, ‘immediate annuity policy’ and ‘allocated annuity policy’ have been inserted into Schedule 1 to the Life Insurance Act to support the amended definition of ‘superannuation policy’. A ‘deferred annuity policy’ is a policy that provides for an annuity that is not presently payable, an ‘immediate annuity policy’ is a policy that provides for an annuity that is presently payable, and an

‘allocated annuity policy’ has the meaning given by the regulations.  
***[Schedule 1, item 135, Schedule 1 to the Life Insurance Act]***

### ***Terrorism and Cyclone Insurance Act 2023***

1.164 The *Terrorism and Cyclone Insurance Act 2023*, defines an ‘unauthorised foreign insurer’ to have the same meaning as the 2002 Regulations, which are due to sunset. To ensure a smooth transition to the new framework, the definition of ‘unauthorised foreign insurer’ is repealed and substituted with a new definition. This new definition provides that the term ‘unauthorised foreign insurer’ has the same meaning as prescribed by the regulations.

***[Schedule 1, item 137, section 3 of the Terrorism and Cyclone Insurance Act 2003]***

## Commencement and application

1.165 The amendments in Schedule 1 to the Bill commence on a date to be fixed by proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day the Bill receives the Royal Assent, they commence on the day after the end of that period.

1.166 The amendments only apply in relation to offences committed, or contraventions, acts or omissions that occur on or after the commencement of Schedule 1 to the Bill.

***[Section [x]]***