

## **EXPOSURE DRAFT EXPLANATORY STATEMENT**

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

#### *Insurance Acquisitions and Takeovers Act 1991*

#### *Insurance Acquisitions and Takeovers (Public Interest) Determination 2023*

Subsection 5(1) of the *Insurance Acquisitions and Takeovers Act 1991* (the Act) provides 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;
- likely to result in a person who is not a fit and proper person to be in a position of influence over the company being in such a position of influence;
- 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.

Subsection 5(2) of the Act provides that the Minister may, by legislative instrument, determine matters to which regard must or may be had in determining:

- whether a particular matter is contrary to the public interest (in addition to the matters in paragraphs 5(1)(a) to (d) of the Act, listed above); or
- whether a particular matter is likely to have the effect or result mentioned in paragraphs 5(1)(a), (b) or (c) of the Act (listed above) or is contrary to the national interest as mentioned in paragraph 5(1)(d) of the Act.

The 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. Specific decisions in the Act require the Minister to consider whether a matter would be contrary to the public interest.

The purpose of the *Insurance Acquisitions and Takeovers (Public Interest) Determination 2023* (the Determination) is to remake the *Insurance Acquisitions and Takeovers Act 1991- Decision-Making Principles IDM 1/1992* (the DMP) in a form that is fit for purpose, prior to the DMP sunseting.

### **Background**

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. The Attorney-General may defer sunseting 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.

The *Legislation (Insurance Instruments) Sunset-altering Declaration 2018* aligned the sunset date for the DMP, *Insurance Acquisitions and Takeovers (Notices) Regulations 1992*, *Insurance Regulations 2002* and *Life Insurance Regulations 1995* to 1 October 2023, to enable the Treasury to conduct a comprehensive thematic review of regulation imposed on the insurance industry. Relevant provisions of the enabling Acts; that is, the Act, the *Insurance Act 1973* and the *Life Insurance Act 1995*, were also considered.

The DMP were made pursuant to subsection 65(1) of the Act, which allowed the Minister to formulate principles to be complied with by the Minister in making decisions under Part 3 or 4 of the Act. The review found that while the DMP were still required in some form, their application was unclear, and the Act should be amended to clarify their intended operation and purpose; that is, to inform when a matter is contrary to the public interest (referred to as the ‘public interest test’ in this document), pursuant to section 5 of the Act.

To implement the findings of the thematic review, Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023* made a number of amendments, including:

- repealing the enabling provision for the DMP in section 65 of the Act (also repealing the DMP) and replacing it with new subsection 5(2) of the Act which, as described above, provides the Minister with the power to determine, by legislative instrument, matters which inform the public interest test;
- repealing subsection 5(2) of the Act and amending paragraph 5(1)(b) of the Act 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, to remove redundant references to an unsuitable person;
- repealing subsection 5(3) of the Act, which prescribed when a person was taken to be in a position of influence over a company, as the provision is more appropriate to be prescribed in a legislative instrument.

## Summary

The Determination remakes the DMP under a new enabling provision in the Act with minor and technical updates, including updates to align with modern drafting practices. Key changes from the DMP are as follows:

- The Determination prescribes when a person is taken to be in a position of influence over a company. This replaces subsection 5(3) of the Act, which was repealed by Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2023*.

- The Determination updates the matters to which the Minister must or may have regard in considering whether a person is a fit and proper person under the DMP, to provide consistency with other similar provisions in the portfolio, including section 7 of the *Financial Sector (Shareholdings) Determination No. 1 of 2019*.

The Determination does not change the substantive meaning or operation of the majority of provisions in the DMP.

Part 1 provides the name, commencement, authority and definitions relevant to the Determination.

Part 2 prescribes the matters which inform the public interest test in section 5 of the Act. Specifically, section 5 prescribes matters to which the Minister must or may have regard in determining whether a particular matter 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. This remakes section 4 of the DMP with minor updates, as described above.

Section 6 sets out when a person is taken to be in a position of influence over an Australian-registered insurance company. This replaces subsection 5(3) of the Act as described above.

Section 7 prescribes matters to which the Minister must or may have regard in determining whether a particular matter is likely to unduly concentrate economic power in the Australia general insurance industry, the Australian life insurance industry or the Australian financial system. This remakes section 5 of the DMP.

Section 8 prescribes matters to which the Minister must or may have regard in determining whether a particular matter is contrary to the national interest. This remakes section 6 of the DMP.

The Act does not specify any conditions which must be met before the Minister's power to make a Determination may be exercised.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commenced at the same time as Schedule 1 to the *Treasury Laws (Measures for Consultation) Act 2023* and applies from the date of commencement.