

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

INSURANCE ACQUISITIONS AND TAKEOVERS BILL 1991
EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon John Kerin, MP)

INSURANCE ACQUISITIONS AND TAKEOVERS BILL 1991

GENERAL OUTLINE AND MAIN PURPOSE OF THE BILL

This Bill, together with the companion Insurance Laws Amendment Bill 1991, gives effect to the measures to increase the protection of life and general insurance policy holders announced by the then Treasurer on 6 November 1990 and 21 January 1991.

This Bill contains provisions which set out rules for the control, and compulsory notification, of proposals relating to the following:

- . the acquisition or issue of shares in Australian life and general insurance companies (Part 2);
- . the acquisition or leasing of assets of Australian life and general insurance companies (Part 3); and
- . the entering into of agreements relating to directors of Australian life and general insurance companies (Part 4).

The Bill provides that proposals may be approved by the Minister either unconditionally or with conditions, but may be only prohibited where they are considered by the Minister to be contrary to the public interest. The provisions of the Bill aim to protect the public interest by:

- . ensuring that the affairs of Australian life and general insurance companies are carried out in a prudential manner;
- . preventing unsuitable persons from being in a position of influence over Australian life and general insurance companies;
- . preventing the undue concentration of economic power in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; and
- . preventing proposals that would be contrary to the national interest.

FINANCIAL IMPACT STATEMENT

The requirements for compulsory notification and examination of proposals relating to the ownership and control of Australian insurance companies embodied in this Bill, together with the other measures to increase the protection of insurance policy holders contained in the companion Insurance Laws Amendment Bill 1991, will result in additional supervisory costs being incurred by the Insurance and Superannuation Commission.

The Insurance and Superannuation Commission estimates that the additional resources needed to give effect to these measures will be \$510 000 in 1990-91, \$785 000 in 1991-92, \$410 000 in 1992-93 and \$410 000 in 1993-94.

These additional costs will be fully recouped through the life insurance and general insurance supervisory levies.

EXPLANATORY NOTES ON INSURANCE ACQUISITIONS AND TAKEOVERS
BILL 1991

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

1. This clause provides a mode of citation of the Bill.

CLAUSE 2 COMMENCEMENT

2. Subclause (1) provides for the Bill to come into operation on a day to be fixed by Proclamation.
3. Subclause (2) provides that, notwithstanding subclause (1), the Bill will come into operation no later than the day after a period of six months from the day on which the Bill receives the Royal Assent.

CLAUSE 3 OBJECTS OF ACT AND SIMPLIFIED OUTLINE OF ACT

4. This clause is a statement setting out the objects of the Bill and a simplified outline of the Bill. Because this clause sets out only a simplified outline of the Bill, if the simplified outline is inconsistent with the operative provisions of the Bill, the operative provisions prevail.

CLAUSE 4 INTERPRETATION

5. This clause sets out definitions of a number of words and expressions for the purposes of the Bill.

CLAUSE 5 WHAT IS CONTRARY TO THE PUBLIC INTEREST

6. This clause sets out for the purposes of the Bill the circumstances which are deemed to be 'contrary to the public interest'. The circumstances are not limited to the outcomes specified in subclause (1).
7. Subclause (1) provides that, in respect of the application of this Bill to an Australian registered insurance company, a particular outcome is taken to be contrary to the public interest if it is:
 - (a) likely to adversely affect the prudential conduct of the affairs of the company; or
 - (b) likely to result in an unsuitable person being in a position of influence over the company; or

- (c) likely to unduly concentrate economic power in the Australian general insurance industry, the Australian life insurance industry, or in the Australian financial system; or
- (d) contrary to the national interest.

8. Subclause (2) provides that, for the purposes of this clause, a person is taken to be an 'unsuitable person to be in a position of influence over a company' where that person is not a fit and proper person to be in such a position of influence.

9. Subclause (3) provides that, for the purposes of this clause, a person is taken to be in a 'position of influence' over a company where:

- (a) the person, with or without associates, is in a position to control 15 per cent or more of the voting power of the company; or
- (b) the directors of the company are accustomed or are under an obligation to act in accordance with the directions, instructions or wishes of the person, whether acting alone or together with one or more associates; or
- (c) the person has power, with or without associates, to appoint or remove a director of the company; or
- (d) the person is a director of the company or takes part in its management.

CLAUSE 6 ENTERING INTO AN AGREEMENT OR ARRANGEMENT

10. This clause defines for the purposes of the Bill the meaning of the expression 'entering into an agreement or arrangement'.

11. Subclause (1) provides that if a person takes part in, or proposes to take part in, negotiations with a view to entering into an agreement or arrangement, the person is taken to have proposed to enter into the agreement or arrangement.

12. Subclause (2) provides that the expression 'entering into an agreement or arrangement' includes altering or varying an agreement or arrangement.

13. Subclause (3) provides that the expression 'entering into an arrangement' includes entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication. Without limiting the generality of the foregoing, the expression includes entering into an agreement, creating a trust, whether express or implied, or entering into a transaction, and a reference in the Bill to an arrangement is to be construed accordingly.

14. Subclause (4) provides that a reference in this Bill to an arrangement does not include a reference to a moneylending agreement.

CLAUSE 7 ASSOCIATES

15. Subclause (1) sets out, for the purposes of the Bill, the circumstances under which a person or persons are 'associates' of another person.

16. Subclause (2) provides that where otherwise unassociated persons enter or propose to enter into an arrangement where, by acting together, they would be in a position to control any of the voting power in a company, or have power to appoint or remove a director of a company, or cause a situation where one or more of the directors of the company would be accustomed or under an obligation to act in accordance with their directions, instructions or wishes, those persons are regarded as associates for the purposes of application of this Bill.

CLAUSE 8 PROPOSALS TO ACQUIRE SHARES OR ASSETS

17. This clause defines, for the purposes of the Bill, when a person is taken to have proposed to acquire shares or assets.

18. Subclause (1) provides that a person is taken to have proposed to acquire shares or assets if the person makes an offer to acquire the shares or assets, makes or publishes a statement that invites a holder of shares or assets to dispose of those shares or assets, or takes part in, or proposes to take part in, negotiations with a view to acquisition of the shares or assets.

19. Subclause (2) provides that for the purposes of this clause, an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is the insurer.

CLAUSE 9 MEANING OF "ENTITLED TO ACQUIRE"

20. This clause provides that, for the purposes of the Bill, a person is entitled to acquire anything that the person is absolutely or contingently entitled to acquire, for any reason.

CLAUSE 10 MEANING OF "INTEREST IN AN ASSET"

21. This clause defines for the purposes of the Bill the meaning of the expression 'interest in an asset'.

22. Subclause (1) provides that if a person has any legal or equitable interest in an asset, the person holds an interest in the asset.

23. Subclause (2), without limiting the general application of subclause (1), specifies instances where a person is taken to hold an interest in an asset. A person is taken to hold an interest in an asset where:

- (a) the person has entered into a contract to purchase the asset; or
- (b) the person has a right to have the asset transferred to the person or to the person's order, whether the right is exercisable presently or in the future, and whether or not on the fulfilment of a condition; or
- (c) the person has a right to acquire the asset, or an interest in the asset, under an option, whether the right is exercisable presently or in the future, and whether or not on the fulfilment of a condition; or
- (d) the person is otherwise entitled to acquire the asset or an interest in the asset.

24. Subclause (3) provides that a person is taken to hold an interest in an asset even if the person holds the interest jointly with another person.

25. Subclause (4) provides that where a person, whose ordinary business includes the lending of money, holds the interest solely by way of security for the purposes of a moneylending agreement, this is not an interest in an asset for the purposes of the Bill.

26. Subclause (5) provides that an interest in an asset is not to be disregarded only because of its remoteness, or the manner in which the interest arose, or the fact that the exercise of a right conferred by the interest is, or is capable of being, made subject to restraint or restriction.

CLAUSE 11 MEANING OF "INTEREST IN A SHARE"

27. This clause defines for the purposes of the Bill the meaning of the expression 'interest in a share'.

28. Subclause (1) provides that if a person has any legal or equitable interest in a share, the person holds an interest in the share.

29. Subclause (2), without limiting the general application of subclause (1), specifies instances where a person is taken to hold an interest in a share. A person is taken to hold an interest in a share where:

- (a) the person has entered into a contract to purchase the share; or
- (b) the person has a right to have the share transferred to the person or to the person's order, whether the right is exercisable presently or in the future, and whether or not on the fulfilment of a condition; or
- (c) the person has a right to acquire the share, or an interest in the share, under an option, whether the right is exercisable presently or in the future, and whether or not on the fulfilment of a condition; or
- (d) the person is otherwise entitled to acquire the share or an interest in the share; or
- (e) the person is entitled - otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company, or of a class of its members - to exercise or control the exercise of a right attached to the share.

30. Subclause (3) provides that a person does not hold an interest in a share only because that person holds the interest in the share jointly with another person.

31. Subclause (4) provides that in determining whether a person holds an interest in a share, it is not material that the interest cannot be related to a particular share.

32. Subclause (5) provides that an interest in a share is not to be disregarded only because of its remoteness, the manner in which the interest arose, or the fact that the exercise of a right conferred by the interest is, or is capable of being, made subject to restraint or restriction.

CLAUSE 12 CERTAIN INTERESTS IN SHARES TO BE DISREGARDED

33. This clause provides that, for the purposes of the Bill, the following interests in shares must be disregarded:

- (a) an interest in a share of a person whose ordinary business includes the lending of money where the person holds the interest solely by way of security for the purposes of a moneylending agreement;
- (b) an interest in a share of a person, being an interest held by the person by virtue of the person's holding of a prescribed office;
- (c) an interest of a prescribed kind in a share, being an interest of such person or persons as is prescribed.

CLAUSE 13 VOTING POWER

34. This clause defines for the purposes of the Bill the meaning of the expression 'voting power'.

35. Subclause (1) provides that a reference in this Bill to the voting power of a company is a reference to the total rights of shareholders to vote, or to participate in any decision making, concerning any of the following:

- (a) the making of distributions of capital or profits of the company to its shareholders;
- (b) the constituent document of the company;
- (c) any variation of the share capital of the company.

36. Subclause (2) provides that a reference in the Bill to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

37. Subclause (3) provides that, for the purposes of this clause, where the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies.

38. Subclause (4) provides that if a company is limited both by shares and by guarantee, or does not have a share capital, this clause applies as if the members or policy holders were shareholders in the company. This provision is intended to apply to mutual insurance companies the same principles in relation to voting power that apply to insurance companies with shareholders.

CLAUSE 14 ASSOCIATE-INCLUSIVE CONTROL INTEREST IN A COMPANY

39. Subclause (1) defines a type of 'associate-inclusive control interest' that a person holds in a company at a particular time as the sum of:

- (a) the direct control interests in the company of that type that the person holds at that time; and
- (b) the direct control interests in the company of that type held at that time by associates of the person.

40. Subclause (2) is intended to prevent double counting in determining the associate-inclusive control interest that a person holds in a company.

CLAUSE 15 DIRECT CONTROL INTERESTS IN A COMPANY

41. This clause defines four types of 'direct control interests in a company'.

42. A person holds a direct control interest in a company at a particular time equal to the percentage:

- (a) of the total paid-up share capital of the company in which the person holds an interest at that time (subclause (1));
- (b) of the voting power in the company that the person is in a position to control at that time (subclause (2));
- (c) that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up (subclause (3)); or
- (d) that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up (subclause (4)).

43. Subclause (5) is a provision for tracing direct control interests in companies.

CLAUSE 16 POWER TO APPOINT DIRECTOR

44. Subclause (1) provides that a reference in the Bill to power to appoint a director includes a reference to such a power exercisable whether with or without the consent or concurrence of any other person.

45. Subclause (2) provides that, for the purposes of this Bill, a person is taken to have a power to appoint a director where the person has the power to veto such an appointment, or where a person's appointment as a director follows necessarily from that person being a director or other officer of the first-mentioned person.

CLAUSE 17 DEEMED NOTICES - OPTIONS

46. This clause provides that for the purposes of the Bill where a person gives a notice to the Minister stating that the person has or proposes to acquire an option to acquire shares or assets, the notice has effect as if it included a statement that the person proposes to acquire the shares or assets.

47. The purpose of this clause is to provide that a notice is not required to be given to the Minister where a person has or proposes to exercise an option to acquire shares or

assets, where that person has previously given a notice to the Minister stating that the person has or proposes to acquire an option to acquire the shares or assets.

CLAUSE 18 APPLICATION OF ACT

48. Subclause (1) extends the Bill to all external Territories.

49. Subclause (2) extends the Bill to acts, omissions, matters and things outside Australia, whether or not occurring in a foreign country.

50. Subclause (3) provides for binding of the Crown in right of the Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island.

51. Subclause (4) provides that the Crown may not be prosecuted for an offence against or arising out the provisions of the Bill.

CLAUSE 19 SEVERABILITY

52. This clause will apply in the event that some or all of the provisions of the Bill are beyond the legislative power of the Commonwealth and section 15A of the Acts Interpretation Act 1901 is 'insufficient' to enable the Bill to be read down. The clause is designed to assist the courts to read down the Bill to specified heads of legislative power.

53. In particular, this clause provides that if this Bill would be wholly or partly invalid but for the provisions of this clause, this Bill has effect as if each reference to an Australian registered insurance company were, by express provision, confined to an Australian registered insurance company that:

- (a) carries on as its sole or principal business the business of insurance; or
- (b) carries on as its principal business the business of banking; or
- (c) is a financial or trading corporation formed within the limits of the Commonwealth within the meaning of paragraph 51(xx) of the Constitution; or
- (d) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (e) is incorporated in a Territory.

PART 2 - CONTROL OF ACQUISITION OR ISSUE OF SHARES IN AUSTRALIAN-REGISTERED INSURANCE COMPANIES

DIVISION 1 - INTERPRETATION

CLAUSe 20 INTERPRETATION

54. This clause sets out definitions of a number of expressions for the purposes of this Part of the Bill.

CLAUSe 21 WHEN SHARE ACQUISITION AGREEMENTS ENTERED INTO

55. This clause sets out when share acquisition agreements, that include conditions which must be fulfilled before the agreement becomes binding, are taken to have been entered into.

56. Subclause (1) provides, for the purposes of this Part, that:

- (a) where a person enters into an agreement under which the person acquires shares in an Australian-registered insurance company; and
- (b) the provisions of the agreement that relate to the acquisition of the shares concerned do not become binding until the fulfilment of a condition or conditions set out in the agreement;

the agreement is taken not to have been entered into by the person until the time when the provisions referred to in (b) above became binding.

57. Subclause (2) provides for conditions relating to anything done, or omitted to be done, by the Minister under this Bill, or a Minister under the Foreign Acquisitions and Takeovers Act 1975, to be excluded from the application of paragraph (1)(b) of this clause. The intention of this subclause is to provide that a condition included in a share acquisition agreement by virtue of a decision by a Minister under the provisions of this Bill or the Foreign Acquisitions and Takeovers Act 1975, is not a condition for the purposes of paragraph (1)(b) of this clause.

CLAUSe 22 MEANING OF "TRIGGER PROPOSAL" - PROPOSALS TO ACQUIRE OR ISSUE SHARES IN AUSTRALIAN-REGISTERED INSURANCE COMPANIES

58. This clause sets out the conditions under which a proposal to acquire or issue shares in an Australian-registered insurance company is a 'trigger proposal' for the purposes of this Part of the Bill.

59. In particular, this clause provides that a proposal is a 'trigger proposal' for the purposes of this Part where:

- (a) a person proposes, or two or more persons under an arrangement propose, to acquire shares in an Australian-registered insurance company; or
- (b) an Australian-registered insurance company proposes to issue shares;

and the proposed acquisitions or the proposed issue of shares would have the result that:

- (c) the particular associate-inclusive control interest in the company of the person proposing to acquire the shares, or the person to whom the shares are proposed to be issued, as the case may be, would increase:
 - (i) to 15 per cent or more, where that interest is currently less than 15 per cent (or where no interest is currently held); or
 - (ii) to any higher level, where that interest is already 15 per cent or more.

60. This means that any proposal by a person that would cause an associate-inclusive control interest of 15 per cent or more to increase further, or an associate-inclusive control interest of less than 15 per cent to increase to 15 per cent or more, is a trigger proposal, irrespective of the level of any other associate-inclusive control interest in the company held by that person, or of the level of any associate-inclusive control interest in the company held by any other person.

CLAUSE 23 WHEN TRIGGER PROPOSAL CARRIED OUT

61. This clause sets out when a trigger proposal is taken to have been carried out.

62. A person, or two or more persons, as the case requires, or an Australian registered insurance company, as the case may be, is taken to have carried out a trigger proposal when:

- (a) a person enters, or two or more persons under an arrangement enter, into one or more agreements under which the person, or the persons, as the case requires, acquire shares in an Australian registered insurance company; or
- (b) the Australian registered insurance company issues shares;

and the acquisitions or issue have the result that:

- (c) the particular associate-inclusive control interest in the company of the person acquiring the shares, or the person to whom the shares are issued, as the case may be, increases:
 - (i) to 15 per cent or more, where that interest is currently less than 15 per cent (or where no interest is currently held); or
 - (ii) to any higher level, where that interest is already 15 per cent or more.

DIVISION 2 - NOTIFICATION AND TIME LIMITS

CLAUSE 24 COMPULSORY NOTIFICATION OF TRIGGER PROPOSAL

63. This clause provides for the compulsory notification of trigger proposals to the Minister.

64. In particular, this clause provides that a person or company is guilty of an offence if:

- (a) the person or company carries out a trigger proposal; and
- (b) before entering into the agreement or issuing the shares, as the case may be, the person or company did not give to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (c) the person or company knew that the proposal concerned was a trigger proposal or had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether that was the case.

CLAUSE 25 30-DAY TIME LIMIT FOR MINISTER TO MAKE A DECISION

65. This clause specifies a 30-day time limit for the Minister to make a decision in respect of a trigger proposal which has been notified to the Minister.

66. In particular, this clause provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to an acquisition or issue of shares, as the case may be; or

- (b) a conditional go-ahead decision in relation to a proposal specified in a notice;

if:

- (c) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (d) by the end of a period of 30 days after the day on which the Minister receives the notice, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice; or
 - (ii) a temporary restraining order or a permanent restraining order in relation to the acquisition or issue specified in the notice;

and the person or company has not carried out the proposal.

67. This clause further provides that any such go-ahead decision must have been advised in writing to the person or company before the end of 10 days after the day on which the decision is made. In the case of a temporary restraining order, or a permanent restraining order, the order must have been published in the Gazette before the end of 10 days after the day on which the order is made, to be effective.

CLAUSE 26 TRIGGER PROPOSAL MUST NOT BE CARRIED OUT BEFORE A GO-AHEAD DECISION IS GIVEN OR TIME LIMIT RUNS OUT

68. This clause provides that a person or company is guilty of an offence if a notified trigger proposal is carried out before a go-ahead decision by the Minister is given, or a 40-day time limit from the date on which the Minister received the notice of the proposal expires, whichever occurs first.

69. In particular, this clause provides that a person or company is guilty of an offence if:

- . the person or company carries out a trigger proposal; and
- . before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case may be; and

the person entered into the agreement or the company issued the shares before the end of the period of 40 days after the date on which the Minister received the notice, or the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice, whichever first occurs.

DIVISION 3 - GO-AHEAD DECISIONS

CLAUSE 27 UNCONDITIONAL OR CONDITIONAL GO-AHEAD DECISION

70. This clause provides that the Minister may make a decision in respect of a notified trigger proposal that it may proceed either with or without conditions.

71. Subclause (1) provides that the Minister may make a decision that the Commonwealth Government has no objection to a trigger proposal, either:

- (a) unconditionally; or
- (b) so long as the person or company concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.

72. Subclause (2) provides that where the Minister makes a go-ahead decision, the person or company must be given written advice of the decision before the expiration of 10 days after the day on which the decision was made, such advice to include details of the conditions, if any, applicable to the decision.

73. Subclause (3) provides that a person or company is guilty of an offence if the person or company does not comply with the conditions applying to the decision.

74. Subclause (4) provides that where the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister must not subsequently reverse that decision and make either a temporary restraining order or a permanent restraining order in relation to the proposal.

DIVISION 4 - TEMPORARY RESTRAINING ORDERS, PERMANENT RESTRAINING ORDERS AND DIVESTMENT ORDERS

CLAUSE 28 TEMPORARY RESTRAINING ORDER

75. This clause sets out the circumstances under which the Minister may make a temporary restraining order in relation to a trigger proposal. The purpose of this clause is to give the Minister additional time in which to decide whether the proposal may proceed or should be prohibited as contrary to the public interest. The time period cannot be extended

indefinitely. The additional time conferred by a temporary restraining order may only be extended by one further period of time before a decision must be made.

76. Subclause (1) provides that the Minister may make an order temporarily prohibiting any or all of the proposed acquisitions, or prohibiting the proposed issue of shares, as the case may be, to which a trigger proposal relates.

77. Subclause (2) provides that the Minister may only exercise his power to make a temporary restraining order for the purpose of deciding whether a go-ahead decision or a permanent restraining order should be made.

78. Subclause (3) provides that a temporary restraining order applies for the period of time specified in the order, such period not to exceed 60 days after the order comes into operation.

79. Subclause (4) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the acquisition or issue of shares; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or issue specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and
- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the expiration of 10 days after the day on which the decision was made; or

- (ii) a further temporary restraining order, or a permanent restraining order, in relation to the acquisition or issue specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made;

and the person or company has not carried out the proposal.

80. Subclause (5) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the acquisition or issue of shares; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or issue specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and
- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made a further temporary restraining order in relation to the acquisition or issue specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made; and
- (f) by the end of a period of 60 days after the day on which the further temporary restraining order is published, the Minister has not made:
 - (i) a go-ahead decision in relation to the acquisition or issue, written advice of the decision being given to the person or company before the expiration of 10 days after the day on which the decision was made; or

- (ii) a permanent restraining order in relation to the acquisition or issue, the order being published in the Gazette having occurred before the expiration of 10 days after the day on which the order was made;

and the person or company has not carried out the proposal.

CLAUSE 29 PERMANENT RESTRAINING ORDER

81. This clause provides that the Minister may make an order permanently prohibiting any or all of the proposed acquisitions, or prohibiting the proposed issue of shares, as the case may be, to which a trigger proposal relates, where the Minister is satisfied that the result of the trigger proposal would be contrary to the public interest.

CLAUSE 30 DIVESTMENT ORDER

82. This clause sets out the circumstances under which the Minister may make a divestment order in relation to a trigger proposal.

83. Subclause (1) provides that the Minister may make an order directing a person who has acquired shares to dispose of those shares within a specified time to another person or persons approved in writing by the Minister, where the person or company carries out a trigger proposal, and the Minister is satisfied that the result of the trigger proposal is contrary to the public interest.

84. Subclause (2) provides that the Minister may, before the end of the time period specified in a divestment order applicable to that person, by notice in writing served on the person, vary the order by extending or further extending that time.

85. Subclause (3) provides that the Minister must not refuse to approve a person for the purposes of subclause (1) unless the Minister is satisfied that it would be contrary to the public interest for that person to acquire the shares concerned.

86. Subclause (4) provides that the Minister must not make a divestment order in relation to the proposal where:

- (a) a person or company is given written advice of a go-ahead decision within the period of 10 days after the day on which the decision is made; and
- (b) the person or company carries out the proposal concerned;

unless:

- (c) the person or the company is convicted of an offence against subclause 27(3) in relation to the acquisition or issue; or
- (d) an order is made under section 19B of the Crimes Act 1914 in relation to the person or company in respect of an offence against subclause 27(3) of this Bill in relation to the acquisition or issue.

87. This provision is intended to cover those situations where the Court finds that an offence is proved but decides not to record a conviction.

CLAUSE 31 OFFENCE OF CONTRAVENING TEMPORARY RESTRAINING ORDER, PERMANENT RESTRAINING ORDER OR DIVESTMENT ORDER

88. This clause provides that a person is guilty of an offence if the person contravenes a temporary restraining order, a permanent restraining order or a divestment order.

CLAUSE 32 PUBLICATION OF ORDERS

89. This clause provides that all orders, whether temporary restraining, permanent restraining or divestment, must be in writing signed by the Minister, and have no effect unless they are published in the Gazette within 10 days after the date on which made.

CLAUSE 33 WHEN ORDERS COME INTO OPERATION

90. Subclause (1) provides that temporary restraining and permanent restraining orders come into operation on the dates on which they are published in the Gazette.

91. Subclause (2) provides that a divestment order comes into operation on the date specified in the order, such date not to be earlier than 30 days after the date of publication of the order in the Gazette.

CLAUSE 34 REVOCATION OF ORDERS

92. Subclause (1) provides that the Minister may, at any time, by notice published in the Gazette, revoke any order, whether it is a temporary restraining, permanent restraining or divestment order.

93. Subclause (2) provides that the Minister must not revoke a permanent restraining order or a divestment order unless he or she is satisfied that it would not be contrary to the public interest to do so.

PART 3 - CONTROL OF ACQUISITION OR LEASING OF ASSETS OF
AUSTRALIAN-REGISTERED INSURANCE COMPANIES

DIVISION 1 - INTERPRETATION

CLAUSE 35 INTERPRETATION

94. This clause sets out definitions of a number of expressions for the purposes of this Part of the Bill.

CLAUSE 36 MEANING OF "TRIGGER PROPOSAL" - PROPOSALS TO
ACQUIRE OR LEASE ASSETS OF AUSTRALIAN-REGISTERED
INSURANCE COMPANIES

95. This clause sets out the conditions under which a proposal to acquire or lease assets of an Australian-registered insurance company is a 'trigger proposal' for the purposes of this Part of the Bill.

96. In particular, this clause provides that a proposal is a 'trigger proposal' for the purposes of this Part where:

- (a) one or more persons propose to acquire assets of an Australian-registered insurance company under a non-arm's length transaction; and the value of those assets, together with the total value of any assets of the company acquired by those persons or their associates under non-arm's length transactions in the preceding 12 month period, is not less than 15 per cent of the total book value of the assets of the company as at the date of the proposed acquisition;

or

- (b) one or more persons propose to enter into a non-arm's length arrangement relating to the leasing or letting on hire, or the granting of other rights to use, assets of an Australian-registered insurance company; and the value of the assets concerned, together with the total value of assets under any other such arrangements entered into by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the total book value of the assets of the company as at the date when the proposed arrangement will be entered into;

or

- (c) one or more persons propose to acquire any or all of the interests, rights or benefits of an insurance company (registered under the Life Insurance Act 1945) under one or more contracts of life insurance where the company is the insurer; and the total net liabilities in respect of those contracts, together with the total net liabilities in respect of any such contracts entered into by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the total book net liabilities in respect of all of the company's contracts of life insurance as at the date of the proposed acquisition;

or

- (d) one or more persons propose to acquire any or all of the interests, rights or benefits of an insurance company (authorised under the Insurance Act 1973) under one or more contracts of insurance where the company is the insurer; and any reduction in the company's unearned premiums provision resulting from the acquisition, together with the total of any reductions in the company's unearned premiums provision resulting from any such acquisition by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the company's book unearned premiums provision as at the date of the proposed acquisition;

or

- (e) one or more persons propose to acquire any or all of the interests, rights or benefits of an insurance company (authorised under the Insurance Act 1973) under one or more contracts of insurance where the company is the insurer; and any reduction in the company's outstanding claims provision resulting from the acquisition, together with the total of any reductions in the company's outstanding claims provision resulting from any such acquisition by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the company's book outstanding claims provision as at the date of the proposed acquisition.

97. The provisions covered by (c), (d) and (e) above are intended to cover portfolio transfers of insurance business or life insurance business. Contracts of reinsurance are not included.

CLAUSE 37 WHEN TRIGGER PROPOSAL CARRIED OUT

98. This clause sets out when a trigger proposal is taken to have been carried out.

99. A person is taken to have carried out a trigger proposal when:

- (a) one or more persons acquire assets of an Australian-registered insurance company under a non-arm's length transaction; and the value of the assets acquired, together with the total value of any assets of the company acquired by those persons or their associates under non-arm's length transactions in the preceding 12 month period, is not less than 15 per cent of the total book value of the assets of the company as at the date of the acquisition;

or

- (b) one or more persons enter into a non-arm's length arrangement relating to the leasing or letting on hire, or the granting of other rights to use, assets of an Australian-registered insurance company; and the value of the assets concerned, together with the total value of assets under any other such arrangements entered into by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the total book value of the assets of the company as at the date the arrangement was entered into;

or

- (c) one or more persons acquire any or all of the interests, rights or benefits of an insurance company (registered under the Life Insurance Act 1945) under one or more contracts of life insurance where the company is the insurer; and the total net liabilities in respect of those contracts, together with the total net liabilities in respect of any such contracts entered into by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the total book net liabilities in respect of all of the company's contracts of life insurance as at the date of the acquisition;

or

- (d) one or more persons acquire any or all of the interests, rights or benefits of an insurance company (authorised under the Insurance Act 1973) under one or more contracts of insurance where the company is the insurer; and any reduction in the company's unearned premiums provision resulting from the acquisition, together with the total of any reductions in the company's unearned premiums provision resulting from any such acquisition by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the company's book unearned premiums provision as at the date of the acquisition;

or

- (e) one or more persons acquire any or all of the interests, rights or benefits of an insurance company (authorised under the Insurance Act 1973) under one or more contracts of insurance where the company is the insurer; and any reduction in the company's outstanding claims provision resulting from the acquisition, together with the total of any reductions in the company's outstanding claims provision resulting from any such acquisition by those persons or their associates in the preceding 12 month period, is not less than 15 per cent of the company's book outstanding claims provision as at the date of the acquisition;

DIVISION 2 - NOTIFICATION AND TIME LIMITS

CLAUSE 38 COMPULSORY NOTIFICATION OF TRIGGER PROPOSAL

100. This clause provides for the compulsory notification of trigger proposals to the Minister.

101. In particular, this clause provides that a person is guilty of an offence if:

- (a) the person carries out a trigger proposal; and
- (b) before the acquisition or before entering into the arrangement, as the case may be, the person did not give to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or enter into the arrangement, as the case requires; and
- (c) the person knew that the proposal concerned was a trigger proposal, or had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether that was the case.

CLAUSE 39 30-DAY TIME LIMIT FOR MINISTER TO MAKE A DECISION

102. This clause specifies a 30-day time limit for the Minister to make a decision in respect of a trigger proposal which has been notified to the Minister.

103. In particular, this clause provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to an acquisition or arrangement, as the case may be; or

- (b) a conditional go-ahead decision in relation to a proposal specified in a notice;

if:

- (c) before the acquisition, or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and
- (d) by the end of a period of 30 days after the day on which the Minister receives the notice, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice; or
 - (ii) a temporary restraining order or a permanent restraining order in relation to the acquisition or issue specified in the notice;

and the person has not carried out the proposal.

104. This clause further provides that any such go-ahead decision must have been advised in writing to the person before the end of 10 days after the day on which the decision is made.

105. In the case of a temporary restraining order, or a permanent restraining order, any such order must have been published in the Gazette before the end of 10 days after the day on which the order is made, to be effective.

CLAUSE 40 TRIGGER PROPOSAL MUST NOT BE CARRIED OUT BEFORE A GO-AHEAD DECISION IS GIVEN OR TIME LIMIT RUNS OUT

106. This clause provides that a person is guilty of an offence if a notified trigger proposal is carried out before a go-ahead decision by the Minister is given, or a 40-day time limit from the date on which the Minister received the notice of the proposal expires, whichever occurs first.

107. In particular, this clause provides that a person is guilty of an offence if;

- . the person carries out a trigger proposal; and
- . before the acquisition or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets,

interests, rights or benefits or to enter into the arrangement, as the case may be; and

the person acquired the assets, interests, rights or benefits, or entered into the arrangement, before the end of the period of 40 days after the date on which the Minister received the notice, or the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice, whichever first occurs.

DIVISION 3 - GO-AHEAD DECISIONS

CLAUSE 41 UNCONDITIONAL OR CONDITIONAL GO-AHEAD DECISION

108. This clause provides that the Minister may give an unconditional or conditional go-ahead decision to a notified trigger proposal.

109. Subclause (1) provides that the Minister may make a decision that the Commonwealth Government has no objection to a trigger proposal, either:

- (a) unconditionally; or
- (b) so long as the person concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.

110. Subclause (2) provides that where the Minister makes a go-ahead decision, the person must be given written advice of the decision before the expiration of 10 days after the day on which the decision was made, such advice to include details of the conditions, if any, applicable to the decision.

111. Subclause (3) provides that a person is guilty of an offence if the person does not comply with the conditions applying to the decision.

112. Subclause (4) provides that where the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister must not subsequently reverse that decision and make either a temporary restraining order or a permanent restraining order in relation to the proposal.

DIVISION 4 - TEMPORARY RESTRAINING ORDERS, PERMANENT RESTRAINING ORDERS AND DIVESTMENT ORDERS

CLAUSE 42 TEMPORARY RESTRAINING ORDER

113. This clause sets out the circumstances under which the

Minister may make a temporary restraining order in relation to a trigger proposal. The purpose of this clause is to give the Minister additional time in which to decide whether the proposal may proceed or should be prohibited as contrary to the public interest. The time period cannot be extended indefinitely. The additional time conferred by a temporary restraining order may only be extended by one further period of time before a decision must be made.

114. Subclause (1) provides that the Minister may make an order temporarily prohibiting the proposed acquisitions or the entering into of the proposed arrangement, as the case may be, to which a trigger proposal relates.

115. Subclause (2) provides that the Minister may only exercise his power to make a temporary restraining order for the purpose of deciding whether a go-ahead decision or a permanent restraining order should be made.

116. Subclause (3) provides that a temporary restraining order applies for the period of time specified in the order, such period not to exceed 60 days after the order comes into operation.

117. Subclause (4) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the acquisition or arrangement; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before the acquisition, or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or enter into the arrangement, as the case may be; and
- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or arrangement specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and
- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made:

- (i) a go-ahead decision in relation to the proposal specified in the notice, written advice of the decision having been given to the person or company before the expiration of 10 days after the day on which the decision was made; or
- (ii) a further temporary restraining order, or a permanent restraining order, in relation to the proposal specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made;

and the person has not carried out the proposal.

118. Subclause (5) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the acquisition or arrangement; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before the acquisition, or before entering into the arrangement, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or enter into the arrangement, as the case may be; and
- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or arrangement specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and
- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made a further temporary restraining order in relation to the acquisition or arrangement specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made; and
- (f) by the end of a period of 60 days after the day on which the further temporary restraining order is published, the Minister has not made:

- (i) a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the expiration of 10 days after the day on which the decision was made; or
- (ii) a permanent restraining order, in relation to the proposal specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made;

and the person has not carried out the proposal.

CLAUSE 43 PERMANENT RESTRAINING ORDER

119. This clause provides that the Minister may make an order permanently prohibiting the proposed acquisition or prohibiting the entering into of the proposed arrangement, as the case may be, to which a trigger proposal relates, where the Minister is satisfied that the result of the trigger proposal would be contrary to the public interest.

CLAUSE 44 DIVESTMENT ORDER

120. This clause sets out the circumstances under which the Minister may make a divestment order in relation to a trigger proposal.

121. Subclause (1) provides that the Minister may, for remedial purposes, make an order directing the person acquiring the assets, interests, rights or benefits to dispose of those assets, interests, rights or benefits within a specified time to another person or persons approved in writing by the Minister; or directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind; where the person carries out a trigger proposal, and the Minister is satisfied that the acquisition or arrangement is contrary to the public interest.

122. Subclause (2) provides that the Minister may, before the end of the time period specified in a divestment order applicable to that person, by notice in writing served on the person, vary the order by extending or further extending that time.

123. Subclause (3) provides that the Minister must not refuse to approve a person for the purposes of subclause (1) unless the Minister is satisfied that it would be contrary to the public interest for that person to acquire the assets, interest, rights or benefits concerned.

124. Subclause (4) provides that the Minister must not make a divestment order in relation to the proposal where:

- (a) a person is given written advice of a go-ahead decision within the period of 10 days after the day on which the decision is made; and
- (b) the person carries out the proposal concerned;

unless:

- (c) the person is convicted of an offence against subclause 41(3) in relation to the acquisition or issue; or
- (d) an order is made under section 19B of the Crimes Act 1914 in relation to the person in respect of an offence against subclause 41(3) of this Bill in relation to the acquisition or arrangement.

125. This provision is intended to cover those situations where the Court finds that an offence is proved but decides not to record a conviction.

CLAUSE 45 OFFENCE OF CONTRAVENING TEMPORARY RESTRAINING ORDER, PERMANENT RESTRAINING ORDER OR DIVESTMENT ORDER

126. This clause provides that a person is guilty of an offence if the person contravenes a temporary restraining order, a permanent restraining order or a divestment order.

CLAUSE 46 PUBLICATION OF ORDERS

127. This clause provides that all orders, whether temporary restraining, permanent restraining or divestment, must be in writing signed by the Minister, and have no effect unless they are published in the Gazette within 10 days after the date on which they are made.

CLAUSE 47 WHEN ORDERS COME INTO OPERATION

128. Subclause (1) provides that a temporary restraining and permanent restraining order comes into operation on the date on which it is published in the Gazette.

129. Subclause (2) provides that a divestment order comes into operation on the date specified in the order, such date not to be earlier than 30 days after the date of publication of the order in the Gazette.

CLAUSE 48 REVOCATION OF ORDERS

130. Subclause (1) provides that the Minister may, at any time, by notice published in the Gazette, revoke any order, whether it is a temporary restraining, permanent restraining or a divestment order.

131. Subclause (2) provides that the Minister must not revoke a permanent restraining order or a divestment order unless he or she is satisfied that it would not be contrary to the public interest to do so.

PART 4 - CONTROL OF AGREEMENTS RELATING TO THE
DIRECTORATE OF AUSTRALIAN-REGISTERED INSURANCE
COMPANIES

DIVISION 1 - INTERPRETATION

CLAUSE 49 INTERPRETATION

132. This clause sets out definitions of a number of expressions for the purposes of this Part of the Bill.

CLAUSE 50 MEANING OF "TRIGGER PROPOSAL" - AGREEMENTS
RELATING TO THE DIRECTORATE OF
AUSTRALIAN-REGISTERED INSURANCE COMPANIES

133. This clause sets out the conditions under which a proposed agreement relating to the directorate of an Australian-registered insurance company is a 'trigger proposal' for the purposes of this Part of the Bill.

134. In particular, this clause provides that a proposal is a 'trigger proposal' for the purposes of this Part where:

- (a) one or more persons propose to enter into an agreement in relation to an Australian-registered insurance company;

or

- (b) it is proposed to alter a constituent document of an Australian-registered insurance company;

and

under the proposed agreement or in consequence of the proposed alteration:

- (c) one or more directors of the Australian-registered insurance company will be accustomed or under an obligation to act in accordance with the directions, instructions or wishes of:

(i) a person, acting alone or together with one or more associates, whose associate-inclusive control interest in the company is not less than 15 per cent; or

(ii) an associate of such a person;

or

(d) either:

(i) a person, acting alone or together with one or more associates, whose associate-inclusive control interest in the company is not less than 15 per cent; or

(ii) an associate of such a person;

will have the power to appoint or remove one or more directors of the Australian-registered insurance company.

CLAUSE 51 WHEN TRIGGER PROPOSAL CARRIED OUT

135. This clause sets out when a trigger proposal is taken to have been carried out.

136. A person, either alone or with others, or an Australian-registered insurance company, as the case may be, is taken to have carried out a trigger proposal when:

(a) one or more of the persons enter into an agreement in relation to an Australian-registered insurance company;

or

(b) a constituent document of an Australian-registered insurance company is altered;

and

under the agreement or in consequence of the alteration:

(c) one or more directors of the Australian-registered insurance company are accustomed or under an obligation to act in accordance with the directions, instructions or wishes of:

(i) a person, acting alone or together with one or more associates, whose associate-inclusive control interest in the company is not less than 15 per cent; or

- (ii) an associate of such a person;

or

- (d) either:

- (i) a person, acting alone or together with one or more associates, whose associate-inclusive control interest in the company is not less than 15 per cent; or

- (ii) an associate of such a person;

will have the power to appoint or remove one or more directors of the Australian-registered insurance company.

DIVISION 2 - NOTIFICATION AND TIME LIMITS

CLAUSE 52 COMPULSORY NOTIFICATION OF TRIGGER PROPOSAL

137. This clause provides for the compulsory notification of trigger proposals to the Minister.

138. In particular, this clause provides that a person or company is guilty of an offence if:

- (a) the person or company carries out a trigger proposal; and
- (b) before entering into the agreement or before the alteration, as the case may be, the person or company, as the case requires, did not give to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the proposal to make the alteration, as the case requires; and
- (c) the person or company knew that the proposal concerned was a trigger proposal or had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether that was the case.

CLAUSE 53 30-DAY TIME LIMIT FOR MINISTER TO MAKE A DECISION

139. This clause specifies a 30-day time limit for the Minister to make a decision in respect of a trigger proposal which has been notified to the Minister.

140. In particular, this clause provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to an agreement or alteration, as the case may be; or
- (b) a conditional go-ahead decision in relation to a proposal specified in a notice;

if:

- (c) a person or company carries out a trigger proposal; and
- (d) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or proposal to alter the company's constituent document, as the case may be; and
- (e) by the end of a period of 30 days after the day on which the Minister receives the notice, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice; or
 - (ii) a temporary restraining order or a permanent restraining order in relation to the agreement or alteration specified in the notice;

and the person or company has not carried out the proposal.

141. This clause further provides that any such go-ahead decision must be advised in writing to the person or company before the end of 10 days after the day on which the decision is made. In the case of a temporary restraining order, or a permanent restraining order, any such order must be published in the Gazette before the end of 10 days after the day on which the order is made, to be effective.

CLAUSE 54 TRIGGER PROPOSAL MUST NOT BE CARRIED OUT BEFORE A GO-AHEAD DECISION IS GIVEN OR TIME LIMIT RUNS OUT

142. This clause provides that a person or company is guilty of an offence if a notified trigger proposal is carried out before a go-ahead decision by the Minister is given, or a 40-day time limit from the date on which the Minister received the notice of the proposal expires, whichever occurs first.

143. In particular, this clause provides that a person or company is guilty of an offence if:

- . the person or company carries out a trigger proposal; and
- . before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case may be; and
- . the person entered into the agreement, or the company altered its constituent document, before the end of the period of 40 days after the date on which the Minister received the notice, or the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice, whichever first occurs.

DIVISION 3 - GO-AHEAD DECISIONS

CLAUSE 55 UNCONDITIONAL OR CONDITIONAL GO-AHEAD DECISION

144. This clause provides that the Minister may give an unconditional or conditional go-ahead decision to a notified trigger proposal.

145. Subclause (1) provides that the Minister may make a decision that the Commonwealth Government has no objection to a trigger proposal, either:

- (a) unconditionally; or
- (b) so long as the person or company concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.

146. Subclause (2) provides that where the Minister makes a go-ahead decision, the person or company must be given written advice of the decision before the expiration of 10 days after the day on which the decision was made, such advice to include details of the conditions, if any, applicable to the decision.

147. Subclause (3) provides that a person or company is guilty of an offence if the person or company does not comply with the conditions applying to the decision.

148. Subclause (4) provides that where the Minister makes a go-ahead decision in relation to a trigger proposal, the

Minister cannot subsequently reverse that decision and make either a temporary restraining order or a permanent restraining order in relation to the proposal.

DIVISION 4 - TEMPORARY RESTRAINING ORDERS, PERMANENT RESTRAINING ORDERS AND DIVESTMENT ORDERS

CLAUSE 56 TEMPORARY RESTRAINING ORDER

149. This clause sets out the circumstances under which the Minister may make a temporary restraining order in relation to a trigger proposal. The purpose of this clause is to give the Minister additional time in which to decide whether the proposal may proceed or should be prohibited as contrary to the public interest. The time period cannot be extended indefinitely. The additional time conferred by a temporary restraining order may only be extended by one further period of time before a decision must be made.

150. Subclause (1) provides that the Minister may make an order temporarily prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be, to which a trigger proposal relates.

151. Subclause (2) provides that the Minister may only exercise his or her power to make a temporary restraining order for the purpose of deciding whether a go-ahead decision or a permanent restraining order should be made.

152. Subclause (3) provides that a temporary restraining order applies for the period of time specified in the order, such period not to exceed 60 days after the order comes into operation.

153. Subclause (4) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the agreement or alteration; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before entering into the agreement, or before the alteration, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case requires; and

- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the agreement or alteration specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and
- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the expiration of 10 days after the day on which the decision was made; or
 - (ii) a further temporary restraining order, or a permanent restraining order, in relation to the proposal specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made;

and the person or company has not carried out the proposal.

154. Subclause (5) provides that the Minister is not empowered to make:

- (a) a temporary restraining order, a permanent restraining order or a divestment order in relation to the agreement or alteration; or
- (b) a conditional go-ahead decision in relation to the proposal specified in a notice;

if:

- (c) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case requires; and
- (d) before the end of a period of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or arrangement specified in the notice, such order being published in the Gazette before the end of 10 days after the day on which the order is made; and

- (e) by the end of a period of 60 days after the day on which the temporary restraining order is published, the Minister has not made a further temporary restraining order in relation to the agreement or alteration specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made; and
- (f) by the end of a period of 60 days after the day on which the further temporary restraining order is published, the Minister has not made:
 - (i) a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the expiration of 10 days after the day on which the decision was made; or
 - (ii) a permanent restraining order, in relation to the proposal specified in the notice, the order being published in the Gazette before the expiration of 10 days after the day on which the order was made;

and the person or company has not carried out the proposal.

CLAUSE 57 PERMANENT RESTRAINING ORDER

155. This clause provides that the Minister may make an order permanently prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be, to which a trigger proposal relates, where the Minister is satisfied that the result of the trigger proposal would be contrary to the public interest.

CLAUSE 58 DIVESTMENT ORDER

156. This clause sets out the circumstances under which the Minister may make a divestment order in relation to a trigger proposal.

157. Subclause (1) provides that the Minister may, for remedial purposes, make an order directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind; where a person or a company carries out a trigger proposal, and the Minister is satisfied that the agreement or alteration is contrary to the public interest.

158. Subclause (2) provides that the Minister may, before the end of the time period specified in a divestment order

applicable to that person, by notice in writing served on the person, vary the order by extending or further extending that time.

159. Subclause (3) provides that the Minister must not make a divestment order in relation to the proposal where:

- (a) a person or company is given written advice of a go-ahead decision within the period of 10 days after the day on which the decision is made; and
- (b) the person or company carries out the proposal concerned;

unless:

- (c) the person or company is convicted of an offence against subclause 55(3) in relation to the agreement or alteration; or
- (d) an order is made under section 19B of the Crimes Act 1914 in relation to the person in respect of an offence against subclause 55(3) of this Bill in relation to the agreement or alteration.

160. This provision is intended to cover those situations where the Court finds that an offence is proved but decides not to record a conviction.

CLAUSE 59 OFFENCE OF CONTRAVENING TEMPORARY RESTRAINING ORDER, PERMANENT RESTRAINING ORDER OR DIVESTMENT ORDER

161. This clause provides that a person is guilty of an offence if the person contravenes a temporary restraining order, a permanent restraining order or a divestment order.

CLAUSE 60 PUBLICATION OF ORDERS

162. This clause provides that all orders, whether temporary restraining, permanent restraining or divestment, must be in writing signed by the Minister, and have no effect unless they are published in the Gazette within 10 days after the date on which made.

CLAUSE 61 WHEN ORDERS COME INTO OPERATION

163. Subclause (1) provides that temporary restraining and permanent restraining orders come into operation on the date in which published in the Gazette.

164. Subclause (2) provides that divestment orders come into operation on the date specified in the order, such date not

to be earlier than 30 days after the date of publication of the order in the Gazette.

CLAUSE 62 REVOCATION OF ORDERS

165. Subclause (1) provides that the Minister may, at any time, by notice published in the Gazette, revoke any order, whether it is a temporary restraining, permanent restraining or divestment order.

166. Subclause (2) provides that the Minister must not revoke a permanent restraining order or a divestment order unless he or she is satisfied that it would not be contrary to the public interest to do so.

PART 5 - JUDICIAL ENFORCEMENT OF MINISTERIAL ORDERS

CLAUSE 63 FEDERAL COURT OF AUSTRALIA MAY ENFORCE MINISTERIAL ORDERS

167. Subclause (1) provides that the Federal Court of Australia may make such order or orders as it thinks fit to achieve the purpose for which an order made under Part 2, 3 or 4 was made by the Minister in relation to a contravention of such an order by a person.

168. Subclause (2) provides that the Federal Court's order may only be made on application of the Minister; may be made whether or not the contravention by the offender continues; and may be made even if other proceedings in respect of that contravention have been or are to be instituted.

169. Subclause (3) specifies the types of orders that the Federal Court may make, though the types of orders that may be made are not limited to those specified.

170. Subclause (4) provides that, in addition to the powers conferred on the Federal Court by the preceding provisions of this clause, the Federal Court has power to make an order:

- (a) directing any person to do or refrain from doing a specified act for the purpose of securing compliance with any other order made under this clause; and
- (b) containing such ancillary or consequential provisions as the Federal Court thinks just.

171. Subclause (5) provides that, before making an order under this clause, the Federal Court may direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

172. Subclause (6) provides that the Federal Court may, by order, rescind, vary or discharge an order made by it under this clause or suspend the operation of such an order.

173. Subclause (7) provides that a reference in this clause to an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is or was the insurer.

PART 6 - ANTI-AVOIDANCE

CLAUSE 64 ANTI-AVOIDANCE

174. The purpose of this clause is to empower the Minister to make orders to block or unwind schemes entered into for the sole or dominant purpose of avoiding the provisions of Parts 2, 3 or 4 of the Bill.

175. Subclause (1) provides that if:

- (a) one or more persons enter into, commence to carry out, or carry out a scheme; and
- (b) it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out, the scheme or any part of it, did so for the sole or dominant purpose of avoiding application of any provision of this Bill in relation to any person or persons;

the Minister may make any order under a provision of Part 2, 3 or 4 that the Minister would have been able to make if the scheme, or part of the scheme, had not achieved that purpose.

176. Subclause (2) provides that this clause applies to any scheme entered into after the date of introduction of this Bill into the Parliament.

177. Subclause (3) provides that an order may not be made prohibiting a person from doing anything that has already been done by that person before the order is made.

178. Subclause (4) sets out the definition of the word 'scheme' for the purposes of this clause.

PART 7 - DECISION-MAKING PRINCIPLES

CLAUSE 65 DECISION-MAKING PRINCIPLES

179. The purpose of this clause is to empower the Minister to set down principles that he or she will be required to comply with in making a decision as to whether a notified trigger proposal should be approved, either unconditionally or conditionally, or prohibited as contrary to the public interest by the issue of a permanent restraining order.

180. Subclause (1) provides that the Minister may, by signed instrument, formulate principles to be complied with by the Minister in making decisions under Part 2, 3 or 4. Such principles would not apply to a decision by the Minister to make a temporary restraining order under clause 28, 42 or 56.

181. Subclause (2) provides that the Minister must comply with any relevant decision-making principles in making a decision under Part 2, 3 or 4.

182. Subclause (3) provides that 'decision-making principles' made pursuant to this Part are instruments which must be laid before both Houses of the Parliament and which may be disallowed by a vote of either House within 15 sittings days of being tabled.

PART 8 - REVIEW OF DECISIONS

CLAUSE 66 RECONSIDERATION OF REVIEWABLE DECISION

183. This clause provides for the reconsideration by the Minister of a decision made by him or her under Part 2, 3 or 4 (other than in respect of making a temporary restraining order under those Parts).

184. Subclause (1) provides that a person who is affected by a reviewable decision may, if dissatisfied with the decision, by notice given to the Minister within the time specified, request the Minister to reconsider the decision.

185. Subclause (2) provides that the request must set out the reasons for making the request.

186. Subclause (3) provides that the Minister, upon receipt of a request pursuant to subclause (1), must reconsider the decision and may confirm or revoke the decision or vary the decision in such manner as he or she thinks fit.

187. Subclause (4) provides that the Minister is taken to have confirmed the decision under the provisions of subclause (3) if he or she does not confirm, revoke or vary the decision before the end of the time specified.

188. Subclause (5) provides that the Minister must inform the applicant in writing of the result of his or her reconsideration of the decision, and the reasons for confirming, revoking or varying the decision, as the case may be.

CLAUSE 67 REVIEW OF DECISIONS BY ADMINISTRATIVE APPEALS TRIBUNAL

189. This clause provides scope for appeals to be made to the Administrative Appeals Tribunal against a decision of the Minister that has been confirmed or varied under the provisions of clause 66.

190. This clause also provides that in giving any direction on the constitution of the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, the President must ensure that each non-presidential member has special knowledge or skill in relation to life insurance business or insurance business. Further, any non-presidential member must not be a director or employee of a company or body carrying on, whether in Australia or elsewhere, life insurance business or insurance business.

CLAUSE 68 STATEMENTS TO ACCOMPANY NOTIFICATION OF DECISIONS

191. Subclause (1) provides that where a person affected by a reviewable decision is given a written notice that such a decision has been made, the notice must include advice that the person may, if dissatisfied with the decision, seek a reconsideration of the decision in accordance with subclause 66(1) and, if dissatisfied with the outcome of the Minister's reconsideration of the decision, may make application to the Administrative Appeals Tribunal for review of the decision.

192. Subclause (2) provides that where a person is given a written notice by the Minister confirming or varying a reviewable decision, the notice must include advice that the person may, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

193. Subclause (3) provides that a failure to comply with this clause does not affect the validity of a decision.

PART 9 - MISCELLANEOUS

CLAUSE 69 DELEGATION

194. This clause empowers the Minister to delegate, in writing, any or all of his or her powers under this Bill to the Insurance and Superannuation Commissioner or a member of the staff assisting the Commissioner. This power of delegation does not extend to the Minister's powers under Part 7 of this Bill relating to decision-making principles.

CLAUSE 70 CONCURRENT OPERATION OF STATE/TERRITORY LAWS

195. This clause provides that to the extent that a law of a State or Territory is capable of operating concurrently with this Bill, it is the intention of the Parliament that this Bill not apply to the exclusion of such a law.

CLAUSE 71 VALIDITY OF ACTS DONE IN CONTRAVENTION OF THIS ACT

196. Self explanatory.

CLAUSE 72 MINISTER'S CONSENT FOR CRIMINAL PROCEEDINGS

197. Self explanatory.

CLAUSE 73 MINISTER MAY OBTAIN INFORMATION AND DOCUMENTS

198. This clause empowers the Minister to obtain relevant information and/or documents for the purpose of assisting him or her to decide whether a notified proposal could be approved or should be prohibited as contrary to the public interest.

199. Subclause (1) provides that the Minister may, by notice in writing, require a person who the Minister believes is capable of giving information or producing documents about matters that are relevant to the exercise by the Minister of his or her powers under this Bill, to give to the Minister any such information, or produce to the Minister any such documents within the time and in the manner specified in the notice. Further, the Minister may require that person to make copies of any such documents and to produce to him or her those copies.

200. Subclause (2) provides that a notice under subclause (1) must set out the effects of subclauses (5), (6), (7), (8) and (9).

201. Subclause (3) provides that scales of expenses to be allowed to persons required to give information or produce documents under the provisions of this clause may be prescribed in regulations.

202. Subclause (4) provides that in complying with a requirement pursuant to paragraph (1)(c), a person is entitled to be paid reasonable compensation by the Commonwealth.

203. Subclauses (5), (6) and (7) provide that a person must not:

- (a) without reasonable excuse, refuse or fail to comply with a notice under subclause (1);
- (b) knowingly give information that is false or misleading; and
- (c) produce a document, or a copy of a document, that is to that person's knowledge, false or misleading in any material particular.

204. Subclause (8) sets out the circumstances under which subclause (7) does not apply.

205. Subclause (9) provides that a person is not excused from giving information or producing a document under this clause on the ground that the information or document may tend to incriminate the person. It further provides that such information or documents are not admissible in evidence in criminal proceedings other than in connection with this clause.

206. Subclause (10) provides that the Minister may inspect, make and retain copies of, or take and retain extracts from, a document or copy produced under this clause.

207. Subclause (11) provides that the Minister may retain possession of a copy of a document produced to him or her under paragraph (1)(c).

208. Subclause (12) provides that the Minister may, for the purposes of this Bill, take and retain possession of a document produced under this clause.

209. Subclause (13) provides that a person who would, apart from the operation of this clause, otherwise be entitled to possession of the document, is entitled to be supplied with a copy certified by the Minister to be a true copy.

210. Subclause (14) provides that all courts and tribunals must receive the certified copy in evidence as if it were the original.

211. Subclause (15) provides that the person otherwise entitled to possession of the document, or another person authorised by that person, is permitted to inspect and make copies of, or take extracts from, the document until a certified copy is supplied by the Minister.

CLAUSE 74 FALSE OR MISLEADING STATEMENTS ETC.

212. This clause provides that it is an offence for a person to knowingly or recklessly make false or misleading statements.

213. Subclause (1) provides that a person must not knowingly or recklessly, in connection with the operation of this Bill (other than clause 73):

- (a) make a statement to the Minister or to an officer that is false or misleading in any material particular; or
- (b) omit from a statement made to the Minister or to an officer any matter or thing without which the statement is misleading in a material particular; or
- (c) give a document to the Minister or to an officer that contains information that is false or misleading in a material particular.

214. Subclause (2) defines the word 'officer' for the purposes of this clause.

CLAUSE 75 SECRECY

215. The object of this clause is to create duties of non-disclosure for the purposes of section 70 of the Crimes Act 1914 (subclause (1)). In particular, this clause sets out secrecy provisions that apply to any person who is or has been the Insurance and Superannuation Commissioner or a member of the staff assisting the Commissioner.

216. The clause prohibits any such person, except in the performance of a duty under or connection with this Bill, the Insurance Act 1973 or the Life Insurance Act 1945, from divulging or communicating to any other person, any information concerning the affairs of another person acquired under or for the purposes of this Bill (subclause (2)).

217. The provisions in this clause are based on section 126 of the Insurance Act 1973.

218. Subclauses (3) and (4) provide exceptions to the provisions of subclause (2). In particular, subclause (3) permits the communication of information or the production of a document to:

- (a) the Minister; or
- (b) a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

219. Subclause (4) permits the communication of information or the production of a document under this clause or section 126 of the Insurance Act 1973, to:

- (a) the Secretary to a Department of the Commonwealth; or
- (b) an officer of a Department of the Commonwealth approved in writing by the Secretary to that Department;

for the purposes of advising the relevant Minister in relation to a submission made, or to be made by that Minister to the Minister administering this Bill, or in relation to the administration of this Bill. This will permit consultation to be undertaken by the Insurance and Superannuation Commissioner with other relevant departments and agencies of the Commonwealth in respect of notified proposals.

220. Subclause (5) requires that the Secretary to a Department of the Commonwealth, or an officer of such a Department, must not divulge or communicate to any person, information acquired under subclause (4), other than for the purpose for which it was acquired.

221. Subclause (6) provides that for the purposes of this clause, a person is taken to be a Secretary to a Department of the Commonwealth if that person is appointed under an Act to have all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the Public Service Act 1922, and references to an officer and the Minister administering the first-mentioned Act are to be construed accordingly.

CLAUSE 76 CONDUCT BY DIRECTORS, SERVANTS AND AGENTS

222. This clause sets out provisions in relation to proceedings for an offence against this Bill that involve the conduct of directors, servants or agents of a company, or the servants or agents of a person who is not a company.

CLAUSE 77 COMPANY'S STATUTORY ACCOUNTS TO BE PRIMA FACIE
EVIDENCE OF VALUE OF ITS ASSETS

223. This clause provides that where, a life insurance company or general insurance company has lodged accounts under the relevant provisions of the Life Insurance Act 1945 or the Insurance Act 1973, as the case may be, and an amount is shown in those accounts as the value of an asset of the company as at the end of the accounting period concerned, for the purposes of this Bill, those accounts are prima facie evidence of the value of the assets as at the end of that accounting period.

CLAUSE 78 COMPANY'S STATUTORY ACCOUNTS TO BE PRIMA FACIE
EVIDENCE OF TOTAL NET LIABILITIES IN RESPECT OF
ITS CONTRACTS OF LIFE INSURANCE

224. This clause provides that where a life insurance company has lodged accounts under the Life Insurance Act 1945, and an amount is shown in those accounts as the total net liabilities in respect of all of the company's contracts of life insurance as at the end of the accounting period concerned, for the purposes of this Bill, those accounts are prima facie evidence of the total net liabilities in respect of all of the company's contracts of life insurance as at the end of that accounting period.

CLAUSE 79 COMPANY'S STATUTORY ACCOUNTS TO BE PRIMA FACIE
EVIDENCE OF ITS UNEARNED PREMIUMS PROVISION AND
ITS OUTSTANDING CLAIMS PROVISION

225. This clause provides that where a general insurance company has lodged accounts under the Insurance Act 1973, and an amount is shown in those accounts as either the company's unearned premiums provision or the company's outstanding claims provision as at the end of the accounting period concerned, for the purposes of this Bill, those accounts are prima facie evidence of the company's unearned premiums provision or the company's outstanding claims provision, as the case requires, as at the end of that accounting period.

CLAUSE 80 FOREIGN ACQUISITIONS AND TAKEOVERS ACT 1975 AND
THIS ACT TO OPERATE INDEPENDENTLY OF EACH OTHER

226. This clause provides that the Foreign Acquisitions and Takeovers Act 1975 and this Bill operate independently of each other and that, in particular, a decision under either Act has effect only for the purposes of the Act concerned.

CLAUSE 81 TRANSITIONAL - PRE-COMMENCEMENT ACQUISITIONS ETC

227. This clause provides that, subject to Part 6, the Bill does not apply to acquisitions or arrangements that occurred or were entered into, as the case may be, before the commencement of this Bill.

CLAUSE 82 REGULATIONS

228. This clause provides that the Governor-General may make regulations to prescribe matters necessary or convenient to give effect to the Bill (subclause (1), and that without limiting the generality of subclause (1), the regulations may exempt specified proposals, acquisitions, arrangements or transactions from the operation of any or all of the provisions of Parts 2, 3 or 4 (subclause (2)).

PART 10 CONSEQUENTIAL AMENDMENTS

CLAUSE 83 CONSEQUENTIAL AMENDMENTS

229. This clause provides for a minor consequential amendment to the Insurance Act 1973.

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