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HOUSE OF REPRESENTATIVES

Amendments to the Insurance Amendment Bill 1982

EXPLANATORY MEMORANDUM

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

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Amendments to the Insurance Amendment Bill 1982

General Outline and Main Purposes of the Amendments to the Bill

These amendments relate to three aspects of the Insurance Amendment Bill 1982, namely:-

(a) appeals provisions contained in the Bill and the Principal Act. The amendments have been developed in the light of matters raised by the Senate Standing Committee for the Scrutiny of Bills which has sought the incorporation in the Bill of a number of additional appeals provisions. The additional appeals provided for by the amendments will involve appeals against administrative decisions by the Treasurer or the Commissioner taken in respect of conditions to which bodies corporate authorised under the Act are subject, exemptions in respect of insurance business carried on for the benefit of a limited class of persons, transitional provisions relating to bodies corporate refused authorities and to refusals to revoke certain directions or conditions of authorisation imposed by the Treasurer or the Commissioner. The amendments also provide for inclusion of a provision in the Act to require persons affected by reviewable decisions to be informed of their right of appeal.

(b) paragraph 15(1)(d) and related provisions of the Bill, which restrict the extent to which premiums due to an insurer through intermediaries can count as assets of the insurer for purposes of the solvency provisions in the Act. The amendments provide for a number of modifications which will ease the overall effect of the restrictions. The modifications have been developed against the background of concerns expressed by the insurance industry about the provision. In brief, the modifications are designed to:

- apply the restrictions to premiums due to insurers in respect of insurance contracts arranged by intermediaries unless there is a written agreement between the insured and the insurer for the premiums to be paid to the insurer otherwise than through an intermediary;

- make clear that the percentage restrictions in paragraph 15(1)(d) apply after excluding those premiums which have remained unpaid for a period of more than three months (paragraph 15(1)(c) of the Bill);

- relax the specified percentages by increasing from 4% to 5% the percentage in respect of individual intermediaries and from 20% to 25% in respect of intermediaries in aggregate. Consequential increases have been made to the transitional percentages in sub-clause 15(2);

- include a definition of "prescribed premium income" for purposes of the denominator;

- ensure that the restrictions also apply in respect of the renewal of a contract of insurance;

- make clear that the provision does not apply to an employee of an insurer;

- defer the time for commencement of the provision for a period of 12 months commencing on the twenty-eighth day after the day the Act receives Royal Assent to allow further time for the industry to adjust to the changes;

- revise the base period in respect of which the premium values are calculated to the last four completed quarters. This will reduce the impact of the restriction where there is significant recent growth in insurers' business.

(c) clause 46 of the Bill, which provides for phasing-in arrangements allowing insurers, other than those which, during their last financial year, received more than 30% of their total premium income in the form of reinsurance premiums, to gradually adjust to the increased paid-up capital and solvency requirements over a four year period. The amendments to the clause will extend the phasing-in arrangements to all insurers, including reinsurers, that elect to be subject to Part III of the Bill, including the provisions regarding gazettal (clause 47) and directions by the Commissioner (clause 49).

EXPLANATORY NOTES ON THE AMENDMENTS

Amendment (1) - Clause 2 - Commencement

This amendment will allow bodies corporate a clear period of 12 months within which to adjust to the provisions of paragraph 15(1)(d) and (g) and sub-section 15(2).

Amendments (2) and (3) - Clause 14 - Conditions to which authority is subject

Amendment (2) clarifies the powers of the Treasurer and the Commissioner in relation to the revocation or variation of conditions imposed under the new paragraph 29(1)(f) (including the old paragraph 29(g)) or sub-section 29(2). In addition, the amendment will allow a right of appeal against conditions imposed under these provisions and against a refusal by the Treasurer or the Commissioner to revoke or vary such conditions.

Amendment (3) provides for technical drafting changes to make it clear that a condition of authorisation applicable to a body corporate immediately before the amendment of section 29 of the Principal Act, has effect on and after the commencement of the amendments as if it has been imposed under Section 29 of the Principal Act as varied by these amendments.

Amendments (4), (5) and (6) - Clause 15 - Assets

These amendments provide for a new paragraph 30(1)(ea) which restricts the extent to which unpaid premiums in relation to intermediaries (other than unpaid premiums to which paragraph 30(1)(c) is applicable) can be counted as assets for solvency purposes. In addition, the amendments contain a number of related interpretative provisions and revised transitional provisions as reflected in amendments (5) and (6) respectively. Action will be taken in due course to seek supporting changes to the Insurance Regulations, eg to prescribe a revised quarterly Form 16 which will be used as a basis for obtaining details of prescribed premium income as referred to in the new sub-section 30(8) provided for in amendment (5).

Amendments (7), (8) and (9) - Clause 16 - Liabilities

These amendments clarify the powers of the Commissioner in relation to the revocation or variation of directions of the Commissioner under section 31. In addition, the amendments will extend the right of appeal against directions given under the section to a refusal by the Commissioner to revoke or vary such directions.

Amendment (10) - Clause 20 - Exemption in respect of insurance business carried on for the benefit of a limited class of persons

This amendment inserts a revised clause 20 to add a right of appeal against decisions made by the Treasurer under section 37.

Amendments (11), (12), (13) and (14) - Clause 27 - Directions

These amendments provide for a body corporate to apply to the Treasurer for a revocation or variation of a direction given under section 62 of the Principal Act and extend the right of appeal to a decision of the Treasurer to refuse to revoke or vary such a direction. In addition, the amendments effect the repeal of sub-section 62(11) which becomes redundant as a consequence of the new sub-section 62(13) provided for in amendment (14).

Amendment (15) - Clauses 27A and B - Review of certain decisions

This amendment provides two new clauses. Clause 27A rewords sub-section 63(6) to take account of current legislative drafting practice and the review machinery contained in other Commonwealth legislation. Clause 27B adds a new section 64 which specifies the statements which shall accompany the notification of a reviewable decision to the person affected by the decision.

Amendment (16) - Clause 30 - Bodies corporate ceasing to carry on insurance business

This amendment clarifies the powers of the Treasurer in relation to the revocation or variation of directions of the Treasurer under sub-section 105(8), (12) or (12A). In addition, the amendment will extend the right of appeal against directions given under these sub-sections and to a refusal by the Treasurer to revoke or vary such directions.

Amendments (17) and (18) - Clause 35 - Transitional provisions relating to bodies corporate refused authorities under section 27

These amendments clarify the powers of the Treasurer in relation to the revocation or variation of directions of the Treasurer under section 109. In addition, the amendments will allow a right of appeal against directions given under the section and against a refusal by the Treasurer to revoke or vary such directions.

Amendments (19) and (20) - Clause 45 - Application of certain amendments

Amendment (19) omits paragraph 15(1)(d) from the scope of clause 45 as the paragraph comes into operation (in accordance with amendment (1)) 12 months after the commencement of the amendments under sub-clause 2(1) of the Bill. As a consequential drafting matter brought about by amendment (10), amendment (19) also changes a reference to section 20 in clause 45 to sub-section 20(1).

Amendment (20) adds sub-clauses 45(2) and 45(3) at the end of clause 45. Sub-clause 45(2) ensures that relevant former provisions of the Insurance Act remain in force until the end of the financial year commencing before the coming into force of the amendments. Sub-clause 45(3) is aimed at strengthening the appeals machinery (basically to make it comparable to other provisions on appeals which are being inserted in the Bill) in the existing section 29. The machinery will have application for so long as the existing section is continued in force.

Amendments (21) and (22) - Clause 46 - Interpretation

Amendment (21) is of a minor technical drafting nature only.

Amendment (22) omits paragraph 46(1)(a). The effect of this amendment is to remove the requirement that the premium income of a body corporate in respect of reinsurance business should not exceed 30 per cent of its total premium income before the body corporate is eligible to avail itself of the phasing-in arrangements in respect of the increased paid-up capital and solvency provisions in the Bill.

Amendments (23), (24) and (25) - Clause 49 - Directions

These amendments clarify the powers of the Commissioner in relation to the revocation or variation of directions of the Commissioner under clause 49. In addition, the amendments will extend the right of appeal against directions given under the clause to a refusal by the Commissioner to revoke or vary such directions.

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