

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Insurance Amendment Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon P.J. Keating, MP)

Insurance Amendment Bill 1983

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The amendments outlined in the Bill are designed to strengthen the minimum financial standards imposed on general (non-life) insurance companies under the Insurance Act 1973 and to effect a number of other improvements associated with the existing supervisory machinery, including the addition of further appeals provisions.

The amendments are confined to those which are considered essential at this time. The need for a strengthening of the standards required by the Act has been identified by successive Insurance Commissioners and recognised by the insurance industry. The amendments have been developed in the light of comments from the industry.

In large part the Bill is based on the Insurance Amendment Bill 1982, introduced into Parliament on 29 April 1982, and amendments to that Bill which were introduced into Parliament on 9 December 1982. The Bill lapsed following the dissolution of Parliament and the announcement of the general election.

EXPLANATORY NOTES ON THE INSURANCE AMENDMENT BILL 1983

PART I - PRELIMINARY

CLAUSE 1 SHORT TITLE, ETC

Self explanatory.

CLAUSE 2 COMMENCEMENT

This clause provides for most of the provisions in the Bill to come into operation on the twenty eighth day after it receives Royal Assent and for the remainder of the provisions to come into operation by Proclamation.

PART II - AMENDMENTS OF THE PRINCIPAL ACT

CLAUSE 3 INTERPRETATION

This clause amends section 3 of the Principal Act by inserting definitions for "accounting records", "accounts", "charge", "floating charge", "ordinary accounts" "quarterly statutory accounts", "statutory accounts" and "yearly statutory accounts" and

by redefining "books" and "debenture". Their aim is to achieve greater clarity to assist the Commissioner in his administration of the Act, in particular, with respect to requirements related to the accounts kept by insurance companies.

CLAUSE 4 APPLICATION OF ACT

This clause amends section 5 of the Principal Act to allow a prescribed company which provides insurance against the loss of part or all of persons' withdrawable shares or unsecured deposits with building societies to operate outside the application of the Act. The business of the prescribed company (to be the proposed deposits insurance corporation for permanent building societies) is not regarded as an appropriate activity for supervision under the Act. Apart from being subject to companies legislation, it is understood that the deposits insurance corporation will consult as necessary with State and Commonwealth authorities on its operation and arrangements.

CLAUSE 5 REPEAL OF SECTION 13

Section 13 has been made redundant with the coming into force of section 44 of the Public Service Amendment Act 1978. Section 44 repeals the Officers Rights Declaration Act 1928 but there is a special savings provision in relation to those who were covered by the repealed Act.

CLAUSE 6 PUBLIC SERVANT APPOINTED AS COMMISSIONER MAY CONTINUE IN
OFFICE AS PUBLIC SERVANT

This clause amends section 14 of the Principal Act to remove reference to section 13, which is repealed by clause 5.

CLAUSE 7 TERMINATION OF APPOINTMENT

This clause amends section 15 of the Principal Act by adding a new paragraph 15(2)(aa). Sub-section 15(2) sets out the circumstances upon the occurrence of which the Commissioner is to be dismissed. The new paragraph provides an additional ground for the dismissal of the Commissioner if he fails to disclose to the Treasurer all his direct and indirect pecuniary interests in the insurance industry.

CLAUSE 8 ACTING COMMISSIONER AND DELEGATION

This clause repeals section 19 relating to the appointment of an Acting Commissioner and substitutes a new section 19 to bring the form of that section into line with modern drafting practice.

The clause also provides for a new section 19A to be incorporated in the Principal Act enabling the Commissioner to delegate his powers under the Act except for the proviso that he cannot delegate either his power to delegate or his power under sections 23 and 24 to authorise insurers.

CLAUSE 9 CERTAIN PERSONS NOT TO CARRY ON INSURANCE BUSINESS

This clause repeals section 21 of the Principal Act and substitutes a new section 21 incorporating revised penalties for unauthorised persons carrying on insurance business.

CLAUSE 10 APPLICATION FOR AUTHORITY

This clause amends section 22 of the Principal Act to insert a new paragraph 22(2)(ea). This is a technical amendment to bring section 22 into line with the provisions of the Companies legislation (section 508 of the Companies Act and corresponding provisions of the State Companies Codes) relating to reservation or registration of the name of a company recognised to carry on business.

CLAUSE 11 AUTHORITY TO COMMENCE CARRYING ON INSURANCE BUSINESS

This clause makes a number of amendments to section 23 of the Principal Act. Section 23 provides that the Treasurer may grant (on application) an authority to carry on insurance business to bodies corporate if he is satisfied as to the minimum paid-up capital, solvency and other requirements set out in paragraphs 23(a) to (g). Sub-clauses (a) to (e) are principally designed to transfer that authority to the Commissioner and to upgrade the financial requirements for authorisation of bodies corporate.

Sub-clause (f) omits paragraph 23(g) which makes reference to the Insurance (Deposits) Act 1932 as that Act no longer applies to companies authorised under the Insurance Act or to those seeking authorisation.

CLAUSE 12 AUTHORITY TO CARRY ON INSURANCE BUSINESS FOR BODY CORPORATE
THAT CARRIED ON INSURANCE BUSINESS BEFORE 9 DECEMBER 1971

This clause makes a number of amendments to section 24 of the Principal Act. Section 24 provides that the Commissioner may grant (on application) an authority to carry on insurance business to bodies corporate who carried on insurance business before 9 December 1971 if he is satisfied as to a number of financial and other requirements. The amendments are designed to give effect to similar increases in the financial requirements for authorisation as those provided for in clauses 11 and 15. Sub-clause (f) omits paragraph 24(g) which makes reference to the Insurance (Deposits) Act 1932 as that Act no longer applies to companies authorised under the Insurance Act or to those seeking authorisation.

CLAUSE 13 REPEAL OF SECTION 26

With the absorption or exit from the industry of several small insurers for whom this section provided a concession, the section is now redundant and is appropriately repealed.

CLAUSE 14 REFUSAL TO GRANT AUTHORITY

This clause amends section 27 of the Principal Act to take into account the amendment to section 23 (clause 11) giving the Commissioner (rather than the Treasurer) the power to authorise bodies corporate under that section. However, powers relating to refusal of an authority continue to reside with the Treasurer

CLAUSE 15 CONDITIONS TO WHICH AUTHORITY IS SUBJECT

Sub-clause (1) repeals section 29 of the Principal Act and substitutes a new section 29 upgrading the financial requirements of the Act including increased paid-up capital and solvency requirements. Comparable provisions relating to bodies corporate seeking authorisation under the Act are contained in clauses 11 and 12. They also appear in the interim provisions relating to the phasing in of the new standards contained in Part III of the Bill.

New section 29 also provides the Treasurer and the Commissioner with power to revoke or vary conditions imposed under paragraph 29(1)(f) (including the old paragraph 29(g)) or sub-section 29(2). In addition, a right of appeal is allowed against conditions imposed under these provisions and against a refusal by the Treasurer or the Commissioner to revoke or vary such conditions.

Sub-clause (2) makes 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 had been imposed under section 29 of the Principal Act as varied by these amendments.

CLAUSE 16 ASSETS

This clause amends the provisions of section 30 which govern the extent to which certain assets can and cannot be deemed assets for the purpose of meeting the minimum solvency requirements of the Act.

Paragraph (a) omits from paragraph 30(1)(c) "mortgaged or" (wherever occurring) as this is now expressly covered in the definition of "charge" in amended sub-section 3(1) (clause 3).

Paragraph (b) adds a new paragraph 30(1)(ca) which has the effect of excluding from the solvency calculations those assets of a body corporate which are subject to a floating charge.

Paragraph (c) reduces from 6 months to 3 months the period specified in paragraph 30(1)(e) so that any unpaid premium due to an insurer for more than 3 months is not an asset unless approved by the Commissioner under sub-section 30(3).

Paragraph (d) adds new sub-sections 30(2A) and (2B). The purpose of sub-section 30(2A) is to specify guidelines regarding matters to which the Commissioner should have regard in exercising his power under sub-section 30(2) to approve an interest in a related body corporate as an asset for the purposes of the Act. Sub-section 30(2B) provides that the value of a loan, debenture or share, not being an asset under paragraph 30(1)(d), shall be treated as if it were such an asset for the purpose of the guidelines specified in sub-section 30(2A).

Paragraph (e) amends sub-section 30(3) to reduce from 12 months to 9 months the maximum period for which premiums may remain unpaid and be approved as assets by the Commissioner.

CLAUSE 17 LIABILITIES

This clause amends section 31 of the Principal Act. The main purpose of the clause is to refine and strengthen existing machinery so that it will be clear that a body corporate is required to make adjustments in its accounts to reflect directions issued under section 31 by the Commissioner in relation to the level of provision for liabilities to be made by a body corporate.

The clause also provides the Commissioner with power to revoke or vary directions given under section 31. In addition, a right of appeal is extended against directions given under the section to a refusal by the Commissioner to revoke or vary such directions and an offence is created where a body corporate fails to comply with a direction given under the section.

CLAUSE 18 VALUATION OF ASSETS

This clause amends section 33 of the Principal Act by omitting references to sub-section 33(5) which dealt with securities deposited by the body corporate under the Insurance (Deposits) Act 1932 (no longer having any application to authorised insurers or to those seeking authorisation).

CLAUSE 19 EXEMPTION FROM REQUIREMENT RELATING TO ASSETS IN AUSTRALIA

This amendment is consequent upon the insertion of new section 29 (clause 15).

CLAUSE 20 CANCELLATION OF AUTHORITY

This clause amends section 36 of the Principal Act by adding sub-sections 36(8) and (9). Sub-section 36(1) enables the Commissioner to revoke the authority of a body corporate where the insurer so requests and where the Commissioner is satisfied that the insurer has no liabilities. However, a problem has arisen where bodies corporate have sought to disengage from insurance business in Australia by transferring their portfolio to another body corporate in that section 36 does not recognise transfers of this kind. The new sub-sections 36(8) and (9) are designed to overcome this problem by allowing a body corporate to seek revocation of its authority where it has transferred its portfolio to another body corporate which has indemnified all the liabilities under policies of the first-mentioned body corporate.

CLAUSE 21 EXEMPTION IN RESPECT OF INSURANCE BUSINESS CARRIED ON FOR
BENEFIT OF LIMITED CLASS OF PERSONS

This clause amends section 37 of the Principal Act by increasing from \$200,000 to \$500,000 the amount of premiums which a body corporate can receive or have due in a financial year and remain eligible for exemption as a body corporate carrying on insurance business for the benefit of a limited class of persons. The amendment also allows the Treasurer to vary the terms and conditions of exemption and adds a right of appeal against decisions made by the Treasurer under the section.

CLAUSE 22 INTERPRETATION

This clause omits sub-section 39(1). As the amendments in clause 3 provide for a definition of "accounting records" in sub-section 3(1) of the Principal Act, sub-section 39(1) is now redundant.

CLAUSE 23 ACCOUNTING RECORDS

Sub-clause (a) omits sub-section 40(3) of the Principal Act and substitutes a new sub-section 40(3) requiring all bodies corporate (whether incorporated in Australia or overseas) to maintain in Australia such accounting records as are required to be kept under sub-section 40(1).

Sub-clauses (b), (c) and (d) make appropriate amendments to sub-sections 40(4) and (5) of the Principal Act to bring them into line with the new sub-section 40(3) and the new definition of "accounting records" in sub-section 3(1) of the Principal Act (clause 3).

CLAUSE 24 ACCOUNTS AND STATEMENTS TO BE LODGED WITH THE COMMISSIONER

Sub-clause (1) amends section 44 of the Principal Act by omitting sub-sections 44(4) and (5) and substituting new sub-sections. New sub-section 44(4) provides for an expanded quarterly return (Form 16) that must include, in addition to a statement of assets and liabilities as provided for in the existing provisions, a statement of premiums and claims in respect of insurance business carried on during the previous three months. The new sub-section 44(5) makes it clear that the statements required under sub-section 44(4) are provided in respect of insurance and other business conducted in Australia and that where the body corporate is incorporated in Australia the statements also relate to insurance and other business of the body corporate carried on outside Australia.

Sub-clause (2) contains transitional provisions relating to commencement of the changes provided in the clause.

CLAUSE 25 AUDIT OF ACCOUNTS

Sub-clause (a) inserts a new sub-section 47(1A) after sub-section 47(1) of the Principal Act which places an onus on a body corporate to make the necessary arrangements to enable the audit of its accounts in accordance with the Act. (See also notes on sub-clause (b) and clause 26).

Sub-clause (b) amends sub-section 47(2) by removing the specified time period in which the auditor must provide a certificate to a body corporate in relation to the audit of accounts and statements to be lodged with the Commissioner. This has been done to prevent the situation whereby an auditor may be required to give his certificate before preparation of the accounts has been completed. The onus will now be on the body corporate both to prepare the accounts and to obtain a certificate of audit within the four months (five months in the case of reinsurers) time frame specified in section 48.

CLAUSE 26 EXTENSION OF TIME

This clause amends section 49 of the Principal Act by omitting sub-section 49(2) which makes provision for extensions of time for auditors in providing certificates to bodies corporate. The sub-section becomes redundant as a result of the amendments to section 47 (clause 25). The existing provisions of sub-section 49(1) will continue to allow a body corporate to seek an extension of time for lodgement of its audited accounts and statements.

CLAUSE 27 REPORT OF INSPECTOR

This clause amends section 60 of the Principal Act. Section 60 provides for the production and handling of reports arising from an investigation into the affairs of a body corporate instigated by the Commissioner. In essence, the amendments provided for in the clause are concerned with clarifying existing reporting procedures so that where an inspector is not the Commissioner the inspector's report is conveyed to the Treasurer through the Commissioner.

CLAUSE 28 DIRECTIONS

This clause amends section 62 of the Principal Act. Section 62 provides that where an investigation of a body corporate is being or has been made and it appears to the Treasurer that the body corporate is unable to meet its liabilities or to comply with the provisions of the Act or directions applicable to it under the Act, the Treasurer may give any one or more of the directions specified in paragraphs (a) to (j) of sub-section 62(1).

It has been found that the directions available to the Treasurer under sub-section 62(1) and which may be applied to a body corporate under investigation by an inspector are too restrictive. Accordingly, sub-clauses (a), (b), (d) and (h) amend section 62 to give similar flexibility to that already available under sub-section 109(4) in respect of bodies corporate which carried on business prior to 1 August 1974.

Sub-clauses (c), (e), (f) and (j) 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 sub-clause (j). Sub-clause (g) omits sub-sections 62(9), (10) and (11) and substitutes new penalty provisions.

CLAUSE 29 REVIEW OF CERTAIN DECISIONS

This clause rewords sub-section 63(6) to take account of current legislative drafting practice and the review machinery contained in other Commonwealth legislation.

CLAUSE 30 STATEMENTS TO ACCOMPANY NOTIFICATION OF DECISIONS

This clause 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.

CLAUSE 31 REPEAL OF SECTION 104

Section 104 became redundant following repeal of sections 110, 111 and 112 by the Insurance Amendment Act 1977.

CLAUSE 32 BODIES CORPORATE CEASING TO CARRY ON INSURANCE BUSINESS

This clause amends section 105 to ensure the continuing oversight of liabilities of companies in the situation outlined below.

With the phasing out of the Insurance (Deposits) Act 1932 and the refund in August 1979 of all deposits except to those companies in liquidation, legal advice indicates that section 105 ceases to have effect. Section 105 contains provisions to allow for monitoring the running off of liabilities of companies which, although not authorised, carried on insurance business in Australia immediately before the date of commencement of section 21 of the Act and had deposits lodged with the Treasurer as required by the Insurance (Deposits) Act.

On the basis of this advice it appears that the Commissioner has no statutory power to continue to supervise the running off of liabilities of companies previously considered to be subject to the provisions of section 105. The amendment in sub-clause (a) is designed to ensure the continuation of such supervision until all liabilities are discharged or the company is placed into liquidation.

Sub-clauses (b) to (e) clarify 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, they 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.

CLAUSE 33 PERSONS CEASING TO CARRY ON INSURANCE BUSINESS

This clause amends section 106 for similar purposes to those outlined above in respect of sub-clause 32(a) and increases the penalty for failing to comply with notices given under the section.

CLAUSE 34 TRANSITIONAL PROVISIONS RELATING TO BODIES CORPORATE REFUSED AUTHORITIES UNDER SECTION 27

This clause provides for amendments to clarify the powers of the Treasurer in relation to the revocation or variation of directions of the Treasurer under section 109 and adds a right of appeal against directions given under the section and against a refusal by the Treasurer to revoke or vary such directions.

CLAUSE 35 POWER TO REQUIRE PRODUCTION OF BOOKS

This clause amends sub-section 115(1) of the Principal Act to make it clear that the Commissioner may require the production of books not only for the purpose of ascertaining whether a body corporate is complying with the provisions of the Act but also whether the body corporate has in the past complied with those provisions.

CLAUSE 36 INSPECTION OF REGISTER, ACCOUNTS AND AUDITORS' CERTIFICATES

This clause amends section 123 of the Principal Act which provides for persons to have the right to inspect certain documents including specified accounts and statements lodged by a body

corporate with the Commissioner. The amendment will extend that right by including an auditor's certificate on the accounts and statements of a body corporate as one of the documents that may be inspected.

CLAUSE 37 ANNUAL REPORT

This clause repeals sub-section 125(2) which is now redundant as the requirements of the sub-section have been met.

CLAUSE 38 OFFENCES

This clause, drafted in line with current legislative drafting practice, restores the effective value of the penalties involved in sub-section 128(1) of the Principal Act.

CLAUSE 39 JOINDER OF CHARGES AND PENALTIES FOR CERTAIN OFFENCES

CONTINUING OFFENCES

This clause inserts new sections 129A and 129B. Section 129A allows for the joinder of charges against a person in relation to multiple offences capable of being committed under relevant provisions of the Principal Act. Section 129B makes it clear that an obligation to do an act or thing continues even though the time period within which that obligation must be met may have passed.

CLAUSE 40 SCHEDULE

This clause amends sub-paragraph 3(6) of the Schedule to the Principal Act to empower the Treasurer to approve the form in which accounts and statements applicable to Lloyd's are furnished in lieu of prescription by regulation.

CLAUSE 41 AMENDMENTS RELATING TO ACCOUNTS AND ACCOUNTING RECORDS

This clause provides for the minor amendments listed in Schedule 1 which are consequent upon other amendments to the Principal Act.

CLAUSE 42 AMENDMENTS RELATING TO PENALTIES

This clause provides for amendments as set out in Schedule 2 to bring the level of monetary penalties more closely into line with present money values.

CLAUSE 43 FORMAL AMENDMENTS

This clause provides for formal amendments as set out in Schedule 3 to take account of current legislative drafting practice.

CLAUSE 44 APPLICATION OF CERTAIN AMENDMENTS

By virtue of the provisions of sub-clause (1) the amendments provided for in the Bill that alter the minimum financial and reporting requirements of bodies corporate will not apply to a body

corporate in relation to a financial year of the body corporate commencing before the coming into force of the amendments.

Sub-clause (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 (3) is aimed at strengthening the appeals machinery (basically to make it comparable to other provisions on appeals in the amendments) in the existing section 29. The machinery will have application for so long as the existing section is continued in force.

PART III - INTERIM PROVISIONS

CLAUSE 45 INTERPRETATION

The provisions in this and other clauses of this Part are designed to allow, subject to certain safeguards, for a body corporate to gradually move, over a period of 4 interim years, towards full compliance with the increased paid-up capital and solvency requirements of section 29 (clause 15) provided that the interim requirements set out in clause 47 and Schedule 4 are met.

Sub-clause (1) establishes the criteria under which bodies corporate may avail themselves of the interim provisions and provides a definition of "interim year" for purposes of the interim requirements set out in clause 47 and Schedule 4.

Sub-clause (2) is self explanatory.

CLAUSE 46 NOTIFICATION IN GAZETTE OF PRESCRIBED BODIES CORPORATE

This clause will allow for public disclosure of those bodies corporate availing themselves of the interim provisions.

CLAUSE 47 INTERIM APPLICATION OF SECTION 29 OF THE INSURANCE ACT 1973
TO PRESCRIBED BODIES CORPORATE

This clause, along with Schedule 4, specifies the minimum levels of paid-up capital and solvency to be observed by prescribed bodies corporate during the interim years allowed by this Part before full compliance with the increased requirements of section 29 (clause 15) must be reached.

CLAUSE 48 DIRECTIONS

This clause provides the Commissioner with the power to give directions where it appears to the Commissioner that in the interim years a prescribed body corporate has contravened or failed to comply with a provision of, or a direction given under, the Insurance Act 1973 or is about to become unable to meet its

liabilites. These powers are in addition to, and do not derogate from, the existing powers conferred on the Commissioner and the Treasurer by the Insurance Act 1973.

The clause contains penalty provisions for contravention of, or failure to comply with, a direction and also provides the Commissioner with power to revoke or vary directions. In addition, provision is made for a right of appeal against directions given under the clause and against a refusal by the Commissioner to revoke or vary such directions.

SCHEDULE 1 - AMENDMENTS RELATING TO ACCOUNTS AND ACCOUNTING RECORDS

This schedule lists minor amendments relating to accounts and accounting records consequent upon other amendments to the Principal Act.

SCHEDULE 2 - AMENDMENTS RELATING TO PENALTIES

This schedule lists amendments designed to bring the level of existing monetary penalties in the Principal Act more closely into line with present money values.

SCHEDULE 3 - FORMAL AMENDMENTS

This schedule lists formal amendments to take account of current legislative drafting practice.

SCHEDULE 4 - INTERIM APPLICATION OF SECTION 29 OF THE INSURANCE ACT 1973
TO PRESCRIBED BODIES CORPORATE

Self explanatory.