

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

INSURANCE LAWS AMENDMENT BILL 1991
EXPLANATORY MEMORANDUM

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

INSURANCE LAWS AMENDMENT BILL 1991

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The Bill, together with the companion Insurance Acquisitions and Takeovers Bill 1991, gives legislative effect to a number of measures to increase the prudential protection provided for life and general insurance policy holders which the then Treasurer outlined in announcements on 6 November 1990 and 21 January 1991.

More specifically, the provisions of this Bill will amend the Insurance Act 1973 and the Life Insurance Act 1945 to:

- . provide measures to disqualify a person who has been bankrupt or convicted of an offence relating to insurance or dishonest conduct from appointment to a senior management position with a life or general insurance company;
- . enhance provisions dealing with investigations, appointment of inspectors and the giving of directions to insurance companies.

The Insurance Act will also be amended to:

- . increase the minimum capital and solvency requirements for general insurers and introduce an additional solvency requirement based on the level of a company's outstanding claims provisions (phasing-in provisions will apply to existing authorised companies);
- . permit the Commissioner to direct a general insurance company to have an actuary, who is not an officer of the company, carry out a review of its outstanding claims provisions and for the Commissioner to receive a copy of that report;
- . enable the public disclosure of information additional to that which is already available from statutory returns lodged with the Commissioner by general insurers;

The Life Insurance Act will also be amended to:

- . increase the minimum paid-up capital requirement applying to registered life offices, and to require all registered life offices to maintain an excess of non-statutory fund assets over non-statutory fund liabilities (phasing-in provisions will apply to existing registered life offices);
- . reduce certain periods specified in the Act for the lodging of annual statutory returns by registered life offices.

FINANCIAL IMPACT STATEMENT

The measures contained in this Bill to increase the prudential protection of insurance policy holders, together with the requirements for compulsory notification and examination of proposals relating to the ownership and control of Australian life and general insurance companies contained in the companion Insurance Acquisitions and Takeovers 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 LAWS AMENDMENT BILL 1991

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

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

CLAUSE 2 COMMENCEMENT

2. This clause provides for the Bill to come into operation on the day it receives Royal Assent.

PART 2 - AMENDMENT OF THE INSURANCE ACT 1973

CLAUSE 3 PRINCIPAL ACT

3. This clause provides that a reference to the 'Principal Act' in Part 2 is a reference to the Insurance Act 1973.

CLAUSE 4 INTERPRETATION

4. This clause inserts definitions of 'actuary' and 'outstanding claims provision' into section 3 of the Principal Act for the purposes of the improved solvency requirements.

CLAUSE 5 INSERTION OF NEW SECTION

5. This clause inserts a new section 3A (Interpretation - actuaries) in the Principal Act. The clause provides that reference to an actuary means a person who is a Fellow of The Institute of Actuaries of Australia or a person approved by the Commissioner for the purposes of the Act.

CLAUSE 6 AUTHORITY TO COMMENCE CARRYING ON INSURANCE BUSINESS

6. This clause amends section 23 of the Principal Act to provide for increases in certain monetary amounts applying to companies seeking authorisation to conduct insurance business. As a result:

- . the minimum amount of paid-up share capital required of a company is increased from \$500 000 to \$2 million;
- . the amount by which the value of the assets of a company incorporated in Australia must exceed its liabilities is increased from \$1 million to \$2 million; and
- . the amount by which the value of the Australian assets of any company must exceed its Australian liabilities is increased from \$1 million to \$2 million.

CLAUSE 7 AUTHORITY TO CARRY ON INSURANCE BUSINESS FOR BODY
CORPORATE THAT CARRIED ON INSURANCE BUSINESS
BEFORE 9 DECEMBER 1971

7. This clause amends section 24 of the Principal Act to provide changes to the conditions to be satisfied by companies currently carrying on insurance business in Australia (and which carried on such business before 9 December 1971) seeking authorisation to conduct that business. The section is relevant to a limited number of companies which are in the process of running-off insurance liabilities.

8. The clause provides:

- . an increase in the minimum amount of paid-up share capital required from \$500 000 to \$2 million;
- . that, where a company is incorporated in Australia, the value of its assets must exceed its liabilities by the greatest of;
 - \$2 million (increased from \$1 million); or
 - 20 per cent of its premium income during its last preceding financial year (this existing requirement is unchanged); or
 - 15 per cent of its outstanding claims provision as at the end of its last preceding financial year (a new requirement); and
- . for any company, the value of its Australian assets must exceed its Australian liabilities by the greatest of;
 - \$2 million (increased from \$1 million); or
 - 20 per cent of its premium income in Australia during its last preceding financial year (this existing requirement is unchanged); or

- 15 per cent of its outstanding claims provision in respect of liabilities in Australia as at the end of its last preceding financial year (a new requirement).

CLAUSE 8 CONDITIONS TO WHICH AUTHORITY IS SUBJECT

9. This clause amends section 29 of the Principal Act to provide changes to the conditions to which a company's authority to carry on insurance business in Australia is subject.

10. The clause provides:

- . an increase in the minimum amount of paid-up share capital to be maintained at all times from \$500 000 to \$2 million;
- . that, where a company is incorporated in Australia, the value of its assets must at all times exceed its liabilities by the greatest of;
 - \$2 million (increased from \$1 million); or
 - 20 per cent of its premium income during its last preceding financial year (this existing requirement is unchanged); or
 - 15 per cent of its outstanding claims provision as at the end of its last preceding financial year (a new requirement); and
- . for any company, the value of its Australian assets must at all times exceed its Australian liabilities by the greatest of;
 - \$2 million (increased from \$1 million); or
 - 20 per cent of its premium income in Australia during its last preceding financial year (this existing requirement is unchanged); or
 - 15 per cent of its outstanding claims provision in respect of liabilities in Australia as at the end of its last preceding financial year (a new requirement).

CLAUSE 9 EXEMPTION IN RESPECT OF INSURANCE BUSINESS CARRIED ON FOR BENEFIT OF LIMITED CLASS OF PERSONS

11. This clause amends section 37 of the Principal Act by substituting the word 'Commissioner' for the word 'Treasurer'. The effect of this is to give the Commissioner,

rather than the Treasurer, the discretion to exempt a company satisfying the conditions of the section from such provisions of the Principal Act as may be determined appropriate.

CLAUSE 10 ACCOUNTS AND STATEMENTS TO BE LODGED WITH COMMISSIONER

12. This clause amends section 44 of the Principal Act:

- . by effecting minor changes to accounts and statements required to be lodged in respect of each financial year by authorised insurers; and
- . to require that the statement lodged by reinsurers covering claims in respect of Australian liabilities be;
 - reported on a claims notified rather than claims incurred basis; and
 - lodged on a quarterly rather than monthly basis.

CLAUSE 11 INSERTION OF NEW SECTIONS

13. This clause inserts new sections 48A and 48B in the Principal Act.

14. New section 48A (Actuarial investigation of outstanding claims provision) authorises the Commissioner to direct a company to appoint an actuary, who is not to be an officer of the company, to carry out an investigation of the adequacy of the company's outstanding claims provision as at a specified date, and to make a report of that investigation within 30 days.

15. The company must notify the Commissioner, within 7 days, of the name of the actuary appointed and, where the actuary is not acceptable, the Commissioner must notify the company. The company is then required to appoint a different actuary within 7 days. Appropriate appeals provisions apply to the section.

16. New section 48B (Commissioner may reconsider delegate's decisions under subsection 48A(7)) provides that, if a body corporate is dissatisfied with a decision it may, within 21 days, request the Commissioner to reconsider the decision.

CLAUSE 12 INTERPRETATION

17. This clause deletes from section 50 of the Principal Act the definition of 'inspector', which is no longer required as a consequence of other amendments being made to the Act.

CLAUSE 13 INVESTIGATION OF BODY CORPORATE BY COMMISSIONER OR INSPECTOR

18. This clause amends section 52 of the Principal Act by substituting the word 'Commissioner' for the word 'Treasurer'. The effect of this is that the Commissioner, rather than the Treasurer, is empowered to appoint an inspector to undertake an investigation into the affairs of an insurer.

19. The clause also incorporates into section 52 existing provisions, amended to reflect the above change, dealing with an investigation into the affairs of a company which is or has been associated with an insurer under investigation. These provisions previously appeared in section 53 of the Principal Act.

CLAUSE 14 REPEAL OF SECTION 53

20. This clause repeals section 53 of the Principal Act as a consequence of the changes made by the previous clause.

CLAUSE 15 ENTRY ON PREMISES

CLAUSE 16 POWERS OF THE COMMISSIONER OR THE INSPECTOR

CLAUSE 17 PERSONS TO COMPLY WITH REQUIREMENTS OF THE COMMISSIONER OR THE INSPECTOR

CLAUSE 18 PERSON MAY BE REPRESENTED BY A LEGAL PRACTITIONER

CLAUSE 19 NOTES OF EXAMINATION OF PERSON

CLAUSE 20 DELEGATION

CLAUSE 21 REPORT OF THE COMMISSIONER OR THE INSPECTOR

CLAUSE 22 DIRECTIONS

21. These clauses amend sections 54 to 60 and section 62 of the Principal Act as a consequence of changes made to section 52 of the Act which provide for the Commissioner, rather than the Treasurer, to appoint an inspector to undertake an investigation into the affairs of an insurer, and to give directions to a company pursuant to an investigation.

22. In the case of clause 20, subsections 59(2), (4) and (5) of the Principal Act are omitted as a consequence of amendments made to the Acts Interpretation Act 1901.

CLAUSE 23 BODIES CORPORATE CEASING TO CARRY ON INSURANCE BUSINESS

23. This clause amends section 105 of the Principal Act to provide that, in relation to an investigation into a company coming under the provisions of this section, the provisions of section 50 and sections 53 to 61 are to have effect as they were prior to the amendments contained in this Bill.

24. The effect of this is that the Treasurer will retain his powers for the purposes of existing investigations under this section.

CLAUSE 24 INSERTION OF NEW SECTION

25. This clause inserts a new section 117A (Bankrupts and persons convicted of certain offences not to be directors, principal executive officers etc. of authorised insurers) in the Principal Act to provide for certain persons to be disqualified from holding specified positions with an authorised insurer.

26. The clause sets out:

- . the grounds for disqualification, which include:
 - conviction for an offence under the Principal Act, or any law relating to insurance or dishonest conduct, and having been declared a bankrupt;
- . the positions to which disqualification relates, which are:
 - director or principal executive officer of a company (other than a foreign company), and local executive officer of a foreign company;
- . relevant penalties, and provides a defence where the defendant company did not know or suspect that an appointee was disqualified and had made reasonable efforts to determine if the person was disqualified.

CLAUSE 25 INSPECTION OF REGISTER, ACCOUNTS AND AUDITORS' CERTIFICATES

27. This clause amends section 123 of the Principal Act to provide a mechanism for improved public access to accounts and statements lodged with the Commissioner under section 44 of the Act.

CLAUSE 26 OFFENCES

28. This clause amends section 128 of the Principal Act to extend its offence provisions to new sections 48A and 117A.

CLAUSE 27 COSTS OF INVESTIGATIONS

29. This clause amends section 131 of the Principal Act as a consequence of the repeal of section 53 of the Act.

CLAUSE 28 APPLICATION OF AMENDMENTS - SECTION 29 OF THE PRINCIPAL ACT

30. This clause sets out the date of application of the amended conditions to which an insurer's authority is subject.

CLAUSE 29 APPLICATION OF AMENDMENTS - ACCOUNTS AND STATEMENTS

CLAUSE 30 APPLICATION OF AMENDMENTS - ACCOUNTS OF REINSURERS

31. These clauses provide commencement dates for the amendments effected to section 44 of the Principal Act by clause 10.

CLAUSE 31 TRANSITIONAL - PHASING-IN OF CAPITAL AND SOLVENCY REQUIREMENTS

32. This clause sets out provisions to phase-in over a minimum three year period the capital and solvency requirements which are to be satisfied by insurers currently authorised under the Principal Act. The first interim year for an authorised insurer will be its first financial year commencing after commencement of this clause.

CLAUSE 32 TRANSITIONAL - EXEMPTIONS UNDER SECTION 37

33. This clause provides that a decision made or notice already given by the Treasurer under section 37 of the Principal Act is not affected by amendments made under clause 9.

CLAUSE 33 TRANSITIONAL - INVESTIGATIONS

34. This clause provides that the existing provisions of the Principal Act will continue to apply in respect of any notice issued under section 52(1) before the commencement of clauses 12 to 21 and clause 27.

CLAUSE 34 TRANSITIONAL - PRE-COMMENCEMENT DIRECTIONS UNDER
SECTION 62 OF THE PRINCIPAL ACT GIVEN BY TREASURER

35. This clause provides that actions of the Treasurer under section 62 of the Principal Act continue to have effect notwithstanding the proposed amendments.

CLAUSE 35 TRANSITIONAL - SECTION 123 OF THE PRINCIPAL ACT

36. This clause provides that regulations made under section 123 of the Principal Act will not be affected by the proposed amendments.

PART 3 - AMENDMENT OF THE LIFE INSURANCE ACT 1945

CLAUSE 36 PRINCIPAL ACT

37. This clause provides that a reference to the 'Principal Act' in Part 3 is a reference to the Life Insurance Act 1945.

CLAUSE 37 INTERPRETATION

38. This clause inserts a definition of 'eligible asset' for the purposes of the capital and solvency requirements into section 4 of the Principal Act.

CLAUSE 38 INSERTION OF NEW SECTION

39. This clause inserts a new section 4B (Interpretation - eligible assets) in the Principal Act. The clause provides that an eligible asset of a company does not include an investment in a related company. It goes on to set out exceptions to this general rule, including the situation where the investment is in a subsidiary company.

CLAUSE 39 REGISTRATION OF COMPANIES

40. This clause amends section 19 of the Principal Act with respect to the minimum financial requirements imposed on companies seeking registration under the Act.

41. As a result:

- . the minimum amount of share capital (together with share premium account balance) required of a company incorporated in Australia which has a share capital is increased from \$2 million to \$10 million;

- . the value of eligible assets of a company incorporated in Australia which has no share capital is to be not less than \$10 million; and
- . the value of eligible assets in Australia in respect of a foreign company is to be not less than \$10 million.

CLAUSE 40 INSERTION OF NEW SECTION

42. This clause inserts a new section 19A (Capital and solvency requirements) in the Principal Act. This section imposes continuing capital and solvency requirements on registered life insurers.

43. As a result:

- . a registered company which is incorporated in Australia and has a share capital must maintain at all times paid-up share capital (together with share premium account balance) of not less than \$10 million;
- . a registered company incorporated in Australia which has no share capital must maintain at all times eligible assets (other than statutory fund assets) of not less than \$10 million; and
- . a registered foreign company must maintain at all times eligible assets in Australia (other than statutory fund assets) of not less than \$10 million.

44. The section also provides that a registered company must maintain eligible assets (other than statutory fund assets) the value of which exceeds its liabilities (other than statutory fund or share capital liabilities) by \$5 million.

CLAUSE 41 ACTUARIAL REPORTS, ABSTRACTS AND STATEMENTS OF LIFE INSURANCE BUSINESS

45. This clause amends section 48 of the Principal Act to provide for investigations into the financial condition of a registered company by the company's appointed actuary to be made annually rather than at five-yearly intervals. It will formalise a practice already observed by the industry.

CLAUSE 42 ACCOUNTS, BALANCE-SHEETS ETC. TO BE SIGNED AND LODGED WITH COMMISSIONER

46. This clause amends section 52 of the Principal Act to reduce the time permitted for lodgement of accounts, balance sheets or returns under sections 44 and 51, from 5 months to 3 months. It also reduces the time permitted for lodgement of the abstract and statement prepared by the appointed actuary under section 48, from 6 months to 15 weeks.

CLAUSE 43 INSERTION OF NEW SECTION

47. This clause inserts a new section 54C (Inquiry by Commissioner and direction not to deal with certain assets) in the Principal Act to provide that the Commissioner may direct a registered life insurance company not to dispose or deal with an asset where it appears that the company is, or is likely to become, unable to meet its liabilities. The direction cannot extend beyond a period of 6 months.

48. Provision is made for a penalty of up to \$1 million to apply where a company contravenes a direction not to deal with an asset. A more general review of the Act currently being undertaken will look at the adequacy of existing penalties to ensure consistency with those adopted in the Bill.

CLAUSE 44 INSERTION OF NEW SECTION

49. This clause inserts a new section 57A (Directions during or after investigation) in the Principal Act to provide for the Commissioner to issue directions to a registered life insurance company during the course, as well as upon completion, of an investigation. The section also provides that directions must not remain in force for more than 12 months, that further directions may be issued and that affected companies may apply for the direction to be changed or varied.

CLAUSE 45 REVIEW OF CERTAIN DECISIONS

50. This clause amends section 138 of the Principal Act as a consequence of the inclusion of new sections 54C and 57A into the Act. The amendments provide that directions or decisions made by the Commissioner under subsection 54C(4) and subsections 57A(1), (5) and (6) are reviewable decisions.

CLAUSE 46 INSERTION OF NEW SECTION

51. This clause inserts a new section 146A (Bankrupts and persons convicted of certain offences not to be directors, principal executive officers etc. of registered life insurers) in the Principal Act to provide for certain persons to be disqualified from holding specified positions with a registered life insurer.

52. The clause sets out:

. the grounds for disqualification, which include:

- conviction for an offence under the Principal Act, or any law relating to insurance or dishonest conduct, and having been declared a bankrupt;

. the positions to which disqualification relates, which are:

- director, principal executive officer or the appointed actuary of a company (other than a foreign company), and local executive officer or the appointed actuary of a foreign company;

. relevant penalties, and provides a defence where the defendant company did not know or suspect that an appointee was disqualified and had made reasonable efforts to determine if the person was disqualified.

CLAUSE 47 PHASING-IN OF CAPITAL AND SOLVENCY REQUIREMENTS

53. This clause sets out transitional provisions phasing-in over a three to four year period the capital and solvency requirements of section 19A which are to be satisfied by registered life insurance companies. The first interim year for a registered company is that part of the financial year of the company then in progress which ends after the commencement of the Act.

CLAUSE 48 APPLICATION - LODGEMENT OF ANNUAL RETURNS

54. This clause provides for the commencement date of the amendments effected by clause 42 to section 52 of the Principal Act.



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