

1993

**PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

SENATE

INSURANCE LAWS AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer, the Hon John Dawkins, M.P.)

GENERAL OUTLINE AND MAIN PURPOSE OF THE BILL

This bill amends three Acts: the Insurance Act 1973, the Insurance (Agents and Brokers) Act 1984 and the Insurance Laws Amendment Act 1991.

The amendments to the Insurance Act 1973 will :

remove anomalies involving the valuation of shares in related insurance companies and investments in related unit trusts

- provide for more commercial and administrative flexibility in directions made by the Commissioner relating to certain assets of insurers

update provisions of the Act dealing with an insurer's principal banker.

The amendments to the Insurance (Agents and Brokers) Act 1984 will:

give effect to measures that increase the effectiveness of the Act in protecting the insuring public. In particular the amendments will enable the Insurance and Superannuation Commission to more effectively discharge its responsibility to provide greater protection to purchasers of insurance through intermediaries

strengthen the cover provided by professional indemnity insurance contracts held by registered intermediaries. Such contracts will not be cancellable before the Commissioner is notified in writing and insurers will not be permitted to avoid their liabilities under such contracts on grounds of non-disclosure or misrepresentation

clarify the joint and several liability insurers have for multi-agents with whom they have agency agreements

give the Commissioner the power to refuse, suspend or cancel the registration of a registered insurance intermediary under circumstances such as bankruptcy, failure to discharge certain obligations, previous association with a failed intermediary, or failure to provide acceptable accounts

enable the Commissioner to determine the type and form of audited accounts to be furnished by registered intermediaries

- require multi-agents to declare to all insurers with whom they have agency agreements the existence of any agency agreements they have with other insurers

increase the power of the Commissioner to obtain information, require the production of documents and inspect the premises of registered intermediaries, with their consent. Where consent is withheld, the matter can be referred to a

Magistrate and application may be made for a warrant. Secrecy provisions apply.

- stipulate a 37 day credit term limit for insurance agents. Exemptions will be available for certain underwriting agents.
- change the basis of the requirement for a broker associated with an insurer to notify insureds of the association. The existing test of 50% ownership or control will become one of 25% ownership or control.
- extend from 1 to 3 years the time allowed to the Commissioner to prosecute offences under the Act
- update the penalty provisions in the Act and introduce more meaningful penalties for serious offences such as failure to properly deal with insurance monies
- make a number of technical changes necessary for the efficient operation of the Act.

The amendments to the Insurance Laws Amendment Act 1991 will:

- make it clear that the phasing in of capital and solvency requirements for registered life offices applies only to life offices already registered at the date of the original amendment.

FINANCIAL IMPACT STATEMENT

The proposed amendments enhance existing industry supervisory arrangements and are not expected to have any budgetary impact.

The provisions relating to the strengthening of cover provided by professional indemnity contracts will lead to an increase in the cost of this cover for brokers and foreign insurance agents. However this will be offset by the benefits of increased protection in favour of the insuring public.

EXPLANATORY NOTES ON INSURANCE LAWS AMENDMENT BILL 1993

PART 1 - PRELIMINARY

CLAUSE 1 Short Title

This clause provides the mode of citation of the Bill.

CLAUSE 2 Commencement

This clause provides that clauses 1, 2, 3, 10 and 40 are effective from the day on which the Bill receives Royal Assent.

Clause 41, which clarifies the phasing in of capital and solvency amendments made to the Life Insurance Act by the Insurance Laws Amendment Act 1991, is retrospective to 6 January 1992.

The balance of the amendments are effective on the day fixed by proclamation or six months after Royal Assent, whichever is earlier.

PART 2 - AMENDMENTS OF THE INSURANCE ACT 1973

CLAUSE 3 Principal Act

For Part 2, the term 'Principal Act' refers to the Insurance Act 1973.

CLAUSE 4 Valuation of assets

Section 33(6A) of the Principal Act is concerned with the valuation of shares in a body corporate that is related to an insurer authorised under the Act. Sections 24 and 29 provide for solvency requirements of insurers authorised under the Act.

The clause amends section 33(6A) to ensure that the method of valuing the shares in a related body corporate is consistent with the methods used in calculating the solvency of the authorised insurer holding such shares.

CLAUSE 5 Inquiry by Commissioner and directions relating to certain assets of authorised insurers

Section 51 of the Principal Act enables the Commissioner to issue directions restricting insurers whose solvency may be in doubt from disposing of certain assets.

The clause amends section 51 to allow for more flexibility and enhance its practicability. The Commissioner is enabled to give a notice in respect of a class of assets subject to terms and conditions as may be specified.

CLAUSE 6 Principal banker

Section 119 of the Principal Act provides that an authorised general insurer shall have as its principal banker a bank within the meaning of the Banking Act 1959 or a bank constituted by a law of a State. Subsection 119(3) provides that where a bank is not authorised to deal in foreign exchange, it cannot be the principal banker of an authorised general insurer for the purposes of the Act.

While not all banks are authorised to deal in foreign exchange, it is not considered necessary that a bank be so authorised in order that it be the principal banker of an authorised general insurer. Accordingly this clause deletes subsection 119(3) of the Principal Act.

CLAUSE 7 Application of amendments - section 33 of the Principal Act

Section 33(6A) of the Principal Act sets out rules for the valuation of an authorised general insurer's assets for the purposes of determining compliance with the statutory minimum solvency requirements.

This clause is transitional in so far as it provides that the amendments to section 33 (ref clause 4) apply to a valuation of the relevant assets during the third interim financial year that commences after 6 January 1992 and in all subsequent years.

CLAUSE 8 Application of amendments - section 51 of the Principal Act

Section 51 of the Principal Act provides that the Commissioner may issue directions to an insurer not to deal with certain assets under circumstances where it appears that the insurer is likely to become unable to meet its liabilities.

This clause provides that directions given by the Commissioner under section 51 prior to its amendment (ref clause 5) are not affected by the amendments.

CLAUSE 9 Transitional - phasing in of asset valuation requirements

This clause provides for the phasing in of the amendments in clause 4 above in a manner consistent with the transitional arrangements applying to the changes to capital and solvency requirements made in the Insurance Laws Amendment Act 1991.

PART 3 - AMENDMENTS OF THE INSURANCE (AGENTS AND BROKERS) ACT 1984

CLAUSE 10 Principal Act

For Part 3, the term 'Principal Act' refers to the Insurance (Agents and Brokers) Act 1984.

CLAUSE 11 Definitions

Section 9 of the Principal Act defines, amongst others, the term 'binder'.

This clause replaces the expression 'provisional' in that definition with the term 'interim' to ensure consistency with the Insurance Contracts Act 1984.

The clause further introduces definitions of a number of terms into section 9 to assist with the interpretation of the legislation. These are: 'agency agreement', 'agent', 'approved form', 'authorised officer' and 'class of insurance business'.

CLAUSE 12 Insertion of new sections

This clause inserts the following new sections.

Proposed section 9B - Meaning of acceptable contracts of professional indemnity insurance

Sections 19 and 31B of the Principal Act provide that registered insurance brokers and foreign insurance agents are required to have in place professional indemnity insurance contracts accepted by the Commissioner.

Proposed section 9B strengthens the requirements concerning professional indemnity cover by providing that professional indemnity contracts must contain certain clauses. These include a local jurisdiction clause; a non avoidance of claims clause particularly where the Insurance Contracts Act 1984 might otherwise allow avoidance on the grounds of misrepresentation or non-disclosure, a mandatory run-off cover clause, and clauses limiting the ability of an insurer to cancel the contract without prior notification to the Commissioner.

Proposed section 9C - Approved form

This clause provides that an 'approved form' is a form approved by the Commissioner. The term is used throughout the amended Act. The instrument under which such forms are approved can be disallowed by Parliament under the *Acts Interpretation Act 1901* instrument.

CLAUSE 13 Insurance intermediaries other than brokers to operate under written agreements

Section 10 of the Principal Act requires that insurance agents operate under written agency agreements.

Proposed subsection 10(2A) provides that such agency agreements must state whether or not the insurer has granted the agent authority to appoint sub-agents.

CLAUSE 14 Liability for conduct of agents and employees

Section 11 of the Principal Act deals with the liability of insurers for their agents and employees.

This clause amends section 11 of the Principal Act to make clear that insurers are jointly and severally responsible for the conduct of 'multi-agents' (that is persons who are agents of more than one insurer).

The clause sets out rules for determining the particular insurers who will be responsible or jointly and severally responsible for the conduct of multi-agents. The clause distinguishes between various combinations of authorities granted to multi-agents and whether or not the multi-agent has acted within or beyond the scope of the authority granted by one, or several, or all of the insurers.

The clause also makes clear that actions of sub-agents are actions of agents for purposes of the section.

CLAUSE 15 Brokers not to carry on business unless registered

This clause amends section 19(1)(b) in order to maintain its consistency with the proposed section 9B (ref clause 12).

CLAUSE 16 Applications for registration

Section 20 of the Principal Act is concerned with applications for registration by life insurance or general insurance brokers.

This clause expands the section to make it clear that section 20 is applicable both in respect of a new application for registration and a renewal application for registration. It also provides for the application form to be an approved form for purposes of proposed section 9C.

CLAUSE 17 Registration of brokers

Section 21 of the Principal Act is concerned with the registration of brokers.

This clause amends the section to distinguish between registration of new brokers and renewal of registration of existing brokers. In particular, it provides that renewal registrations require the production of satisfactory audited accounts for the balance date during the period of registration. It provides the Commissioner with discretion not to register, or renew registration in a situation involving bankruptcy, insolvency or failure to discharge certain obligations.

The clause introduces a penalty where audited accounts are not submitted within 4 months of the end of the broker's financial year (unless an extension of time for lodgement has been granted by the Commissioner).

Further, the section has been expanded to clarify the meaning of the term 'satisfactory audited accounts' and to give the Commissioner the discretion to accept otherwise unsatisfactory accounts where he is satisfied that they do not reflect dishonesty, recklessness or financial mismanagement.

CLAUSE 18 Suspension or cancellation of registration

Section 25 of the Principal Act enables the Commissioner to suspend or cancel the registration of the registered intermediary convicted of certain offences.

This clause amends section 25 to enable the Commissioner to suspend or cancel the registration of a broker if the broker becomes bankrupt or insolvent, or fails to discharge the ordinary obligations of an insurance intermediary. Such suspension or cancellation may also take place where a broker previously registered having submitted acceptable audited accounts subsequently furnishes the Commissioner with unsatisfactory accounts.

CLAUSE 19 Annual return

Section 25A of the Principal Act is concerned with the annual return submitted by registered insurance intermediaries.

This clause strengthens section 25A and requires the annual return to be in an approved form.

CLAUSE 20 Insertion of new section*Proposed section 25C - Accounting records to be kept by registered brokers*

This clause introduces a requirement for registered brokers to maintain proper records. Such records must reflect the business transactions of the broker and its financial position. The records must be kept so that the broker's accounts can be properly prepared and audited.

In addition the clause introduces a penalty for contravention of the proposed new section.

CLAUSE 21 Insurance broking accounts

Section 26 of the Principal Act requires a registered insurance broker to maintain a separate bank account to be used for the deposit and withdrawal of all moneys received on behalf of an insurer or intending insured in connection with contracts of insurance.

This clause clarifies the meaning of section 26 while broadening its scope to make it clear that all moneys connected with contracts of insurance are affected by the section. It also makes clear that section 26 applies to agents of brokers as if the agent was the broker.

CLAUSE 22 Debts of brokers in relation to premiums etc

Section 27 of the Principal Act sets out the duties of brokers in relation to premiums.

The clause provides that the insured must be informed in writing and the premium be refunded, within 7 days after the end of a 30 day waiting period, where a risk proposal is declined.

The clause also brings within its ambit those risk proposals which are partially declined.

CLAUSE 23 Foreign insurance agents not to carry on business unless registered

Section 31B sets out the requirement that foreign insurance agents be registered and hold professional indemnity insurance.

This clause amends section 31B as a consequence of section 9B (meaning of acceptable contracts of professional indemnity insurance) which is introduced in clause 12 above.

CLAUSE 24 Registration of foreign insurance agents

Section 31D of the Principal Act sets out the requirements for the registration of foreign insurance agents.

This clause extends the ability of the Commissioner to refuse to register an applicant in cases of bankruptcy or insolvency or failure to discharge the ordinary obligations of an insurance intermediary.

CLAUSE 25 Suspension or cancellation of registration

Section 31H of the Principal Act sets out requirements for the suspension or cancellation of registration of foreign insurance agents.

This clause extends the ability of the Commissioner to suspend or cancel the registration of a foreign insurance agent in cases of bankruptcy, insolvency or failure to discharge the ordinary obligations of an insurance intermediary.

CLAUSE 26 Annual return

Section 31J of the Principal Act is concerned with the Annual Return required to be submitted by foreign insurance agents.

This clause strengthens section 31J by requiring the return to be in an approved form and requires that audited accounts be submitted within 4 months of the end of the intermediary's financial year unless an extension of time for lodgment has been granted by the Commissioner.

CLAUSE 27 Insertion of new sections

Proposed section 33A - Insurance intermediaries to notify insurers of multiple agency arrangements

This clause requires multi-agents (agents of more than one insurer) to notify insurers of all agency agreements in place. Multi-agents are also required to notify insurers of proposed additions to or cancellations of such agreements. Further, the clause requires that the multi-agent must not enter or cancel such agreements until all the multi-agent's (other) principals have been given written notice of this intention. Where an agency agreement expires or is terminated, the multi-agent must, within 7 days, give written notice to each of its (other) principals.

The clause introduces a penalty for non-compliance.

CLAUSE 28 Insertion of new sections

The purpose of this clause is to overcome difficulties experienced with investigating alleged breaches of the Act. This clause inserts the following new sections:

Proposed Section 34A - Commissioner may direct an insurance intermediary to provide information

Where, in the Commissioner's opinion, there appears to be a failure or likely failure by an insurance intermediary to meet its ordinary obligations the Commissioner is enabled to seek information and to carry out inspections of the intermediary's records.

The Commissioner may direct the intermediary to furnish him with information orally, on oath or in writing concerning its affairs. The Commissioner may require the production of books, accounts and records kept by the intermediary and, with the consent of the occupier of the premises, to enter the premises for the purposes of his investigation. The Commissioner is permitted to retain possession of the documents obtained in the course of the investigation.

Penalties are imposed where an intermediary, without reasonable excuse, fails to comply with the requirements under the section or where false or misleading information is given intentionally or recklessly.

Proposed section 34B - Production of documents

The Commissioner may, by written notice, require an insurance intermediary to produce any information or documents kept by the intermediary for the purpose of carrying on its insurance business. Such documentation may be used by the Commissioner for the purpose of an inspection, audit or examination.

Penalties are imposed where intermediaries, without reasonable excuse fail to comply with the requirements of the section.

Proposed section 34C - Identity Cards

Under this section, the Commissioner may issue an authorised officer an identity card (incorporating a recent photograph) to be used for inspections.

Penalties are imposed where an authorised officer fails to return his or her identity card.

Proposed section 34D - Offence powers - entry and search of premises with occupier's consent

This section sets out the requirements under which the entry and search of premises may take place. These include the consent of the occupier, and the existence of reasonable grounds for suspecting that there is evidence of an offence against the Principal Act.

Proposed section 34E - Offence-related warrants

Application can be made to a magistrate for a warrant to search premises where an authorised officer is satisfied that there are reasonable grounds for suspecting that there is, on the premises, evidence of an offence against the Principal Act.

Subsection 34E(4) sets out the matters that must be specified in the warrant. Subsection 34E(5) empowers the authorised officer to operate equipment already at the premises to investigate stored information. Subsection 34E(6) allows the officer to copy or document the information, where possible. Where this is not possible the equipment may be seized by the officer under subsection 34E(7). Under subsection 34E(8) an officer may seize anything relating to the offence or another indictable offence in order to prevent concealment, loss, or destruction, or use of the thing in committing another offence.

Proposed section 34F - Announcement before entry under warrant

This section provides that before the authorised officer enters premises under a warrant the officer must announce that he or she is authorised by warrant to enter. The authorised officer must give any person at the premises an opportunity to allow him or her to enter the premises unless there are reasonable grounds to believe that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.

Proposed section 34G - Details of warrant to be given to occupier etc.

This section provides that if a warrant issued under section 34E is being executed, a copy of the warrant must be made available to the occupier of the premises. The officer responsible for the execution must identify himself or herself.

To prevent forgery or other wrongful misuse of the warrant copy, subsection 34G(3) provides that the copy need not include the signature of the issuing magistrate. This provision has been included to meet the requirements of the A.C.T. Chief Magistrate.

Proposed section 34H - Continuance of warrants in certain circumstances

Subsection 34H(1) allows for limited interruption in the execution of a warrant. The authorised officer executing the warrant may, if the warrant is still in force, complete its execution after temporarily ceasing and leaving the premises for not longer than one hour, or longer if the occupier consents in writing.

Subsection 34H(2) provides that where the execution of a warrant is stopped by order of a court which is later revoked, or reversed on appeal, its execution may be completed provided the warrant is still in force.

Proposed section 34J - Use of expert assistance in executing warrants

Subsection 34J(1) provides that the authorised officer may secure the equipment by locking it up or guarding it if he or she believes, on reasonable grounds, that the evidential material may be accessible by operating the equipment at the premises but expert assistance is needed to operate the equipment. Similar provisions apply where the evidential material may be destroyed or otherwise interfered with if the equipment is not secured in the meantime.

This is necessary to ensure that where the equipment is more sophisticated than expected and cannot be accessed or moved, then the opportunity to obtain expert assistance and to preserve evidential material is not lost.

Subsection 34J(2) requires the giving of notice to the occupier that equipment may be secured for up to 24 hours.

Subsection 34J(3) allows the equipment to be secured until after expert assistance is obtained to operate the equipment but for no longer than 24 hours.

Proposed section 34K - Warrants may be granted by telephone etc.

This section enables the issue of a warrant by telephone, telex, facsimile, or other electronic means in an urgent case where delay could frustrate the execution of the warrant. Urgency can arise because of circumstances requiring immediate action or where the remoteness of the location of the search involves unacceptable delay. An application under this section must include all the information provided in an ordinary application but, if necessary, the application may be made before the information is sworn.

The issuing magistrate is required to inform the applicant of the terms of the warrant by the appropriate electronic means and the applicant must complete a form of warrant which sets out the substance of those terms. The applicant must, not later than the day after expiry of the warrant, or the day after the warrant was executed, whichever is earlier, give or transmit to the issuing magistrate the completed form of warrant and, if the information had not been sworn, the sworn information.

In any court proceedings concerning the exercise of a power under the warrant, if the warrant signed by the magistrate is not produced, the court is to assume, unless the contrary is proved, that the power was not duly authorised.

This provision is particularly necessary in remote areas or where for some reason a court employed justice of the peace, authorised officer or magistrate is not readily available. It avoids the need to rely on lay justices of the peace as an alternative.

Proposed section 34L - Discovery of evidence

An authorised officer who seized evidence during an investigation can keep it for 60 days or until the end of proceedings if the proceedings were instituted within 60 days of the seizure. This applies to evidence seized in relation to the offence or another indictable offence. An authorised officer can request a magistrate to extend this period if it is deemed necessary.

Proposed section 34M - Compensation for damage to electronic equipment

This section provides that if damage is caused to equipment as a result of it being operated as mentioned in previous sections and the damage resulted from insufficient care being exercised either in selecting the person to operate equipment or by the person operating it, compensation is payable to the owner.

Compensation is payable out of a special appropriation by the Parliament. In determining the amount of damages payable regard is had to whether the occupier had provided any warning or guidance to the operation of the equipment. This is to minimise compensation in cases where there has been deliberate programming of software to destroy or cause damage by providing warning or guidance.

Proposed section 34N - Copies of seized things to be provided

This section requires an authorised officer, on request, to give a copy of evidence seized that can be readily copied. This does not apply if no original material was seized under paragraph 34D(3)(b) or (c) or 34 E(6)(b) or (c) or if possession of the thing seized could constitute an offence.

Proposed section 34P - Power to require persons to provide information etc.

This section enables the authorised officer on an inspection to direct an intermediary to answer questions or to produce documents. The intermediary must not intentionally or unintentionally make or produce false or misleading statements or documents.

Penalties are imposed where a person required to provide information fails without reasonable excuse to comply with certain requirements under this section.

Proposed section 34Q - Consent

Prior to obtaining permission to enter and search the premises the authorised officer is obliged to inform the occupier that he or she may refuse to consent to his or her entry.

Proposed section 34R - Persons to assist authorised officers

An authorised officer can request the occupier to provide reasonable assistance while conducting a search of the premises.

Penalties are imposed where a person fails to comply with an authorised officer's request.

Proposed section 34S - Offence for making false statements in applications for warrants

A person must not make a false or misleading statement when applying for a warrant.

Penalties will apply where a false or misleading statement is knowingly made in a material particular.

Proposed section 34T - Offences relating to telephone warrants

This section makes it an offence for a person to make certain misstatements in a document that purports to be a form of warrant under section 34E.

Penalties are imposed where such misleading statements are made.

Proposed section 34U - Secrecy

This clause provides for the secrecy of information gained from investigations in order to protect information of a commercially sensitive nature from being divulged to other parties. Similar provisions are contained in other legislation already administered by the ISC regarding life and general insurers and occupational superannuation funds.

CLAUSE 29 Certain money to be trust money

Section 37 of the Principal Act provides that moneys paid to a person (not being a registered insurance broker) as agent of an insurer, being moneys paid in relation to a contract of insurance or proposed contract of insurance, are subject to trust in favour of the insurer.

Clause 29 makes clear that premiums paid to a sub-agent are considered to have been paid directly to the agent.

The clause amends section 37 to require all premium moneys received by an agent to be passed to the insurer within 37 days of receipt of the moneys by the agent unless the agent is exempt under section 37A.

CLAUSE 30 Insertion of new section

Section 37 of the Principal Act provides that certain moneys paid to insurance agents are subject to trust in favour of the insurer.

This clause inserts the following new section:

Proposed section 37A - Commissioner may grant exemptions from certain requirements under section 37

The proposed section 37A enables the Commissioner to grant (or revoke) an exemption from compliance with the credit term provisions introduced by Clause 29. Exemption may be granted where the Commissioner is satisfied that the intermediary is acting under a binder and the nature of the business of the intermediary is such that it is not commercially practicable to comply with the credit provisions of section 37 and the insurer consents to the exemption.

CLAUSE 31 Broker to notify insured of association with insurer

Section 38 of the Principal Act requires brokers to notify insureds of the existence and nature of the broker's association with the insurer. The section sets out criteria to be used in deciding whether or not a broker has an association with an insurer.

The clause amends the section to provide that the question of whether corporations are related to each other for the purpose of this section is determined in the same way as the question would be determined under the Corporations Law. However the clause further provides that the 50% ownership or control test in the Corporations Law will be replaced by a 25% test in line with the Insurance Act 1973.

CLAUSE 32 Insertion of new sections

This clause inserts the following new sections:

Proposed section 41A - Decision-making principles

This clause allows the Commissioner to formulate decision making principles to assist in the administration of section 21 and 31D (registrations), section 25 and 31H (suspension and cancellation of registrations), and 34A (intermediaries providing information).

Decision-making instruments can be disallowed by Parliament under the *Acts Interpretation Act 1901*.

Proposed section 41B - Insurance intermediaries taken to be associated because of prior conduct of personnel

This section sets out criteria to be used when deciding whether an insurance intermediary should be regarded as being associated with a failed intermediary. The new section is relevant for the purposes of section 21 and 31D (registration of brokers and of foreign insurance agents). Under sections 21 and 31D the Commissioner may refuse to register such persons on the grounds that their association with a failed intermediary is a failure to discharge the ordinary obligations of an insurance intermediary.

CLAUSE 33 Insertion of new section

Proposed section 46A - Time for Bringing Proceedings

This clause extends the period during which prosecutions for an offence against the Act may commence to 3 years after the commission of the offence or, with the consent in writing of the Attorney-General, at any later time. This clause brings section 46 in line with the corresponding provision in section 129 of the Insurance Act 1973.

CLAUSE 34 Further amendments of the Principal Act

This clause inserts a number of penalty provisions as set out in the attached Schedule.

The current penalty provisions in the Principal Act were set when the Act was introduced into the Parliament in 1984. The penalty provisions have been brought into line with contemporary standards. Where necessary the penalties are also being adjusted to better reflect the severity of the offence.

CLAUSE 35 Application of amendments - section 21 of the Principal Act

Section 21 (registration of brokers) requires the applicant to furnish the Commissioner with satisfactory audited accounts.

This clause provides that the relevant amendment to section 21 applies only in relation to accounting periods starting on or after the day on which the applicable amendments under this Act commence (ref Clause 16).

CLAUSE 36 Transitional - Applications for registration and renewal of registration

This clause provides that where an application for registration or an application for renewal was made before the date on which the applicable amendments under this Act commence (ref Clause 16) and the Commissioner had not yet registered or renewed or refused registration, the Principal Act as in force immediately before that date continues to apply in relation to the application.

CLAUSE 37 Transitional

Sections 19 and 31B require contracts of professional indemnity to be in place. Regulations prescribing liabilities for the purpose of these sections continue in force despite the repeal and re-enactment of those provisions.

CLAUSE 38 Transitional - trust money

Section 37 of the Principal Act provides that certain moneys paid to insurance agents are subject to trust in favour of the insurer.

Clause 38 provides that if money referred to in section 37 of the Principal Act was paid to an agent before the amendment under clause 29, and the agent had not yet paid the money to the insurer, section 37 as in force before the amendment continues to apply in respect of that money.

CLAUSE 39 Application

Sections 37(2A) and (2B) of the Principal Act (amended by clause 29) apply to premiums (or instalments of premiums) paid to insurance agents.

Clause 39 distinguishes between such premiums paid and relating to cover before the date of amendment and those paid and relating to cover after the date of amendment. The clause makes section 37 (as in force previously) continue to apply in regard to the former while the new sections 37(2A) and (2B) will apply in regard to the later.

PART 4 - AMENDMENT OF THE INSURANCE LAWS AMENDMENT ACT 1991

CLAUSE 40 Principal Act

For Part 4, the term Principal Act refers to the Insurance Laws Amendment Act 1991.

CLAUSE 41 Phasing in of capital and solvency requirements

Section 47 of the Principal Act contains phasing in provisions for new capital and solvency requirements for registered life offices.

This clause amends section 47 to clarify that the phasing in of the new capital and solvency requirements for registered life offices applies only to life offices already registered at the date of the original amendment.

