

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

LIFE INSURANCE (CONSEQUENTIAL AMENDMENTS AND REPEALS) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon Ralph Willis, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



LIFE INSURANCE (CONSEQUENTIAL AMENDMENTS AND REPEALS) BILL 1994

GENERAL OUTLINE AND MAIN PURPOSE OF THE BILL

This Bill, provides for a number of amendments to legislation following from the introduction of the companion Life Insurance Bill 1994, which establishes a new modern regulatory regime for the life insurance industry. This new regime will substantially strengthen prudential supervision and improve consumer protection.

The Bill provides for the repeal of the Life Insurance Act 1945, the Life Insurance Policy Holders' Protection Levies Act 1991 and the Life Insurance Policy Holders' Protection Levies Collection Act 1991. The Life Insurance Act 1945 is to be replaced by the Life Insurance Act 1994. The Life Insurance Policy Holders' Protection Levies Act 1991 and the Life Insurance Policy Holders' Protection Levies Collection Act 1991 were originally put in place to provide for the imposition of levies on life insurance companies to raise revenue to provide a measure of financial protection to the policy holders of the Occidental and Regal life insurance companies. The judicial manager for Occidental and Regal has advised that it is not necessary to call on these levies. It is therefore appropriate that the Acts now be repealed.

This Bill also amends the Defence Force Retirement and Death Benefits Act 1973, the Defence Forces Retirement Benefits Act 1948, the Financial Corporations Act 1974, the Income Tax Assessment Act 1936, the Insurance Acquisitions and Takeovers Act 1991, the Insurance Act 1973, the Insurance (Agents and Brokers) Act 1984, the Insurance and Superannuation Commissioner Act 1987, the Insurance Contracts Act 1984, the Insurance Supervisory Levies Collection Act 1989, the Life Insurance Supervisory Levy Act 1989, the Parliamentary Contributory Superannuation Act 1948, the Pooled Development Funds Act 1992, the Social Security Act 1991, the Superannuation Act 1922, the Superannuation Act 1976, the Superannuation Industry (Supervision) Act 1993 and the Corporations Law as a consequence of the commencement of the Life Insurance Bill 1994.

The provisions of the Bill generally replace references in the Principal Acts to the Life Insurance Act 1945 with references to the Life Insurance Act 1994.

FINANCIAL IMPACT STATEMENT

The measures contained in this Bill are consequential upon the commencement of the Life Insurance Bill 1994 and will not directly incur any costs.

EXPLANATORY NOTES ON THE LIFE INSURANCE (CONSEQUENTIAL AMENDMENTS AND REPEALS) BILL 1994

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

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

CLAUSE 2 COMMENCEMENT

2. This clause provides for the Bill to come into operation immediately on the commencement of the Life Insurance Act 1994.

CLAUSE 3 APPLICATION

3. This clause provides that amendments to the Defence Force Retirement and Death Benefits Act 1973, the Defence Forces Retirement Benefits Act 1948, the Parliamentary Contributory Superannuation Act 1948 and the Superannuation Act 1976 only apply to a transfer value that has become payable to, or in respect of, a person on or after the commencement of this Act.

4. Subclause (2) provides that amendments to the Income Tax Assessment Act 1936 only apply to the 1994-95 year of income and the subsequent years of income.

PART 2 - CONSEQUENTIAL AMENDMENTS

CLAUSE 4 CONSEQUENTIAL AMENDMENTS

5. This clause provides that:

subclause (1) - amendments to a number of Acts are set out in Part 1 of the Schedule to the Act; and

subclause (2) - amendments to the Corporations Law are set out in Part 2 of the Schedule to the Act.

PART 3 - REPEAL OF ACTS

CLAUSE 5 REPEAL OF ACTS

6. This clause provides for the repeal of the Life Insurance Act 1945, the Life Insurance Policy Holders' Protection Levies Act 1991 and the Life Insurance Policy Holders' Protection Levies Collection Act 1991.

SCHEDULE

Part 1 - Amendments of Acts

Part 1 of the Schedule provides for amendments to Commonwealth Acts for the purpose of transition to the new Life Insurance Act 1994.

Defence Force Retirement and Death Benefits Act 1973

The nature of the amendments is essentially to provide for a change to the definition of "life policy" and the introduction of a definition for "owner of a life policy", following commencement of the Life Insurance Act 1994.

Defence Forces Retirement Benefits Act 1948

The nature of the amendments is essentially to provide for a change to the definition of "life policy" and the introduction of a definition for "owner of a life policy", following commencement of the Life Insurance Act 1994.

Financial Corporations Act 1974

This amendment replaces a reference to "Life Insurance Act 1945-1973" with "Life Insurance Act 1994".

Income Tax Assessment Act 1936

These amendments essentially replace references to "Life Insurance Act 1945" with "Life Insurance Act 1994", and references to "Division 3 of Part III of the Life Insurance Act 1945" with "Part 4 of the Life Insurance Act 1994".

Insurance Acquisitions and Takeovers Act 1991

These amendments essentially:

- replace references to "Life Insurance Act 1945" with "Life Insurance Act 1994";
- replace references to "accounts" with "statements";
- replace references to section 52 of the Life Insurance Act 1945 with references to section 82 of the Life Insurance Act 1994; and
- insert "or statements" in subsection 77(2) and (3).

Insurance Act 1973

These amendments essentially replace references to "Life Insurance Act 1945" with "Life Insurance Act 1994".

Insurance (Agents and Brokers) Act 1984

These amendments essentially replace references to "Life Insurance Act 1945" with "Life Insurance Act 1994", and replace the reference to the annual report section of the Life Insurance Act 1945 with a reference to the annual report provision in the Life Insurance Act 1994.

Insurance and Superannuation Commissioner Act 1987

This amendment replaces a reference to "Life Insurance Act 1945" with "Life Insurance Act 1994".

Insurance Contracts Act 1984

These amendments essentially:

- . provide for definitions for "continuous disability insurance policy" and "contract of life insurance" following the commencement of the Life Insurance Act 1994;
- . omit Division 2 of Part III and substitute a new Division 2 which provides that a contract of life insurance is not void only because the insured did not have an insurable interest when the contract was entered into;
- . insert a new section 48A which relates to policies effected by a person on their own life for the benefit of a third party, and protects the money payable under the policy to the third party;
- . amend section 64 by, among other things, the inclusion of subsection (6) which will enable insurers to deduct "contributions tax" and other non-refundable taxes when calculating the amount to be repaid under section 64;

Under section 64, an insured under a contract of life insurance (other than a blanket superannuation contract) has a right, exercisable at any time before the expiration of 14 days after receiving the policy document, to terminate the contract and receive a full refund or the purchase price from the life insurance company concerned. The *Income Tax Assessment Act 1936* requires the company to pay "contributions tax" in respect of the untaxed element of the post-June 1983 component of Eligible Termination Payments rolled over to purchase policies, regardless of subsequent cancellation. The insurer should be able to deduct from refunds to the insured the tax it is required to pay.

- . insert a new section 64B setting out particular requirements in respect of calculating the amount to be repaid under section 64 where the exercise of the "cooling-off" period is in respect of an investment-linked contract.

In exercising the "cooling-off" period in respect of an investment-linked contract, an insured must accept any investment risk prior to cancellation. Thus, on cancellation within the "cooling-off" period, the insured will receive an amount based on the allocation price for the contract if it had been entered into on the day of cancellation, adjusted to take account of any difference between that allocation price and the allocation price on the day the contract was entered into. The life company will remain liable to repay any fees and charges (except deductions of non-refundable tax), that had been deducted. The 14 day "cooling-off" period will start from the time the insured receives an allocation in the fund, and is to be prominently advertised in the policy documentation.

Insurance Supervisory Levies Collection Act 1989

These amendments provide for the life insurance supervisory levy to be collected from life companies registered under the Life Insurance Act 1994.

Life Insurance Supervisory Levy Act 1989

These amendments essentially amend the Title and replace a reference to "Life Insurance Act 1945" with "Life Insurance Act 1994".

Parliamentary Contributory Superannuation Act 1948

The nature of the amendments is essentially to provide for a change to the definitions of "life policy" and the introduction of a definition for "owner of a life policy", following commencement of the Life Insurance Act 1994.

These changes lead to amendments to sections of the Act dealing with situations where life policies associated with a person's previous employment may be included in his or her transfer value to the Scheme.

Pooled Development Funds Act 1992

This amendment involves the replacement of the definition of "life office" following commencement of the Life Insurance Act 1994.

Social Security Act 1991

The nature of these amendments involve replacement of a reference to "Life Insurance Act 1945" with "Life Insurance Act 1994".

Superannuation Act 1922

This amendment retains, for the purposes of subsection 119A(1) of the Superannuation Act 1922, the definition of "life policy" in the Life Insurance Act 1945. This saving provision is necessary as a consequence of the repeal of the Life Insurance Act 1945.

Superannuation Act 1976

The nature of the amendments is essentially to provide for a change to the definition of "life policy" and the introduction of a definition for "owner of a life policy", following commencement of the Life Insurance Act 1994.

These changes lead to amendments to sections of the Act dealing with situations where life policies associated with a person's previous employment may be included in his or her transfer value to the Scheme.

Superannuation Industry (Supervision) Act 1993

The nature of these amendments are purely reference changes from "Life Insurance Act 1945" to "Life Insurance Act 1994" and subsequent section references.

Part 2 - Amendments of the Corporations Law

Part 2 of the Schedule provides for amendment of the Corporations Law for the purpose of transition to the new Life Insurance Act 1994. The nature of these amendments are purely reference changes from "Life Insurance Act 1945" to "Life Insurance Act 1994" and subsequent section references.

The Life Insurance Act 1994 will ensure that all life company products issued out of a statutory fund are subject to regulation by the Insurance and Superannuation Commission, and not subject to duplicate regulation under the Corporations Law. All life company products, including investment-linked products, will be exempt from the Corporations Law, but subject to equivalent regulation under the Life Insurance Act 1994.