

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

LIFE INSURANCE AMENDMENT BILL 1983

EXPLANATORY MEMORANDUM

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



## Life Insurance Amendment Bill 1983

### GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The Bill contains amendments to the Life Insurance Act which are intended to strengthen and improve the existing supervisory machinery and to overcome certain difficulties experienced in the administration of the Act. The main provisions of the Bill have been designed to:

- . provide for a minimum paid-up capital requirement of \$2 million for life offices seeking registration;
- . enable either the Treasurer or the Commissioner to impose conditions on initial or continuing registration;
- . empower the Commissioner to exercise specified but limited controls over certain forms of investments made by life insurance companies in related companies and in trust schemes and to require the provision of data on such investment activities;

- . effect a number of administrative changes to extend the effective period for furnishing of the Commissioner's Annual Report to Parliament, to give recognition in the Act to The Institute of Actuaries of Australia and to enable the Commissioner to have greater access to documents in the possession of a life office relating to its assets or business; and
- . allow appeals against certain administrative decisions that may be taken in accordance with the Act and upgrade the Act's appeals mechanism to bring it more into line with that contained in other Commonwealth legislation.

In addition, a number of formal amendments have been included to take into account current legislative drafting practice.

## EXPLANATORY NOTES ON THE LIFE INSURANCE AMENDMENT BILL

## CLAUSE 1        SHORT TITLE, &amp;C.

Self explanatory

## CLAUSE 2        COMMENCEMENT

This clause provides for the provisions of the Bill to come into operation on such date, or dates as the case may be, as fixed by Proclamation.

## CLAUSE 3        INTERPRETATION

This clause amends section 4 of the principal Act by inserting definitions of "holding company", "related company" and "subsidiary"; these terms are to have the same respective meanings as in the Companies Act 1981 as if references in section 7 of that Act to corporations were references to companies. The clause also provides that references to these terms are not to be confined to companies carrying on or proposing to carry on life insurance business in Australia.

## CLAUSE 4            ACTUARIES

This clause amends section 4A of the Principal Act to give specific recognition in the Act to The Institute of Actuaries of Australia in lieu of the current recognition given to certain overseas actuarial bodies. Previously the section provided, inter alia, that a reference in the Act to an actuary be read as a reference to a Fellow of the Institute of Actuaries incorporated by Royal Charter in the United Kingdom, The Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America. The clause omits references to those bodies and inserts in lieu a reference to the Australian Institute. However, persons, not Fellows of The Institute of Actuaries of Australia, may still be approved by the Commissioner as actuaries for the purposes of the Act and an appeal is allowed against a refusal to grant such an approval.

## CLAUSE 5            TERMS AND CONDITIONS OF APPOINTMENT

Section 9A of the Principal Act contains a number of provisions relating to terms and conditions of appointment of a person as Life Insurance Commissioner, including a provision precluding appointment of a person on the basis of an association with either a life company or a company related to a life company.

This clause amends section 9A to bring the wording of the provision for determining whether such companies are related into line with that used in the Companies Act 1981.

#### CLAUSE 6 ANNUAL REPORT AND RETURNS

This clause amends section 11 of the Principal Act to extend the time allowed for presentation of the Commissioner's Annual Report from three months to five months. The longer period will allow the Commissioner a more reasonable time for compilation and preparation of the Report and associated statistical material while still remaining consistent with the guidelines for the preparation of annual reports by statutory authorities.

#### CLAUSE 7 REGISTRATION OF COMPANIES

This clause amends section 19 of the Principal Act to impose a statutory minimum paid-up capital requirement on companies seeking registration under the Act. The existing provisions of the Act do not contain any requirements regarding the level of capital to be held by companies wishing to conduct life insurance business. However, it has been the practice of the Commissioner, as part of his registration guidelines, to require a company to have at least \$2 million paid-up capital before being registered. The amendment will give legislative backing

to that guideline requirement and will enable the Commissioner to refuse an application for registration if he is not satisfied that, where a company has a share capital, the sum of its paid-up share capital and balance of its share premium account is not less than \$2 million.

CLAUSE 8            CONDITIONS

This clause inserts a new section 20 into the Principal Act. The new section will allow the Treasurer or the Commissioner at any time to impose conditions to which the registration of a company will be subject. This power to impose conditions on the initial or continuing registration of life insurance companies will improve the level of protection provided to policyholders and will provide more scope in the Act for the Commissioner to deal with the applications of companies intending to embark on a limited range of life insurance activities. The conditions will be confined to those consistent with the basic thrust of the Act and in practice the Treasurer will retain the ultimate responsibility for the imposition of any significant conditions.

The new section also allows the Treasurer or the Commissioner to either revoke or vary conditions imposed under the section, and permits application by a company for revocation or variation of a condition.



Sub-section 20(4) provides that the Commissioner is not empowered to revoke or vary a condition imposed by the Treasurer. 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. (Note on clause 15 also refers.)

#### CLAUSE 9 INVESTMENT OF STATUTORY FUNDS

This clause repeals section 39 of the Principal Act and replaces it with a new section 39 which empowers the Commissioner to exercise specified but limited controls over certain forms of investments made by life insurance companies in related companies and in trust schemes, and which requires the provision of data on such investment activities.

The new sub-section 39(2) prohibits a life office from investing any assets of a statutory fund in a related company other than its own subsidiary, or in a trust scheme without prior permission of the Commissioner. In effect, the restriction on related company investment will apply to investments by a life office "upstream" in a parent or holding company or "cross-stream" in another company related to the parent or holding company, but not to "down-stream" investment in subsidiaries. However, sub-sections 39(3) and 39(4) provide certain exemptions from these restrictions. In particular, sub-section 39(3) exempts investments in or with a bank, or with a prescribed short-term money market dealer,

while sub-section 39(4) exempts investments in trust schemes where the sum of such moneys invested and the value of all other such investments does not exceed 5% of the value of the assets of the appropriate statutory fund maintained by the company.

New sub-section 39(5) specifies a number of matters to which the Commissioner shall have regard in determining whether or not to grant approval under sub-section 39(2) to a proposed investment of assets of a fund of a company in a related company or under a trust scheme.

Sub-section 39(6) provides that a transaction will not be invalidated by reason only that it was entered into in contravention or sub-section 39(2). However, this provision does not affect liability to a penalty for such a contravention.

Sub-section 39(7) requires the periodic provision by life companies to the Commissioner, in a form approved by him, of certain specified information in respect of their investments in related companies and in trust schemes.

Sub-section 39(8) provides that, for the purposes of the provisions of section 39 in respect of a life office's investments in related companies and subsidiary companies, reference to such companies are to be taken as references to

related companies and subsidiaries, as the case may be, of the life office.

Sub-section 39(9) provides that investment in a company, for the purposes of section 39, shall mean investment in shares in, debentures of, or a loan to that company.

Sub-section 39(10) specifies the basis for determining the value of the assets of a statutory fund of a life company, and the value of the assets of the company for the purpose of facilitating checks on investments in the restricted areas.

In particular, such valuations are to be based on the most recent balance-sheet provided to the Commissioner; or where no such balance-sheet has been lodged, on the most recent audited balance-sheet of the company, or where there is no such balance sheet, on an audited balance-sheet prepared by the company at such date as fixed by the Commissioner.

Sub-section 39(11) defines for the purposes of this section "debenture", "fund", "moneys", "share" and "trust scheme".

CLAUSE 10            PROVISIONS IN RELATION TO THE ESTABLISHMENT OF  
STATUTORY FUNDS IN RESPECT OF CLASSES OF LIFE  
INSURANCE BUSINESS

This clause amends section 40 of the Principal Act by adding new sub-sections 40(10), (11) and (14) to facilitate the revocation or variation of directions given under sub-section 40(8). The effect of the amendments will be to allow the Commissioner to either revoke or vary directions given under sub-section 40(8), and to permit application by a company for a revocation or variation.

Provision is also made for a right of appeal in respect of decisions by the Commissioner made under the new sub-sections 40(10) and (11) (note on clause 15 also refers).

CLAUSE 11            ACCOUNTS, BALANCE-SHEETS, &C., TO BE SIGNED AND  
LODGED WITH COMMISSIONER

This clause amends section 52 of the Principal Act which relates to accounts, balance-sheets, abstracts, statements and returns which must be signed and lodged with the Commissioner, by adding new sub-sections 52(4), (5) and (7).

Under sub-section 52(3) the Commissioner may in certain circumstances give to a company such directions as he thinks necessary for the variation of any account, balance-sheet, abstract, statement or return lodged in accordance with the provisions of section 52.

The effect of the amendments will be to allow the Commissioner to either revoke or vary directions given under sub-section 52(3), and to permit application by a company for a revocation or variation.

Provision is also made for a right of appeal in respect of decisions by the Commissioner under the new sub-sections 52(4) and (5) (note on clause 15 also refers).

CLAUSE 12      COMMISSIONER MAY DEMAND INFORMATION  
POWER TO REQUIRE PRODUCTION OF BOOKS  
ACCESS TO PREMISES

This clause repeals section 54 of the Principal Act relating to the Commissioner's power to demand information and inserts in lieu a revised section 54 and new sections 54A and 54B.

The existing section 54 did not provide the Commissioner with power to demand documents and did not extend to information or documents relating to the business of subsidiaries. The new section 54 gives the Commissioner the power to demand from a company information, or copies of documents in its possession, relating to any matter in connection with the business of the company or its subsidiaries. This amendment will assist the Commissioner in ensuring that the interests of policyholders are adequately protected.

New section 54A gives the Commissioner or his authorized officer power to require production of books along the lines of section 115 of the Insurance Act 1973. In particular, new sub-section 54A(1) provides the power to require the production of, to inspect, take extracts from and make copies of any books that are required under the Act to be kept, for the purpose of ensuring that a company is complying with the Act. Sub-section 54A(2) provides similar powers in respect to companies which have applied for registration under the Act in order to facilitate consideration of an application.

Sub-sections 54A(3), (4) and (5) place an onus on company directors and officials to comply with these requirements and make it an offence for them to obstruct or hinder the Commissioner or his authorised officer in their exercise of these powers. An appropriate penalty is provided.

New section 54B gives the Commissioner or his authorised officer a complementary right of access to company premises along the lines of section 115A of the Insurance Act. In particular, new sub-section 54B(1) gives the Commissioner or his authorized officer the power to enter premises, with the permission of the occupier, to search for, inspect, take extracts from and make copies of any books of a life insurance company.

Sub-sections 54B(2) and (3) provide that a Justice of the Peace may, under certain circumstances, allow the Commissioner or his authorized officer the right to enter premises for the purpose of searching for, inspecting, taking extracts from and copying of company books.

Sub-section 54B(4) allows the Commissioner or his authorized officer, having entered premises, to search for, inspect, take extracts from and make copies of any books of the life insurance company while sub-section 54B(5) makes it an offence for a person to unreasonably obstruct or hinder him in the exercise of his powers under sub-section 54B(4). An appropriate penalty is provided.

## CLAUSE 13      POWER TO MAKE INVESTIGATION

This clause amends section 55 of the Principal Act by omitting paragraph 55(1)(c) and substituting a revised paragraph 55(1)(c). Existing paragraph 55(1)(c) specifies that failure by a company to comply with any provision of the Act is a basis for a possible investigation into the business of the company.

The effect of the amendment will be to extend the grounds upon which an investigation may be undertaken. In particular, the new paragraph 55(1)(c) will provide that failure to comply with a direction given to the company under the Act and failure to comply with a condition imposed under section 20 shall be additional grounds upon which the Commissioner may serve on a company a notice to show cause why an investigation should not be undertaken.

## CLAUSE 14      ACTION AFTER COMPLETION OF INVESTIGATION

This clause amends section 58 of the Principal Act by adding new sub-sections 58(3), (4) and (5) to facilitate the revocation or variation of directions issued under paragraph 58(1)(b).



Under paragraph 58(1)(b) the Commissioner may, after completion of an investigation of the business of a company, and in certain circumstances, issue appropriate directions to the company in respect of its life insurance business to deal with the situation disclosed as a result of the investigation.

The effect of the amendments will be to allow the Commissioner to either revoke or vary directions issued under paragraph 58(1)(b), and to permit application by a company for a revocation or variation.

Provision is also made for a right of appeal in respect of decisions by the Commissioner under the new sub-sections 58(3) and (4) (note on clause 15 also refers).

#### CLAUSE 15      REVIEW OF CERTAIN DECISIONS

This clause amends section 138 of the Principal Act to effect a number of changes as a consequence of other amendments in the Bill. In essence, the amendments are designed to widen the rights of appeal available under the legislation.

A new paragraph 138(aa) is inserted into the definition of "person affected by a reviewable decision" to provide for that definition to be extended to include an actuary upon whose behalf a company's request for approval under sub-section 4A(3) has been refused.

The clause also effects a number of amendments to the definition of "reviewable decision" to bring within that definition a number of additional decisions, including a refusal to approve an actuary under sub-section 4A(3) for the purposes of the Act. Decisions relating to the imposition, revocation or variation of a condition on registration imposed under section 20 (notes on clause 8 refer), and decisions relating to the revocation or variation of directions given under sub-sections 40(8) and 52(3), or issued under paragraph 58(1)(b) (notes on clauses 10, 11 and 14 refer), are also included.

New sub-section 138(16) provides that, in addition to decisions of the Commissioner, a right of appeal is also available against decisions of the Treasurer in respect of conditions on registration imposed under section 20.

CLAUSE 16        STATEMENTS TO ACCOMPANY NOTIFICATION OF  
DECISIONS

This clause inserts a new section 138A into the Principal Act to specify the statements which shall accompany the notification of a reviewable decision that is given to a person affected by the decision. The Insurance Amendment Bill 1983 contains a clause to insert a similar new section into the Insurance Act 1973. These additions bring the Principal Act more into line with similar areas in other Commonwealth legislation.

CLAUSE 17        DOCUMENTS LODGED OR FURNISHED UNDER LAWS  
RELATING TO ACQUISITION OF SHARES

This clause amends section 139A of the Principal Act by omitting sub-section 139A(2). As the amendments in clause 3 provide for a definition of, inter alia, "holding company" in sub-section 4(9) of the Principal Act, sub-section 139A(2) is now redundant.

CLAUSE 18        OFFENCES

This clause amends section 148 of the Principal Act to insert a new paragraph 148(1)(aa). Paragraph 148(1)(aa), in effect, provides that a contravention of or failure to comply a condition on registration imposed under section 20 shall constitute an offence against the Act.

CLAUSE 19        FORMAL AMENDMENTS

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









