

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

**LIFE INSURANCE BILL 1994**  
SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

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



## **LIFE INSURANCE BILL 1994**

### **) GENERAL OUTLINE AND MAIN PURPOSES OF THE AMENDMENTS**

These amendments to the Life Insurance Bill 1994 complete the prudential measures for the new regulatory regime for the life insurance industry.

) The main changes are, firstly to update the provisions relating to policies in Part IV of the *Life Insurance Act 1945* which have generally remained unchanged for the past half century. These amendments reflect a modern approach to the provisions relating to life insurance policies and are easier to understand than the previous provisions.

The remaining amendments have resulted from consultation with interested parties and the unintended effect of certain provisions. These amendments represent technical refinements to the legislation.

These amendments will complement the prudential measures already in the Bill and establish a new modern regulatory regime for the life insurance industry.

### **FINANCIAL IMPACT STATEMENT**

There is no financial impact as a result of these amendments.

**EXPLANATORY NOTES ON THE NEW CLAUSES AND AMENDMENTS TO THE LIFE INSURANCE BILL 1994****AMENDMENT 1**

1. Paragraph 9(1)(a) is amended by omitting the reference to continuous disability policies which are referred to specifically in paragraph (1)(e).

**AMENDMENT 2**

2. Paragraphs 9(1)(f) and (g) are amended to omit the paragraphs and substitute paragraphs which provide clarification that investment account contracts and investment-linked contracts are life policies even if they do not constitute contracts of insurance.

**AMENDMENT 3**

3. Subclause 11(1) is omitted and substituted with a subclause which outlines what type of business will constitute life insurance business.

**AMENDMENT 4**

4. Paragraph 12(2)(b) is amended to allow annuity business not covered by clauses 9 or 11 to be deemed to be life business.

**AMENDMENT 5**

5. Paragraph 13(2)(a) is amended to clarify that the liabilities referred to include policy liabilities.

**AMENDMENT 6**

6. Subclause 14(2) is amended to provide that an investment account contract does not need to have an insurance element.

**AMENDMENT 7**

7. Subclause 14 (3) is amended to provide further clarification to the subclause.

**AMENDMENT 8**

8. Subclause 14(4) is omitted and substituted with subclauses (4), (5) and (6). Subclause (4) redefines the type of contract that will constitute an investment-linked contract and clarifies that such a contract does not need to have an insurance element. Subclause (5) permits the Commissioner to declare (in a written form) that certain contracts are, or would be investment account contracts or investment-linked contracts.

9. Subclause (6) provides that when the Commissioner makes a declaration this Act has effect accordingly and the Commissioner must give a copy of the declaration to the life company at whose request the declaration was made. These provisions will provide flexibility to the Commissioner where contracts are hybrids, containing characteristics of both investment account and investment-linked contracts.

#### AMENDMENT 9

10. Clause 15 is amended to change the terminology from "policy" to "benefits". The clause explains the terms "participating benefit" and "non-participating benefit". It further provides that the Commissioner may declare particular benefits to be participating benefits or non-participating benefits. The amendment provides for the situation where a policy contains both participating and non-participating benefits.

#### AMENDMENT 10

11. Clause 17 is omitted and substituted with a clause which provides that a person other than a registered company under this Act must not intentionally issue a life policy or undertake liability under a life policy. Subclause 17(2) outlines what is excluded from the general prohibition. This amendment will enable investment account and investment-linked contracts without an insurance element to be issued by other than registered life companies.

#### AMENDMENT 11

12. The amendment to paragraph 19(2)(a) is self explanatory.

#### AMENDMENT 12

13. Clause 24 is amended to insert subclause (5) which provides that this section applies to an existing life company as if a reference to the amount specified in a relevant provision or fixed by regulations includes a reference to such an amount as modified by regulation made under subsection 255(2).

#### AMENDMENT 13

14. Subparagraph 27(1)(b)(ii) is amended to standardise references to "policy liabilities".

#### AMENDMENT 14

15. Paragraph 30(c) is amended to clarify that the liabilities referred to include policy liabilities.

#### AMENDMENT 15

16. Clause 32 is omitted and substituted with a clause that clarifies that in the investment, administration and management of the assets of a statutory fund, a life company must comply with Part 4 and must give priority to the interests of the owners of policies referable to the fund.

## AMENDMENT 16

17. Subclause 34(3) is amended to take account of the new subclause (3A).

## AMENDMENT 17

18. Subclause 34(3A) is inserted and permits the life company to maintain a single bank account for money that constitutes assets of 2 or more statutory funds, provided the account is maintained in accordance with the Commissioner's rules.

## AMENDMENT 18

19. Paragraph 35(3)(b) is omitted and substituted with a paragraph that provides an alternative as to how the proportion of the premium is to be specified.

## AMENDMENT 19

20. Paragraph 36(c) is amended to omit "50" and substitute "48 or 50" to ensure that amounts paid to a life company by a director as a result of a breach of a duty to statutory fund policy owners is paid into the statutory fund.

## AMENDMENT 20

21. Paragraph 38(2)(a) is amended to clarify that the liabilities referred to include policy liabilities.

## AMENDMENT 21

22. Subclause 38(7) is inserted to clarify that the section does not apply to the transfer of assets from one statutory fund to another in accordance with Division 3, 4 or 6.

## AMENDMENT 22

23. Clause 42 is omitted and substituted with a clause that provides for a definition that further clarifies the term "investment performance guarantee" and clarifies the calculation of the investment performance guarantee factor which shall not exceed 5%.

## AMENDMENT 23

24. Clause 45 is omitted and substituted with a new clause which provides that transfers of assets between statutory funds will be permitted in accordance with Divisions 3, 4, 6 or on an arm's length basis. This amendment will permit assets to be transferred between funds rather than forcing sales and purchases on the market with consequent transaction costs.

## AMENDMENT 24

25. Clause 48 is omitted and substituted with a clause that provides that a director of a life company has a duty to the owners of policies referable to a statutory fund of the company to ensure the life company complies with this Part and gives priority to policy owner's interests. It provides clarification to the issue of conflict between the interests of the owners of policies referable to a statutory fund and the interests of shareholders. In that event the director is to ensure priority to the interests of policy owners.

## AMENDMENT 25

26. Subclause 50(2) is omitted and substituted with a subclause that only requires a person to prove they acted with due diligence to ensure that the company complied with the notice, to avoid liability under subsection (1).

## AMENDMENT 26

27. Clause 51 is amended to clarify that the Commissioner may bring an action against persons who are no longer directors.

## AMENDMENT 27

28. Paragraph 53(5)(b) is amended to clarify that the liabilities referred to include policy liabilities.

## AMENDMENT 28

29. Paragraph 55(1)(a) is amended to standardise references to "policy liabilities".

## AMENDMENT 29

30. Subclause 55(2) is amended to standardise references to "policy liabilities".

## AMENDMENT 30

31. Part 4, Division 5 is omitted and substituted with a new Division. The amendments involve changes to the definitions used in the Division, and the resulting consequential amendments, as detailed below.

## CLAUSE 56 INTERPRETATION

32. The substituted clause 56 incorporates technical refinements to definitions to clarify terms and aid in the interpretation of the Division and clarify that the Division applies to mutual companies as well as shareholder companies.

## CLAUSE 57 OBLIGATION TO ALLOCATE OPERATING PROFIT OR LOSS

33. The substituted clause 57 requires a life company, where a category of business of a statutory fund has disclosed an operating profit or incurred an operating loss for the period, to allocate the profit or loss.

## CLAUSE 58 OPERATING PROFIT ETC.

34. The substituted clause 58 establishes the basis for determining if there has been an operating profit or an operating loss.

## CLAUSE 59 ALLOCATION OF OPERATING PROFIT ETC.

35. The substituted clause 59 provides that a life company must allocate all of the operating profit or loss of a category of business of a statutory fund for a period. Subclauses (2) and (3) specify how a life company allocates operating profit and operating loss, respectively. Subclauses (4) and (5) specify how a life company allocates a capital payment.

## CLAUSE 60 BASIS OF ALLOCATION OF OPERATING PROFIT ETC.

36. Subclause (1) details the rules which apply to the allocation of an operating profit of a category of business of a statutory fund. In particular, it provides that at least 80% of profit of a category representing Australian participating business (or such higher percentage as is specified in the articles of association of the company), must be treated as, or added to Australian policy owners' retained profits of the statutory fund.

37. Subclause (2) details the rules which apply to the allocation of an operating loss of a category of business of a statutory fund. In particular, it provides that no more than 80% of a loss of a category representing Australian participating business (or such higher percentage as is specified in the articles of association of the company) may be taken into account in reduction of Australian policy owners' retained profits of the statutory fund.

## AMENDMENT 31

38. Clause 61 is amended to make technical refinements to the definition of "Australian policy owners' retained profits".

## AMENDMENT 32

39. Clause 61 is amended to make technical refinements to the definition of "Australian policy owners' retained profits".

## AMENDMENT 33

40. Clause 61 is amended to make technical refinements to the definition of "overseas policy owners' retained profits".



## AMENDMENT 34

41. Clause 61 is amended to make technical refinements to the definition of "overseas policy owners' retained profits".

## AMENDMENT 35

42. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (Australian participating)".

## AMENDMENT 36

43. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (Australian participating)".

## AMENDMENT 37

44. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (overseas and non-participating)".

## AMENDMENT 38

45. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (overseas and non-participating)".

## AMENDMENT 39

46. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (overseas and non-participating)".

## AMENDMENT 40

47. Clause 61 is amended to make technical refinements to the definition of "shareholders' retained profits (overseas and non-participating)".

## AMENDMENT 41

48. Subclause 61(2) is inserted to clarify that the distribution rules set out in the Division are to apply to mutual companies as well as shareholder companies.

## AMENDMENT 42

49. Paragraph 62(1)(a) is amended to omit "Australian participating policies" and substitute "Australian policies that provide for participating benefits" as a consequential amendment resulting from the change from "participating policies" to "participating benefits".

## AMENDMENT 43

50. Paragraph 62(1)(b) is omitted and substituted by paragraphs (b) and (ba). This amendment permits the distribution or transfer of overseas policy owners' retained profits to owners of Australian policies that provide for participating benefits or to shareholders funds, respectively, if the Commissioner has approved the distribution or transfer.

## AMENDMENT 44

51. Subparagraph 62(1)(c)(iii) is amended by omitting "participating policies" and substituting "policies that provide for participating benefits" as a consequential amendment resulting from the change from "participating policies" to "participating benefits".

## AMENDMENT 45

52. Subclause 62(5) is omitted and substituted with a subclause which provides the circumstances under which Commissioner's rules may or may not prohibit the distribution of shareholders' retained profits.

## AMENDMENT 46

53. Subclause 63(3) is omitted and substituted with a subclause which specifies how shareholders' capital may be distributed.

## AMENDMENT 47

54. Clause 66 is omitted and substituted with a clause which gives a fuller explanation of the purpose of the solvency standard.

## AMENDMENT 48

55. Subclause 68(1) is amended to clarify that the liabilities referred to include policy liabilities.

## AMENDMENT 49

56. The amendment to clause 71 is self explanatory.

## AMENDMENT 50

57. The amendment to subclause 73(1) is self explanatory.

## AMENDMENT 51

58. Subclause 73(3) is omitted. This subclause gave the Commissioner a broad direction making power in respect of the capital adequacy standard in relation to a statutory fund.

## AMENDMENT 52

59. The amendment to paragraph 75(2)(a) will standardise the terminology used to define particular categories of business.

## AMENDMENT 53

60. The amendments to paragraphs 75(3)(a), (b) and (c) will standardise the terminology used to define particular categories of business.

## AMENDMENT 54

61. Clause 76 is omitted and substituted with a clause which provides that a life company must keep such records of the income and outgoings of an overseas fund of the company at the category of business level.

## AMENDMENT 55

62. Paragraph 83(3)(c) is amended by omitting "condition" and substituting "position". This will more accurately reflect the role of auditors who look at the year's transactions from an historical perspective and certify the financial position as at the balance date. This contrasts with the role of an actuary which involves an examination of the overall financial condition of the company and an assessment of how the company is likely to cope with future developments.

## AMENDMENT 56

63. Paragraphs 83(4)(a) and (b) are omitted and substituted with paragraphs that clarify that the liabilities referred to are the policy liabilities of the company.

## AMENDMENT 57

64. Clause 93 is omitted and substituted with a new clause which clarifies procedural aspects regarding the appointment of an actuary, including provision for the Commissioner to approve an appointment as an actuary. Subclauses (1) and (2) provide that a life company must have an actuary appointed by the company and that a person must be appointed to be the actuary of a company within 6 weeks after a person ceases to hold the appointment.

65. Clause 94 is omitted and substituted with a clause which outlines the circumstances that will lead to a person ceasing to hold an appointment as the actuary of a life company, including the Commissioner declaring a person not eligible for such appointment.

## AMENDMENT 58

66. Subclause 99(1) is amended so that not only the present appointed actuary has qualified privilege in respect of the matters outlined in the clause, but also a person who has been an appointed actuary of a life company.

AMENDMENT 59

67. Subclause 99(2) is amended so that not only the present appointed actuary has qualified privilege in respect of the matters outlined in the clause, but also a person who has been an appointed actuary of a life company.

AMENDMENT 60

68. Paragraph 113(2)(a) is amended to clarify that the liabilities referred to are policy liabilities.

AMENDMENT 61

69. Clause 114 is omitted and substituted to clarify that the liabilities to be valued in accordance with the clause are the policy liabilities.

AMENDMENT 62

70. Subclause 116(1) is amended to change the focus from directors obtaining the appointed actuary's written report, to the appointed actuary giving the company the written report.

AMENDMENT 63

71. Subclause 116(2) is amended to change the focus from directors obtaining the appointed actuary's written report, to the appointed actuary giving the company the written report.

AMENDMENT 64

72. Paragraph 117(2)(c) is omitted and substituted with a paragraph which clarifies that the liabilities referred to are policy liabilities.

AMENDMENT 65

73. Subclause 134(1) is amended to standardise terminology with that used in specifying the purpose of the solvency standard. This clarifies that a trigger for the use of this clause is the failure to meet the solvency standard.

AMENDMENT 66

74. Paragraph 136(a) is amended to standardise terminology with that used in specifying the purpose of the solvency standard. This clarifies that a trigger for the use of this clause is the failure to meet the solvency standard.

## AMENDMENT 67

75. Paragraph 150(1)(a) is amended to standardise terminology with that used in specifying the purpose of the solvency standard.

## AMENDMENT 68

76. Subparagraph 159(a)(i) is amended to standardise terminology with that used in specifying the purpose of the solvency standard.

## AMENDMENT 69

77. Clause 165 is amended to correct the cross reference now that the whole of the *Life Insurance Act 1945* is to be repealed.

## AMENDMENT 70

78. Clause 186 is omitted and substituted with a clause which clarifies that the liquidator must first determine whether a policy liability exists in respect of a person appearing as the owner of a policy on the company's records, before determining the value of that policy liability. The new clause also provides that for the purposes of a winding-up, the company's liability in relation to a specific policy is the amount determined.

## AMENDMENT 71

79. This clause is amended by omitting words before paragraph (1)(c) and substituting subclauses (1A), (1B) and (1), to clarify that in the winding-up of a life company the assets of a statutory fund must be applied in accordance with the applicable Corporations Law, with the exception that policy owners rank before other unsecured creditors but after employees of the life company.

## AMENDMENT 72

80. Subclauses 187(3), (4) and (5) are inserted to provide that where in the winding-up of a life company there is a liability that relates to more than one fund, the liquidator may apportion that liability to determine what part is to be borne by each of the statutory fund(s) or by the statutory fund.

## AMENDMENT 73

81. Subclause 188(2) is omitted and substituted with a subclause that only requires a person to prove they acted with due diligence to avoid liability under subsection (1).

## AMENDMENT 74

82. Clause 189 is amended to allow the Division to apply to transfers of business to a company registered under the Act which is not yet carrying on life insurance business.

**AMENDMENT 75**

83. Subclause 190(1A) is inserted to clarify that a transfer or amalgamation of life insurance business may be to a company registered under the Act which is not yet carrying on life insurance business.

**AMENDMENT 76**

84. Subclause 190(3) is inserted to provide circumstances under which a transfer or amalgamation of life insurance business is not required to be made under a scheme approved by the Court.

**AMENDMENT 77**

85. Clause 191 is amended to allow the Division to apply to transfers of business to a company registered under the Act which is not yet carrying on life insurance business.

**AMENDMENT 78**

86. Clause 197 is amended to allow the Division to apply to transfers of business to a company registered under the Act which is not yet carrying on life insurance business

**AMENDMENT 79**

87. Omit Parts 10 and 11 and the Schedule and substitute the following Parts and Schedule:

**PART 10 - PROVISIONS RELATING TO POLICIES****DIVISION 1 - ISSUE OF POLICIES****CLAUSE 198            ALTERATION OF PROPOSAL AND POLICY FORMS**

88. Subclause (1) allows the Commissioner to request from a life company any form of proposal or policy document ordinarily used by the company in Australia.

89. Subclause (2) provides that if the Commissioner believes a form submitted under subclause (1) does not comply with the Act or is likely to mislead, the Commissioner may give the company written notice of the areas where the form fails to comply with the Act or is likely to mislead. The life company is to be invited to make submissions on any matter set out in the notice.

90. Subclause (3) provides that the Commissioner may give the life company a written direction to change the form if, after a specified period, no submissions have been made, or the submissions given are not satisfactory.

91. Subclause (4) provides that where a form is subject to a written direction, a life company or a representative of the company must not make use of that form, unless it has been changed in accordance with the direction.

#### CLAUSE 199 CAPACITY OF YOUNG PERSONS TO INSURE ETC.

92. This clause provides that a person who is at least 10 years of age, but has not reached 16, may legally enter into or take an assignment of a life policy with the written consent of a parent or guardian. In respect of a person who has reached 16 but not 18, that person is to have the same capacity to exercise rights or powers in relation to a life policy as a person who has reached 18.

#### DIVISION 2 - ASSIGNMENTS AND MORTGAGES

#### CLAUSE 200 ASSIGNMENT OF LIFE POLICY

93. This clause provides that the rights of a person as owner of a life policy may only be assigned under this section. For an assignment to be effective it must comply with the requirements in subclause (2). If a valid assignment has taken place, it will have the effects as set out in subclause (3). Several rules in relation to an assignment are set out in subclauses (4), (5), (6) and (7).

#### CLAUSE 201 MORTGAGES AND TRUSTS

94. This clause provides that an assignment of a policy by way of mortgage or on trust will not be effective unless it complies with the rules set down in subparagraphs (1)(a) to (1)(c). This clause also allows transferees under an assignment to be described in a memorandum of transfer as the trustee or trustees of a superannuation fund.

#### CLAUSE 202 EFFECT OF NOTICE OF TRUST ETC.

95. This clause provides that a life company is not entitled to rely on any provisions of sections 200 or 201, if it has not acted in good faith or has received express notice in writing of any trust, right, equity or interest. The clause provides that if a notice has been given, the company can pay moneys into the Court for a valid discharge and the Court has responsibility for paying out those monies.

#### CLAUSE 203 TRANSFER OF POLICY AFTER CHANGE OF TRUSTEE

96. This clause prescribes a method of transferring ownership of a policy from one trustee to another. The previous provision in the *Life Insurance Act 1945* was deficient in relation to procedures necessary to obtain the requisite statutory declaration. Thus the section has been amended to ensure in appropriate circumstances the incoming trustee(s) can invoke the provision.

## DIVISION 3 - PROTECTION OF POLICIES

## CLAUSE 204 PROTECTION OF INTEREST OF INSURED

97. This clause provides for the protection of the interests of a person against creditors in certain cases. The clause ensures the protection of the interests of the life insured, irrespective of who effected the policy, and the protection of an interest on the life of the spouse. This clause is subject to the *Bankruptcy Act 1966*.

## CLAUSE 205 PROTECTION OF POLICY MONEY ON PERSON'S DEATH

98. This clause relates to policies effected by a person on their own life for the benefit of their estate. This clause protects the money payable under the policy from being applied or made available for payment of the person's debts, except in the circumstances outlined in subparagraph (1)(b). This clause is subject to the *Bankruptcy Act 1966*.

## DIVISION 4 - SURRENDER VALUES, PAID-UP POLICIES AND NON-FORFEITURE OF POLICIES

## CLAUSE 206 APPLICATION OF DIVISION

99. Self explanatory.

## CLAUSE 207 SURRENDER OF POLICIES

100. This clause provides that the owner of a policy which has been in force for at least 3 years may ask the company to surrender the policy. Subclauses (3) and (4) set out the rules for the amount and payment of the surrender value of the policy, including minimum surrender values which will be set in actuarial standards.

101. The equivalent provision under the *Life Insurance Act 1945*, set the period at 6 years, however, this was thought to be an unconscionably long period since the market, usually pays surrender values after 3 years and in many cases, after 2 years.

## CLAUSE 208 RELAXATION OF COMPANY'S OBLIGATIONS TO SURRENDER

102. This clause allows the Commissioner to suspend or vary a life company's obligation to pay surrender values under section 207 in certain circumstances.

103. This power would only be exercised very rarely. However, it is important in providing a safety valve in extreme circumstances by preventing a run on the statutory funds of a life company, thus enabling other courses of corrective action to be considered. It is intended to protect the interests of policy owners who are not seeking to surrender their policies.



## CLAUSE 209 PAID-UP POLICIES

104. This clause provides that if premiums under a policy have been paid in respect of a period of at least 3 years, the owner of the policy may ask the life company concerned to vary the policy so that no further premiums are payable and treat the policy as a paid up policy.

105. The clause also outlines the rules for varying the policy. It specifies what the life company is entitled to do if the policy owner owes a debt to the company under the policy, or a debt owed by the policy owner to the company is secured by the policy.

## CLAUSE 210 NON-FORFEITURE OF POLICIES IN CERTAIN CASES OF NON-PAYMENT OF PREMIUMS

106. This clause provides for the non-forfeiture of a policy where premiums are overdue. Overdue premiums plus interest are to be treated as a debt secured by the policy. It also allows the issue of the requisite warning notice at the same time as the renewal notice. This is not only more practical for life companies but it is appropriate to warn the policy owner before the due date of the premium.

## DIVISION 5 - PAYMENT OF POLICY MONEY

### CLAUSE 211 PROBATE OR ADMINISTRATION NOT NECESSARY IN CERTAIN CASES - A SINGLE POLICY

107. This clause allows a company to pay small claims (not more than \$50,000) in certain circumstances without requiring the production of probate or letters of administration.

### CLAUSE 212 PROBATE OR ADMINISTRATION NOT NECESSARY IN CERTAIN CASES - 2 OR MORE POLICIES

108. This clause allows a company to pay small claims (totalling not more than \$50,000) in certain circumstances without requiring the production of probate or letters of administration.

### CLAUSE 213 DEATH OF POLICY OWNER WHO IS NOT THE LIFE INSURED

109. This clause enables a company to endorse a change in title in respect of certain policies (not more than \$25,000) owned by a deceased person but not on that person's life.

### CLAUSE 214 COMPANY NOT BOUND TO SEE TO THE APPLICATION OF MONEY PAID BY IT

110. Self explanatory.

**CLAUSE 215            POWER TO PAY MONEY INTO COURT**

111. This clause provides the company with the right to pay moneys into Court if, in the company's opinion, it cannot otherwise obtain a proper discharge. The payment of moneys then becomes the responsibility of the Court. In doing this, it is expected the company act reasonably. A company is unlikely to pay money into Court unnecessarily, since if it does so, it might be required to pay the legal costs of other parties in any subsequent proceedings.

**CLAUSE 216            UNCLAIMED MONEY**

112. This clause provides that a life company must give to the Commissioner a statement of all unclaimed moneys as at the end of each calendar year. At the time of providing the statement, the company must also pay to the Commonwealth an amount equal to the amount of unclaimed money worked out under subclause (6).

113. The remaining clauses deal with administrative matters involved in the lodgement, certification and payment of unclaimed money.

**CLAUSE 217            NO DEDUCTION IN RESPECT OF OTHER POLICIES**

114. This clause provides that a claim which is paid under a policy cannot be used by the company to pay debts due to it on any other policy except with the written consent of the claimant.

**DIVISION 6 - CHILDREN'S ADVANCEMENT POLICIES****CLAUSE 218            INTERPRETATION**

115. Self explanatory.

**CLAUSE 219            PROPERTY IN CHILD'S ADVANCEMENT POLICY**

116. This clause applies to every child's advancement policy except a policy effected by a parent, or a person who stands in the place of a parent, of a child in which it is expressly provided that this section does not apply to it.

117. Subclause (3) provides that unless and until the child reaches the vesting age, the policy is the absolute property, both at law and in equity, of the person effecting the policy or his or her assigns. That person or his or her assigns is taken to have the power to assign, mortgage, charge, surrender, vary or otherwise deal with the policy.

118. Subclause (4) provides that when a child whose life is insured under a child's advancement policy reaches the vesting age, the policy is taken to be the absolute property of the child, both at law and in equity, subject to the two conditions specified in subparagraphs (4)(a) and (4)(b).

## CLAUSE 220 DEATH OR BANKRUPTCY OF POLICY OWNER

119. This clause details the procedures that must be followed if the person who effects a child's advancement policy dies or becomes bankrupt. It should be noted that the company which issued the policy is under no obligation to see to the application of the proceeds of the policy.

## DIVISION 7 - LOST OR DESTROYED POLICY DOCUMENTS

### CLAUSE 221 LOST OR DESTROYED POLICY - ISSUE OF REPLACEMENT POLICY DOCUMENT

120. This clause outlines the procedure that must be followed by the life company when issuing a replacement policy document, where the original policy document is claimed to have been lost or destroyed.

### CLAUSE 222 FORM OF REPLACEMENT POLICY DOCUMENT

121. This clause outlines the form a replacement policy document must take and provides that the replacement policy document must state the reason why the replacement policy document was issued.

### CLAUSE 223 NOTICE BEFORE ISSUING REPLACEMENT POLICY DOCUMENT

122. This clause provides that before issuing a replacement policy document, the company must issue a notice of its intention to do so. The notice must be circulated in a newspaper in an appropriate district as outlined in subparagraphs (3)(a) to (3)(c). The applicant must meet all the expenses relating to the advertising and the issuing of the replacement policy document. The details of a replacement policy document must be entered in the appropriate register of policies.

### CLAUSE 224 CLAIM UNDER POLICY WHERE POLICY DOCUMENT LOST OR DESTROYED

123. This clause provides that a company is discharged from all liability to any person under a policy which is lost or has been destroyed, providing the company has satisfied the criteria set down in subclause (1).

124. One particular criteria that must be satisfied is that the company give at least 10 days' notice of its intention to satisfy the claim or comply with the request. Subclause (2) sets out the rules relating to the notice. Subclause (3) provides that expenses associated with advertising the notice are to be paid by the person making the claim or request in respect of the policy.

CLAUSE 225            APPLICATION OF SECTIONS 221, 222, 223 AND 224 TO  
REPLACEMENT POLICY DOCUMENT

125. This clause provides that if the owner of a policy claims that the policy is lost or has been destroyed, sections 221, 222, 223 and 224 apply to the replacement policy document as if it were an original policy document

DIVISION 8 - GENERAL

CLAUSE 226            REGISTERS

126. This clause provides that a life company must have a register of life policies for each State and Territory in which it carries on life insurance business.

CLAUSE 227            REGISTRATION OF LIFE POLICIES

127. This clause provides that a life company must register each life policy issued by the company in Australia in accordance with subclause (1). The life company must also register each life policy issued by the company outside Australia in accordance with subclause (2).

128. The policy may be transferred from a register to another register, provided the owner of a life policy issued in Australia makes a written request. The expenses incurred by the company in connection with the transfer are to be paid by the owner of the policy.

CLAUSE 228            EFFECT OF SUICIDE ON POLICY

129. This clause provides that a life company may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide, if the policy expressly excludes liability.

CLAUSE 229            CONDITION AS TO WAR RISK VOID

130. This clause provides that any term or condition of a life policy is void if it limits, to an amount less than the sum insured and bonuses, the amount payable under the policy if the life insured by the policy dies on war service. This general rule does not apply if the person who effected the policy agrees in writing to the insertion of that term or condition in the policy.

CLAUSE 230            POLICIES NOT INVALIDATED BY CONTRAVENTIONS OF THE  
ACT

131. Self explanatory.

**PART 11 - MISCELLANEOUS****CLAUSE 231            ANNUAL REPORT**

132. This clause requires the Commissioner to prepare and give to the Treasurer as soon as practicable after the end of each financial year, a report on the operation of the Act during the year. The Treasurer has to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after the day of receipt of the report.

**CLAUSE 232            DELEGATION**

133. This clause provides that the Commissioner may delegate all his or her powers or functions under the Act or the regulations to a member of his or her staff. A delegate is subject to the directions of the Commissioner.

**CLAUSE 233            OPERATION OF STATE AND TERRITORY LAWS**

134. This clause provides that it is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act. Two exceptions to this general intention are outlined.

**CLAUSE 234            PROHIBITION OF MIXED INSURANCE BUSINESS**

135. This clause provides that a life company must not intentionally carry on any insurance business other than life insurance business. This provision does not prevent a life insurer owning a general insurance subsidiary or vice versa, nor a corporate structure involving a holding company and separate life and general insurance subsidiaries. Therefore, a particular organisation could conduct both classes of business, provided they do so within the constraints of separate legal entities.

136. This clause also does not prohibit an existing life company from carrying on general insurance business, if the company was carrying on general insurance business immediately before the commencement of this Act.

**CLAUSE 235            INJUNCTIONS**

137. This clause explains the types of injunctions that are available, when they can be used and the scope of the Court's power in granting injunctions.

**CLAUSE 236            REVIEW OF CERTAIN DECISIONS**

138. This clause outlines which decisions made under the Bill are reviewable by the Commissioner and subsequently the Administrative Appeals Tribunal. It sets down the period within which a request for review must be made and also the period to make a decision.

**CLAUSE 237            CONSTITUTION AND PROCEDURE OF TRIBUNAL**

139. Self explanatory.

**CLAUSE 238            PROSPECTUS TO BE GIVEN TO COMMISSIONER**

140. This clause requires a life company who lodges a prospectus, relating to securities of the company, with the Australian Securities Commission under Part 7.12 of the Corporations Law of a State or internal Territory, to also provide the Commissioner with a copy of the prospectus.

**CLAUSE 239            DOCUMENTS RELATING TO TAKEOVER SCHEMES**

141. This clause requires a life company, which lodges a document with the Australian Securities Commission or is given a document for the purposes of Part 6.3 of the Corporations Law of a State or an internal Territory, to give the Commissioner a copy within 7 days after the document is lodged or received.

**CLAUSE 240            REGISTER OF LIFE COMPANIES**

142. This clause provides that the Commissioner must keep a register containing prescribed information in respect of each registered life company. The Commissioner is to determine the form and manner in which the Register may be kept. The Register is permitted to be kept by means of a computer.

**CLAUSE 241            INSPECTION OF REGISTER ETC**

143. This clause provides that the Commissioner must ensure the Register is available for inspection during normal business hours. Any person who pays a prescribed fee is entitled to inspect the Register.

**CLAUSE 242            NON-SHAREHOLDER MEMBERS OF LIFE COMPANY - VOTING BY POST**

144. This clause outlines the arrangements that must be made for a life company that does not have share capital and is limited by both shares and by guarantee. It explains the system that must be established to facilitate the voting by post in elections of directors and questions relating to the alteration of the company's articles of association.

145. The clause also provides for various rules in relation to such voting. Paragraph (2)(d) sets out the arrangements that must be made by a life company for the inspection of the postal voters' roll by any candidate in the election.

**CLAUSE 243            INSPECTION OF DOCUMENTS**

146. This clause provides that any document given to the Commission under section 118(2) must be available for inspection by any member of the public and can be copied if the prescribed fee is paid.

#### CLAUSE 244 COMMISSIONER'S POWER TO OBTAIN STATISTICS ETC.

147. This clause allows the Commissioner to collect such statistics as are prescribed by Commissioner's rules. The Commissioner may also publish such statistics.

148. The Commissioner will only issue Commissioner's Rules with respect to statistics, where there has been extensive consultation with industry.

#### CLAUSE 245 BANKRUPTS AND PERSONS CONVICTED OF CERTAIN OFFENCES NOT TO BE DIRECTORS, PRINCIPAL EXECUTIVE OFFICERS ETC. OF LIFE COMPANIES

149. This clause provides that certain persons who have been convicted of an offence or have been bankrupt etc. cannot be a director, principal executive officer or the appointed actuary of a company registered under this Act.

#### CLAUSE 246 PRINCIPAL EXECUTIVE OFFICER

150. This clause provides who is a principal executive officer of a life company for the purposes of this Act and provides that an existing company must give written notice of its principal executive officer to the Commissioner within 3 months after commencement of the Act.

#### CLAUSE 247 PROTECTION OF PERSON WHO DISCLOSES INFORMATION ETC. UNDER COMPULSION

151. This clause provides that a person who discloses information or produces records in accordance with a requirement or direction of a person under this Act, is not liable to anyone else in respect of the disclosure or production.

#### CLAUSE 248 OFFENCES

152. This clause sets out the time within which proceedings for an offence against this Act may be instituted. Subclause (2) provides that proceedings against a company for an offence do not prevent the institution of proceedings for the judicial management or winding up of the company on a ground that relates to the matter that constitutes the offence.

#### CLAUSE 249 FALSE OR MISLEADING DOCUMENTS

153. This clause provides that where a false or misleading statement has been made by a person in a document, that person is guilty of an offence.

#### CLAUSE 250 CONDUCT BY DIRECTORS, SERVANTS AND AGENTS

154. This clause sets out the considerations a court may take into account in proceedings for an offence in determining the state of mind of directors, servants and agents in relation to any conduct engaged in by or on behalf of a body corporate or individual.

## CLAUSE 251            SECRETY

155. The objective of this provision is to maintain the confidentiality of information acquired from financial institutions in the course of the Insurance and Superannuation Commission's supervisory activities, while permitting the disclosure of such information to particular parties in certain circumstances.

156. Subclause (1) outlines particular definitions for the purpose of the section, including "compliance officer". Subclause (2) provides that as a general rule, information obtained under or for the purposes of this Act must not be disclosed to any person, or to a court. Subclause (3) permits disclosure of information where the life company has consented in writing to the disclosure.

157. Subclauses (4), (5) and (6) set out particular persons to whom a compliance officer may disclose information and the circumstances in which the information can be disclosed.

## CLAUSE 252            COMMISSIONER'S RULES

158. This clause provides that Commissioner's rules are a disallowable instrument and can relate to all matters required or permitted by this Act to be prescribed by Commissioner's rules.

## CLAUSE 253            REGULATIONS

159. This clause provides the type of regulations that may be made by the Governor-General.

## PART 12 - HOW THIS ACT AFFECTS EXISTING LIFE COMPANIES ETC.

### CLAUSE 254            COMPANIES REGISTERED UNDER *LIFE INSURANCE ACT 1945*

160. This clause allows existing life companies to be automatically registered under this Act. It also provides for the transfer of conditions imposed on registration of a life company under the *Life Insurance Act 1945* to the new Act. A certificate of registration issued under the *Life Insurance Act 1945* is taken to be the same certificate issued under subsection 21(5) of this Act.

161. This clause also provides that an existing life company that is incorporated outside Australia is taken to be a company within the meaning of this Act. However, certain provisions as specified in subclause (7) do not apply to such companies.

### CLAUSE 255            CONTINUING CAPITAL REQUIREMENTS

162. This clause clarifies the application of transitional provisions in the *Insurance Laws Amendment Act 1991* relating to the capital requirements to be satisfied by life companies. Regulations made under this Act in respect of life company capital requirements may modify the operation of the relevant section of the *Insurance Laws Amendment Act 1991*.



CLAUSE 256            APPROVED AUDITOR

163. Self explanatory.

CLAUSE 257            APPROVED ACTUARY

164. Self explanatory.

CLAUSE 258            DOCUMENTS REQUIRED TO BE LODGED

165. This clause outlines the general rules for lodgment of documents that were required to be lodged under section 52 of the *Life Insurance Act 1945* immediately before the commencement of this Act for a period that ended before that commencement and the company had not lodged that document before that commencement.

CLAUSE 259            REINSURANCE BETWEEN STATUTORY FUNDS

166. This clause provides that Part 4 of this Act will not be contravened by a life company engaging in reinsurance between statutory funds, in relation to a particular policy, if certain conditions are satisfied.

CLAUSE 260            SCHEME FOR TRANSFER OR AMALGAMATION

167. This clause provides that if a copy of a scheme was lodged with the Commissioner under section 75 of the *Life Insurance Act 1945* before the commencement of this Act, that Act as in force immediately before that commencement continues to apply in relation to the scheme and Part 9 of this Act does not apply in relation to that scheme.

CLAUSE 261            MODIFICATION OF OPERATION OF DIVISIONS 5 AND 6 OF  
PART 4

168. This clause is a transitional provision which provides that regulations may modify, in respect of existing life companies, the operation of Division 5 of Part 4 in relation to certain financial statements given to the Commissioner under this Act or the *Life Insurance Act 1945*, and Division 6 of Part 4 in relation to financial statements given to the Commissioner under section 82. The clause incorporates "sunset" provisions, in that the regulations can only be made in respect of a period commencing before 1 January 1996.

CLAUSE 262            EXISTING BENEFIT SOCIETY BUSINESS

169. This clause provides that business carried on by a society, registered under a law of a State or Territory relating to the registration of benefit societies, after the commencement of this Act, to the extent that it would be business under paragraph (b), is not life insurance business for the purpose of this Act, but only for a period of 2 years beginning at the commencement of this Act.

## CLAUSE 263

## JUDICIAL MANAGEMENT AND WINDING-UP

170. This clause outlines which Act and which Parts of an Act will apply where a company or part of the business of the company, was under judicial management or being wound up under the *Life Insurance Act 1945* immediately before the commencement of this Act

## CLAUSE 264

SAVING PROVISION - SECTIONS 83, 84 AND 94 OF THE *LIFE INSURANCE ACT 1945*

171. This clause provides that in spite of the repeal of the *Life Insurance Act 1945*, sections 83, 84 and 94 of that Act continue to apply to policies to which those sections applied immediately before the commencement of this Act.

**SCHEDULE**

172. This Schedule provides the definitions of various terms used within the Act.









D

D

D

D

