

1994-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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 have resulted from consultation with interested parties and the unintended effect of certain provisions. They represent technical refinements to the legislation to correct ambiguity in the actual wording and construct of the provisions.

The 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. Clause 11 is amended to insert subclause (1A) which clarifies that life company business includes the investment, administration and management of statutory fund assets.

AMENDMENT 2

2. Paragraph 11(2)(e) is amended to provide that where a life company undertakes the business specified in subparagraphs (e)(i) and (ii), that business is life insurance business.

AMENDMENT 3

3. Clause 24 is amended to insert subclauses (6) and (7) which allow the Commissioner's rules to modify the operation of subsection 23(2). This amendment will allow existing capital arrangements to be maintained where such arrangements are permitted, in respect of a specified company, under Commissioner's Rules.

AMENDMENT 4

4. Paragraph 30(f) is omitted and substituted with a paragraph which clarifies that the provisions of Divisions 5 and 6 of Part 4 are not qualified by the provisions of clause 30.

AMENDMENT 5

5. Clause 32 is omitted and substituted with a clause which clarifies the phrase "owners of policies" to include existing policy owners and prospective policy owners of the company. The clause also clarifies the duty of the company to act reasonably, based on the circumstances at the time of its actions and decisions, in considering the interests of policy owners, and that the company may make investment or other decisions of a strategic nature.
6. Subclause (3) clarifies that an investment is not automatically invalidated if made in contravention of this duty.

AMENDMENT 6

7. Subclause 41(1) is amended as a consequence of amendments to clause 32.

AMENDMENT 7

8. Subclause 43(2) is amended to omit "promote" and substitute "further" to ensure that the provision is interpreted as relating to the ongoing investment, administration and management of the business of the fund.

AMENDMENT 8

9. Subclause 43(3) is amended to omit the first line and substitute a new first line. This amendment is to ensure that there is no conflict between the "general rule" for investing, stated in subclause (2), and the duty of the company stated in clause 32.

AMENDMENT 9

10. Subclauses 48(2) and (3) are omitted and substituted with subclauses which clarify that a director's duty is to take reasonable care and use due diligence. These amendments ensure consistency between the director's duty and the company's duty (as a consequence of amendments to clause 32).

11. Subclause 48(4) is omitted and substituted with a subclause which clarifies the phrase "interests of owners of policies referable to a statutory fund".

AMENDMENT 10

12. Subclause 48(8) is omitted due to uncertainty in the operation between subclauses (4) and (8). A director's duty to exercise due care and diligence is now established under subclause 48(2).

AMENDMENT 11

13. Subclause 259(2) is omitted and substituted with a subclause which removes the cross reference to *Life Insurance Act 1945*.

AMENDMENT 12

14. Clause 259 is amended to insert subclause (4) which removes the operation of paragraph (1)(c) and subclause (2) in respect of the company's first financial year ending after commencement of this Act. The purpose of this amendment is to correct the operation of paragraph (1)(c) which imposes a retrospective requirement on the appointed actuary to make a statement in the financial condition report which may be completed prior to the commencement of the Act.

AMENDMENT 13

15. Paragraph (c) of the definition of a "continuous disability policy" is omitted and substituted with a paragraph correcting a typographical error.