

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HOUSING LOANS INSURANCE CORPORATION
(SALE OF ASSETS AND ABOLITION) BILL 1990

EXPLANATORY MEMORANDUM

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

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GENERAL OUTLINE

The Government recently announced that the ongoing operations of the Housing Loans Insurance Corporation (HLIC) are to be sold to the CIC Insurance Group (CIC), subject to the negotiation of satisfactory contractual arrangements.

This Bill provides authority for the Commonwealth to effect the sale. The goodwill and certain other business assets of the Corporation, such as plant and equipment, are to be transferred to CIC, which is also to enter into a management contract with the Commonwealth to administer, on its behalf, those insurance contracts entered into by the HLIC prior to the sale date which are still in force at that time. The existing Commonwealth guarantee in respect of these contracts is to be retained.

The Bill also provides for the HLIC to be abolished shortly after the sale and for its residual assets and liabilities to be transferred to the Commonwealth.

CIC is to offer re-employment to the bulk of the HLIC management and staff on terms which, overall, are comparable to those which they now enjoy. The Bill provides that, with some exceptions, those employees who refuse offers of employment will be deemed to have resigned. This will prevent employees who have received reasonable job offers from putting themselves in redundancy situations, and thereby receiving large redundancy payments and the associated lump sum superannuation benefits.

FINANCIAL IMPACT

It is estimated that the Net Present Value of the arrangements described above for the disposal/management of HLIC's assets and liabilities is around \$80 million, the bulk of which will come from the transfer to Consolidated Revenue of the Corporation's assets remaining after sale.

The initial payment into Consolidated Revenue in the current financial year is expected to exceed \$100 million but this will be offset to some extent by payments in succeeding years of claims against pre-sale insurance contracts entered into by the HLIC, which the Commonwealth has guaranteed, and the management fees payable to the buyer or its subsidiary.

NOTES ON CLAUSES

Clause 1 - Short title

1. Provides for the Act to be cited as the Housing Loans Insurance Corporation (Sale of Assets and Abolition) Act 1990.

Clause 2 - Commencement

2. Provides that, generally, the Act shall come into operation on the day it receives the Royal Assent. However clauses 22-24 (which relate to the abolition of the HLIC and the treatment of its residual assets) are to come into effect from a date to be proclaimed or, in the absence of a proclamation, six months after the sale day. Proclamation is expected to occur shortly after the sale/management contract between the Commonwealth and the buyer and its subsidiaries (the CIC Insurance Group) comes into effect.

Clause 3 - Interpretation

3. Subclause (1) defines various terms used in the Act. Subclause (2) provides that, unless the contrary intention appears, terms used in this Act have the same meaning as in the Housing Loans Insurance Act 1965 (hereinafter and in the Act referred to as the Corporation Act), under which the HLIC was established and operates.

Clause 4 - Subsidiaries

4. Provides that the question of subsidiary relationships between companies in the buyer group will be determined according to the Companies Act 1981.

Clause 5 - Agreement for sale of Corporation business

5. Subclause (1) gives authority for the Minister for Finance, on behalf of the Commonwealth, to enter into an agreement for the sale of the HLIC's goodwill and some or all of its property.

6. Subclauses (2) and (3) provide that the goodwill and other sale assets may variously be sold to either the buyer company or one of its subsidiaries. Subclause (4) specifies that the sale agreement is to cover the arrangements to be followed in respect of insurance contracts entered into by the HLIC before sale day.

Subclause (5) provides for the sale agreement to also establish the commencement date when the sales made under it are to have effect.

Clause 6 - Corporation to cease business on sale

7. Provides that the HLIC must not enter into further contracts of insurance on or after the day the sales to be made under the sale agreement (of the Corporation's goodwill and property) are to have effect. The HLIC will not be able to amend such contracts as they will, on sale day, be vested in the Commonwealth.

Clause 7 - Pending proceedings about sale assets

8. Provides for the buyer or one of its subsidiaries to be substituted for the HLIC from sale day in those situations where the Corporation is subject to court proceedings in respect of assets covered by the sale agreement. In these circumstances, the buyer or its subsidiary, as applicable, is to have the same rights in these proceedings as the Corporation would have had.

Clause 8 - Management of pre-sale contracts

9. Subclause (1) requires the sale agreement to bind the buyer, or its subsidiary, to manage the Corporation's pre-sale insurance contracts on behalf of the Commonwealth for a period beginning on sale day and concluding at a date to be set by, or calculated in accordance with, the terms of the sale agreement.

10. Subclause (2) states that the Commonwealth will take the place of the HLIC as the insurer under pre-sale contracts for the period that the buyer or its subsidiary manages such contracts on its behalf. This is necessary as the HLIC is to be abolished shortly after sale day (see clause 22).

11. Subclause (3) provides that the company undertaking the management of the pre-sale insurance contracts for the Commonwealth is to be its paid agent. The arrangements for the management contract will be set out in detail in the sale agreement.

Clause 9 - Account for making payments under pre-sale contracts

12. Provides for the company managing the pre-sale contracts to establish a bank account to be known as the Insurance Account and maintain it throughout the management period in accordance with arrangements to be specified in the sale agreement.

Clause 10 - Payments into Insurance Account

13. Subclause (1) provides that the Commonwealth will periodically throughout the management contract transfer into the Insurance Account amounts needed to meet payments expected to be made in settlement of claims arising under the pre-sale contracts.

14. Subclause (2) provides for such amounts to be appropriated from the Consolidated Revenue Fund.

Clause 11 - Payments out of Insurance Account

15. Subclause (1) prohibits payments from the Insurance Account unless they are in accordance with this clause. Subclause (2) provides that the buyer, or its subsidiary, may meet claims arising during the management period under the pre-sale contracts from the account.

16. Subclause (3) specifies that interest earned on the outstanding balance in this account is to accrue to the Commonwealth and be credited to the account. The sale agreement will require that the bank account be one that attracts a competitive rate of interest. Subclause (4) states that all money held in the account when the management period expires is to be returned to the Commonwealth. It is anticipated that provisions will be included in the sale agreement under which, once the residual risks associated with the pre-sale insurance policies have been reduced to a certain level - expected to be after around 5 years - the buyer or its subsidiary will take over responsibility for the remaining policies for an agreed consideration.

Clause 12 - Insurer under pre-sale contracts after management period

17. Provides that the sale agreement is to designate the buyer or its subsidiary as the insurer under those pre-sale insurance contracts still in force at the end of the management contract between itself and the Commonwealth (when the buyer is, for an appropriate consideration, to assume total responsibility for such contracts). By this clause, the contracts will be changed accordingly at that point.

Clause 13 - Guarantee by Commonwealth

18. Provides a guarantee by the Commonwealth of the payment of all moneys that become payable under insurance contracts written by the HLIC prior to the sale date, including after they become the responsibility of

the buyer or its subsidiary alone. It effectively continues the present statutory guarantee on such contracts arising out of section 30 of the Corporation Act, which is to be repealed by clause 22.

Clause 14 - Corporation records in Archives

19. Provides the buyer with access to information on the business of the Corporation which is in the custody of Archives where that is necessary for the on-going conduct of the former HLIC business by the buyer.

Clause 15 - Certain corporation employees taken to have resigned

20. This clause is aimed at discouraging those HLIC employees who receive a reasonable offer of employment from the buyer or its subsidiary from rejecting that offer in order to render themselves eligible for the benefits associated with redundancy. Under clause 15, those employees who reject a reasonable offer of employment will be deemed to have resigned from the Corporation on sale day (and thus attract only the lesser benefits associated with resignation) unless they fall within one of two categories of exempt employees.

21. The two exempt categories are set out in subclause (2). Paragraph (a) excludes those HLIC employees who decline to take up an offer with the buyer or its subsidiary because its terms are less remunerative than those provided by the Corporation. Paragraph (b) provides a discretion to the Minister for Finance to also exclude a Corporation employee where the employee considers, and the Minister agrees, that there are good reasons for him not to accept the offer of employment from the buyer or its subsidiary.

22. Those employees exempt under subclause (2) will be declared redundant and retrenched by administrative means unless they are able to successfully exercise mobility rights under the Public Service Act 1922.

Clause 16 - Certain Corporation employees taken to have failed to accept offer

23. Provides that the Minister may declare that a HLIC employee has failed to accept a reasonable offer of employment from the buyer or its subsidiary where the Minister is satisfied that the employee sought to dissuade the buyer or its subsidiary from making such an offer in order to attract redundancy benefits. An employee so declared will be deemed to have resigned.

Clause 17 - Public Service Rights

24. Clause 17 addresses mobility and other rights which some Corporation employees may have under the Public Service Act 1922. The individuals concerned will, by administrative means, be given the opportunity to exercise such rights before the sale date. Where those rights are not exercised, or in the case of mobility rights where their exercise has proved unsuccessful as at sale day, and the employee concerned either resigns voluntarily to accept employment with the buyer or is deemed to have resigned in accordance with subclause 15(1), then any remaining Public Service rights which they may have (other than rights in respect of superannuation) will be abolished on sale day.

25. Should the timetable implicit in this clause prove, in practice, to be incompatible with the operation of clauses 15 and 16, then a regulation will be promulgated under the authority of clause 27 to allow those with mobility rights to exercise them.

Clause 18 - Comcare rights

26. Clause 18 preserves any rights which a Corporation employee holds under the Commonwealth Employees' Rehabilitation and Compensation Act 1988 in situations where the employee has suffered an injury prior to sale day. The clause has the effect of transferring after sale day, the Corporation liability to the Commonwealth.

Clause 19 - Secrecy provisions

27. Clause 19 over-rides the secrecy obligations imposed on members and employees of the Corporation by Section 43 of the Corporation Act and section 70 of the Crimes Act 1914 to the extent necessary to allow the sale to take place and to permit HLIC employees who accept employment with the buyer or its subsidiary to discharge their duty to their new employer, both in the period between the signing of the sale agreement and the repeal of the Corporation Act and afterwards.

28. Subclause (1) defines a Corporation officer for the purposes of this clause to include the members (including full-time members) of the Corporation plus its officers and employees.

29. Subclause (2) authorises the disclosure to the buyer of such Corporation records, documents and information as is required by the sale agreement.

30. Subclause (3) specifies that a Corporation officer as defined in subclause (1) is a Commonwealth officer for the purposes of section 70 of the Crimes Act 1914.

31. Subclause (4) authorises those HLIC employees who accept employment with the buyer or its subsidiary to disclose to that company and the company undertaking the management contract, plus their employees, such information relating to the affairs of the Corporation as is necessary to fulfil their duty of employment to the buyer or its subsidiary.

Clause 20 - Liabilities of Corporation may be transferred

32. This clause permits the sale agreement to transfer to the buyer or its subsidiaries for an appropriate consideration some or all of the liabilities of the Corporation.

Clause 21 - Final report by Corporation

33. Subclause (1) provides for the HLIC to provide a final accounting to the Treasurer and Parliament of its operations in the period between its last Annual Report and the sale day.

34. Subclause (2) specifies information concerning directions and determinations by the Treasurer which must be included in the final report, while subclause (3) requires the Auditor-General to report to the Treasurer on the final financial statements of the Corporation. The provisions in these two subclauses mirror similar provisions in the Corporation Act.

35. Subclause (4) requires the Treasurer to lay the final report, financial statements and Auditor-General's report before the Parliament within 15 sitting days of receiving them.

Clause 22 - Repeal of Corporation Act

36. Clause 18 repeals the Corporation Act, thereby, abolishing the HLIC. By subclause 2(1), this clause will take effect from a date to be proclaimed (expected to shortly after the sale date).

Clause 23 - Residual assets to vest in Commonwealth

37. This clause deals with the treatment of the HLIC's residual assets and liabilities at the point that it is wound up. Subclause (1) vests the residual assets remaining with the HLIC on its abolition in the

Commonwealth. These will include, in particular, the investments underlying the provisions made by the HLIC to meet pre-sale insurance obligations.

38. Subclause (2) preserves the rights of others in respect of the assets so vested and converts rights against the HLIC into rights against the Commonwealth. Subclause (3) transfers to the Commonwealth the liability to meet the residual debts, liabilities and obligations of the HLIC on its abolition, including the HLIC's liability for income tax under section 38 of the Corporation Act.

39. Subclause (4) substitutes the Commonwealth for the HLIC in any contracts to which the latter is a party at the point it is abolished, while subclause (5) substitutes the Commonwealth for the HLIC in any court actions involving the Corporation which were pending at its abolition.

Clause 24 - Minister may dispose of or deal with residual assets

40. Clause 24 empowers the Minister for Finance to dispose of, or otherwise deal with, residual assets of the HLIC vested in the Commonwealth by subclause 23(1). It is proposed that these assets will be liquidated and the proceeds transferred to the Consolidated Revenue Fund.

Clause 25 - Exemption from taxation

41. Subclause (1) exempts from taxation anything which the Minister for Finance certifies was done for the purposes of this Act. Subclause (2) exempts the residual assets from rates, taxes or charges, other than where such imposts were a liability incurred by the HLIC before its abolition and thereby fall within subclause 23(3).

Clause 26 - Delegation by Minister

42. Clause 26 authorises the Minister for Finance to delegate certain specified powers provided under the Act to a Senior Executive Service officer in the Department of Finance.

Clause 27 - Regulations

43. Clause 27 provides a regulation making power.

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