

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

INSURANCE LEGISLATION AMENDMENT BILL 1989
EXPLANATORY MEMORANDUM

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

INSURANCE LEGISLATION AMENDMENT BILL 1989

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The Bill contains provisions for amendment of the Insurance Act 1973, the Insurance (Agents and Brokers) Act 1984 and the Life Insurance Act 1945 to overcome certain deficiencies in the existing legislation so as to maintain effective supervision over the general insurance and life insurance industries and insurance intermediaries.

More specifically, the provisions of the Bill will:

- . amend the Insurance Act 1973 and the Insurance (Agents and Brokers) Act 1984 to provide for the registration of insurance intermediaries dealing with unauthorised foreign insurers, and collection of statistics regarding premiums remitted overseas; and
- . amend the Life Insurance Act 1945 to give effect to a number of changes that have been developed in the light of the ongoing administration of the Act and an assessment of representations received on some aspects of the Act. The more significant changes are concerned with introduction of the concept of 'appointed actuary' which would have the effect of requiring each life insurance company to appoint an appointed actuary for the purpose of performing certain functions required under the Act. The proposed changes are also intended to complement and enhance the existing supervisory arrangements, remove a number of ambiguities, and repeal certain redundant unproclaimed provisions.

FINANCIAL IMPACT STATEMENT

The registration of insurance intermediaries dealing with unauthorised foreign insurers, and the related collection of statistics, will involve additional supervisory costs for the Insurance and Superannuation Commission. It is proposed to make regulations to impose a registration fee on foreign insurance agents, consistent with that applicable to registered insurance brokers, to recover the costs of this supervision.

EXPLANATORY NOTES ON INSURANCE LEGISLATION AMENDMENT BILL 1989

PART I - PRELIMINARY

CLAUSE 1 SHORT TITLE

This clause provides the mode of citation of the Bill.

CLAUSE 2 COMMENCEMENT

This clause provides for the provisions specified in subclause (1) to come into operation on the twenty-eighth day after the day on which the Bill receives Royal Assent, and for the remaining provisions to come into operation on a day or days to be fixed by Proclamation (subclause (2)).

Subclause (3) provides that, notwithstanding subclause (2), all provisions must commence within six months of the day on which the Bill receives the Royal Assent.

PART II - AMENDMENT OF THE INSURANCE ACT 1973

CLAUSE 3 PRINCIPAL ACT

Self explanatory.

CLAUSE 4 INTERPRETATION

This clause sets out, for the purposes of the Principal Act, a revised definition of the term 'debenture' which is consistent with the broad definition included in the Companies Code. Regulations can be made to narrow this definition by way of exclusions, if required.

CLAUSE 5 REPEAL OF SECTION 113

This clause provides that section 113 of the Principal Act be repealed. Complementary changes are being made to the Insurance (Agents and Brokers) Act 1984 to provide for the registration of insurance intermediaries dealing with unauthorised foreign insurers (see clause 15).

CLAUSE 6 OFFENCES

This clause amends section 128 of the Principal Act to take account of the repeal of section 113.

PART III - AMENDMENT OF THE INSURANCE AMENDMENT ACT 1983

CLAUSE 7 PRINCIPAL ACT

Self explanatory.

CLAUSE 8 INTERPRETATION

This clause, which complements clause 4, omits the unproclaimed paragraph 3(c) of the Principal Act which is now redundant.

PART IV - AMENDMENT OF THE INSURANCE (AGENTS AND BROKERS)
ACT 1984

CLAUSE 9 PRINCIPAL ACT

Self explanatory.

CLAUSE 10 INTERPRETATION

This clause sets out definitions of a number of words and expressions that will be inserted in section 9 of the Principal Act for the purposes of giving effect to Part IV of the Bill.

CLAUSE 11 INSERTION OF NEW SECTION

This clause inserts a new section 9A (Meaning of references to arranging contracts etc. with unauthorised foreign insurers) in the Principal Act to provide that references to a person arranging a contract as agent for or with an unauthorised foreign insurer includes the situation where the contract is arranged with 2 or more insurers one or more of whom is an unauthorised foreign insurer.

CLAUSE 12 REGISTRATION OF BROKERS

This clause amends section 21 of the Principal Act to provide that the Commissioner shall register an applicant provided the applicant has furnished to the Commissioner a copy of each foreign agency agreement (if any) authorising the applicant to arrange contracts as agent for an insurer. This is an addition to the applicant having fulfilled the other requirements of section 21. The clause also requires that a person who audits accounts that are lodged with the registration application will have the qualifications prescribed by the regulations. Subclause (2) provides that the amendment does not apply to accounts furnished to the Commissioner by an applicant before the commencement of the amendment.

CLAUSE 13 INSPECTION OF DOCUMENTS

This clause amends section 23 of the Principal Act to provide that public inspection of documents under such arrangements as are prescribed be extended to include any foreign agency agreement and annual return in respect of an insurance intermediary, lodged with the Commissioner.

CLAUSE 14 INSERTION OF NEW SECTIONS

This clause inserts a new section 25A (Annual return) in the Principal Act to provide that a person who, during a particular accounting period, has been a registered insurance broker, whether suspended or not, and has arranged any contract of general insurance with an unauthorised foreign insurer during that period, shall furnish to the Commissioner a return (in the prescribed form). This return is to be accompanied by a report of an approved auditor in accordance with the regulations. The return is to be lodged within 4 months after the end of the period to which it relates with the first return to be lodged in connection with a period that commences at or after the commencement of this section.

This clause also inserts a new section 25B (Notification of foreign agency agreements) in the Principal Act to provide that a registered insurance broker, whether suspended or not, shall lodge with the Commissioner, within 21 days, a copy of any foreign agency agreements (whether entered into before or after the commencement of this section) and any alteration to those agreements. Where an agreement is terminated the Commissioner is to be notified in writing, within 21 days, of the termination.

CLAUSE 15 INSERTION OF NEW PART

This clause inserts a new Part IIIA - Registration of Foreign Insurance Agents, in the Principal Act.

New section 31A (Interpretation) provides that if the Act is to apply to an External Territory, the commencement of this Part in relation to that Territory shall be interpreted as being the date on which the Act applies to that Territory, or commencement of this Part, whichever is the later.

New section 31B (Foreign insurance agents not to carry on business unless registered) provides that a person shall not, after the expiration of 6 months after this Part commences, carry on business as a foreign insurance agent, whether alone or in partnership, unless the person is a registered insurance broker and has in force indemnity insurance in respect of any prescribed liabilities, or the person is a registered foreign insurance agent and has in force indemnity insurance in respect of any prescribed liabilities.

New section 31C (Applications for registration) provides for the making of applications for registration. The section provides penalties for false or misleading information submitted in connection with an application.

New section 31D (Registration of foreign insurance agents) provides that the Commissioner shall register an applicant provided prescribed indemnity insurance is in force, the registration fee has been paid, and the applicant has furnished to the Commissioner a copy of each foreign agency agreement that authorises the applicant to arrange contracts as agent for an insurer. Subsection (2) provides that the Commissioner may refuse to register an applicant if the Commissioner is aware that the applicant or one of its directors, employees or agents has been convicted of an offence referred to in new section 31H. Subsection (3) provides for yearly registration. Subsection (4) provides that a registration may be cancelled upon application by the registered foreign insurance agent to the Commissioner where the Commissioner is satisfied that the person is no longer carrying on business as a foreign insurance agent. Subsection (5) provides for the notice of registration or cancellation of registration to be published in the Gazette.

New section 31E (Register to be kept) requires the Commissioner to maintain a Register of Foreign Insurance Agents.

New section 31F (Inspection of documents) provides that the Register of Foreign Insurance Agents, together with a contract of indemnity insurance referred to in subparagraphs 31B(1)(a)(ii) or (b)(ii), foreign agency agreement and annual return in respect of an insurance intermediary, lodged with the Commissioner, will be available for public inspection.

New section 31G (Delay in registration or renewal) provides that a foreign insurance agent may continue to carry on business as an agent pending registration where the agent carried on business prior to the commencement of the registration requirements, has lodged an application and has not been refused registration, and complies with so much of the registration requirements as the Commissioner specifies. This section also applies to a registered foreign insurance agent seeking renewal of registration.

New section 31H (Suspension or cancellation of registration) provides that the Commissioner may suspend, for an appropriate period, or cancel registration (such suspension or cancellation to be published in the Gazette) if the person, or one of its directors, employees or agents, is convicted of an offence against a law of any country in respect of the conduct of insurance or in respect of dishonest conduct. This offence must be one that, in the Commissioner's opinion, renders the person unfit to carry on business as a foreign insurance agent.

New section 31J (Annual return) provides that a person who, during a particular accounting period, has been a registered foreign insurance agent, whether suspended or not, and has arranged any contract of general insurance as agent for an unauthorised foreign insurer during that period, shall furnish to the Commissioner a return (in the prescribed form). This return is to be accompanied by a report of an approved auditor in accordance with the regulations. The return is to be lodged within 4 months after the end of the period to which it relates, with the first return to be lodged in connection with a period that commences on or after the commencement of this section.

New section 31K (Notification of foreign agency agreements) provides that a registered foreign insurance agent, whether suspended or not, shall lodge with the Commissioner, within 21 days, a copy of any foreign agency agreements (whether entered into before or after the commencement of this section) and any alteration to those agreements. Where an agreement is terminated the Commissioner is to be notified in writing, within 21 days, of the termination.

CLAUSE 16 INSURANCE INTERMEDIARY TO NOTIFY INSURED IF INSURER IS AN UNAUTHORISED FOREIGN INSURER

This clause amends section 34 of the Principal Act to provide that an insurance intermediary arranging or effecting a contract of general insurance, where the insurer or any of the insurers under the contract is an unauthorised foreign insurer, shall obtain an acknowledgment (in the prescribed form) from the appropriate person (as defined) in the prescribed manner and within the required time (as defined).

CLAUSE 17 ACCOUNTS AND AUDIT

This clause amends section 44 of the Principal Act, which deals with the inspection of books, accounts and records, to provide that registered foreign insurance agents, as well as registered insurance brokers, come within the scope of the section.

CLAUSE 18 CERTAIN PARTICULARS TO BE INCLUDED IN REPORTS

This clause amends section 45 of the Principal Act to provide that the Commissioner's annual report to the Treasurer on the workings of the Act shall also include particulars in relation to registered foreign insurance agents.

PART V - AMENDMENT OF THE LIFE INSURANCE AMENDMENT ACT 1977

CLAUSE 19 PRINCIPAL ACT

Self explanatory.

CLAUSE 20 REPEAL OF SECTIONS 6, 7, 10, 13 AND 35

This clause provides for the repeal of unproclaimed sections 6, 7, 10, 13 and 35 of the Principal Act which are redundant.

PART VI - AMENDMENT OF THE LIFE INSURANCE ACT 1945

CLAUSE 21 PRINCIPAL ACT

Self explanatory.

CLAUSE 22 INTERPRETATION

This clause sets out definitions of a number of words and expressions to be inserted in section 4 of the Principal Act.

CLAUSE 23 ACTUARIES

This clause amends section 4A of the Principal Act to ensure that an actuary as defined in this section includes an "appointed actuary" appointed under new section 47A.

CLAUSE 24 ANNUAL REPORT AND RETURNS

This clause amends section 11 of the Principal Act to provide for the Commissioner to present his annual report on the workings of the Act within 3 months of each year ending on 30 June rather than within 5 months of each year ending on 31 December. The revised reporting period corresponds to the reporting period provided in the other Acts administered by the Insurance and Superannuation Commission thereby enabling production of a single consolidated report within 3 months of each year ending 30 June. Subclause (2) is a transitional provision.

CLAUSE 25 REPEAL OF SECTION 13

This clause repeals section 13 of the Principal Act. Subclause (2) is a saving provision continuing section 13 in effect for any parties to a policy who may have already entered into contracts to submit disputes or differences to the Commissioner under that section.

CLAUSE 26 APPLICATION FOR REGISTRATION

This clause amends section 17 of the Principal Act to take account of the insertion of new Division 4A - Appointed Actuaries, in Part III of the Act; to provide that all companies, not just foreign companies, shall, in their application for registration under the Act, specify the countries outside Australia in which they carry on life insurance business; and to require that companies shall, when making application for registration under the Act, specify the statutory funds established or proposed to be established by them. The clause also provides scope for the Commissioner to obtain such other information, as may be prescribed, to ensure that he is provided with all necessary information relevant to determining whether a company's application for registration should be approved. Subclause (2) provides that the amended provisions shall apply to applications for registration made after the commencement of the respective provisions.

CLAUSE 27 INSERTION OF NEW SECTION

This clause inserts a new section 21A (Company not to be registered unless it has an appointed actuary) in the Principal Act to require a company to have an "appointed actuary" as a prerequisite for registration under the Act.

CLAUSE 28 INVESTMENT OF STATUTORY FUNDS

This clause amends subsection 39(7) of the Principal Act to provide that the statement of particulars of investments to be lodged with the Commissioner shall be in accordance with a prescribed form rather than an administratively approved form.

CLAUSE 29 INSERTION OF NEW DIVISION

This clause inserts a new Division 4A - Appointed Actuaries, in Part III of the Principal Act.

New section 47A (Appointment etc. of actuary) sets out details of the qualifications for appointment as an appointed actuary of a company, and provides that the appointment shall be in writing and that there may be at any point in time only one appointed actuary of the company. This new section also sets out the circumstances under which a person ceases to be an appointed actuary. Subsection (4) provides a discretion for the Commissioner, at the request of the company, to approve as appointed actuary a person who does not meet the requirements of paragraph 47A(1)(a).

New section 47B (Registered company required to appoint actuary) provides that a registered company shall appoint an appointed actuary within 3 months after the commencement of operation of the Division, and that a registered company shall appoint a new appointed actuary within 6 weeks after the office becomes vacant.

New section 47C (Registered company to notify appointment) provides that a registered company shall notify the Commissioner within 14 days of the particulars of the appointment of the appointed actuary.

New section 47D (Registered company to notify if appointed actuary ceases to act) provides that a registered company shall notify the Commissioner within 14 days after the cessation of appointment of an appointed actuary.

CLAUSE 30 ACTUARIAL REPORTS, ABSTRACTS AND STATEMENTS OF LIFE INSURANCE BUSINESS

This clause amends section 48 of the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendments do not apply to investigations commenced by an actuary before the commencement of the amendments.

CLAUSE 31 PROVISIONS AS TO VALUATIONS

This clause amends section 49 of the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendment does not apply to valuations made as part of an investigation under subsection 48(1) commenced by an actuary before the commencement of the amendment, nor to any other valuation made by an actuary before the commencement of the amendment.

CLAUSE 32 PAYMENTS OF DIVIDENDS AND BONUSES FROM STATUTORY FUNDS

This clause amends section 50 of the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendment does not apply to payments, allocations or transfers approved by an actuary before the commencement of the amendment.

CLAUSE 33 ACCOUNTS, BALANCE-SHEETS ETC. TO BE SIGNED AND LODGED WITH COMMISSIONER

Paragraph (a) amends section 52 of the Principal Act by the insertion of two new subsections (2B) and (2C).

Subsection 52(2B) provides that a company lodging a document with the Commissioner shall also include a statement, in accordance with the prescribed form, of the pecuniary interests of its appointed actuary. Subsection 52(2C) provides that where the company lodges such a statement the company may, in compiling the statement, rely on information provided by the appointed actuary without being guilty of an offence even though incorrect information may have been provided to the company by the actuary.

Paragraph (b) amends subsection 52(3) of the Principal Act so as to make it clear that the Commissioner has the power to require a company to adjust its records to render them consistent with returns made by it that have been altered at the direction of the Commissioner.

CLAUSE 34 INSERTION OF NEW SECTION

This clause inserts a new section 53A (Interpretation) in Division 7 of Part III of the Principal Act to define the term "officer" for the purposes of the Division.

CLAUSE 35 POWER TO REQUIRE PRODUCTION OF BOOKS

This clause amends section 54A of the Principal Act by omitting subsection (4) as a consequence of the insertion of section 53A.

CLAUSE 36 POWER TO OBTAIN INFORMATION

This clause amends section 56 of the Principal Act to take account of the definition of "officer" in section 53A.

CLAUSE 37 CERTAIN FORMS TO BE SUBMITTED FOR APPROVAL

This clause amends section 77 of the Principal Act to enable the Commissioner to object to material in proposal or policy documents which is considered misleading by virtue of an omission, as well as such documents containing anything likely to mislead.

CLAUSE 38 PREMIUM RATES

This clause amends section 78 of the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendment specified does not apply to premium rates approved by an actuary before the commencement of the amendment. Subclause (3) provides that the amendments specified do not apply in relation to any requirement by the Commissioner made before the commencement of the amendments.

CLAUSE 39 COMMISSIONS OR REBATES IN RESPECT OF POLICIES

This clause amends section 79 of the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act.

CLAUSE 40 REPEAL OF SECTIONS 80, 81 AND 82

This clause provides for the repeal of sections 80, 81 and 82 of the Principal Act.

CLAUSE 41 MINORS

This clause amends section 85 of the Principal Act as a consequence of the insertion of a definition of a "minor" in section 4 of the Act.

CLAUSE 42 UNCLAIMED MONEYS

This clause amends subsection 106(8) of the Principal Act to raise the threshold for publication in the Gazette by the Treasurer of unclaimed moneys from \$20 to \$200 or such higher amount as may be prescribed. The revised threshold will apply to statements of unclaimed moneys as at 31 December 1988 and to subsequent statements. The clause also amends subsection 106(10) to provide that the Insurance and Superannuation Commissioner and not the Secretary to the Department of the Treasury shall have the power to authorise officers for the purposes of section 106.

CLAUSE 43 INTERPRETATION

This clause amends section 114 of the Principal Act to make it consistent with the generally accepted view that a "minor" means a person under the age of eighteen years. Policies effected before the commencement of this amendment are unaffected by the amendment.

CLAUSE 44 LOST POLICIES

This clause amends section 119 of the Principal Act to reduce the period of notice required to be given by companies before they may issue a special policy from one month to ten days. Paragraph (b) also amends section 119 to make it unnecessary for a company to produce a special policy where the policy has been lost or destroyed and is being terminated by a claim. A company will have to give ten days notice in a relevant newspaper before satisfying a claim in such circumstances, the expenses of which shall be paid by the claimant.

CLAUSE 45 REVIEW OF CERTAIN DECISIONS

This clause repeals paragraph (a) of the definition of "reviewable decision" in subsection 138(1) of the Principal Act as a consequence of the repeal of the unproclaimed section 16A. The clause also inserts new provisions for the review of a refusal by the Commissioner to exercise his discretion under subsection 47A(4) to approve a person as an appointed actuary or a revocation by the Commissioner of an approval given.

CLAUSE 46 SERVICE OF NOTICES

This clause amends section 146 of the Principal Act, which deals with the service of notices upon a person, to permit a notice to be served by sending it by post to the person at the address last known to the Commissioner, and to clarify that an address for postal purposes includes a post office box or bag service.

CLAUSE 47 AMENDMENT OF SECOND SCHEDULE

This clause amends the Second Schedule in the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendments do not apply to investigations commenced by an actuary before the commencement of the amendments.

CLAUSE 48 AMENDMENT OF THIRD SCHEDULE

This clause amends the Third Schedule in the Principal Act as a consequence of the insertion of Division 4A - Appointed Actuaries, in Part III of the Act. Subclause (2) provides that the amendment does not apply to investigations commenced by an actuary before the commencement of the amendment.









