

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

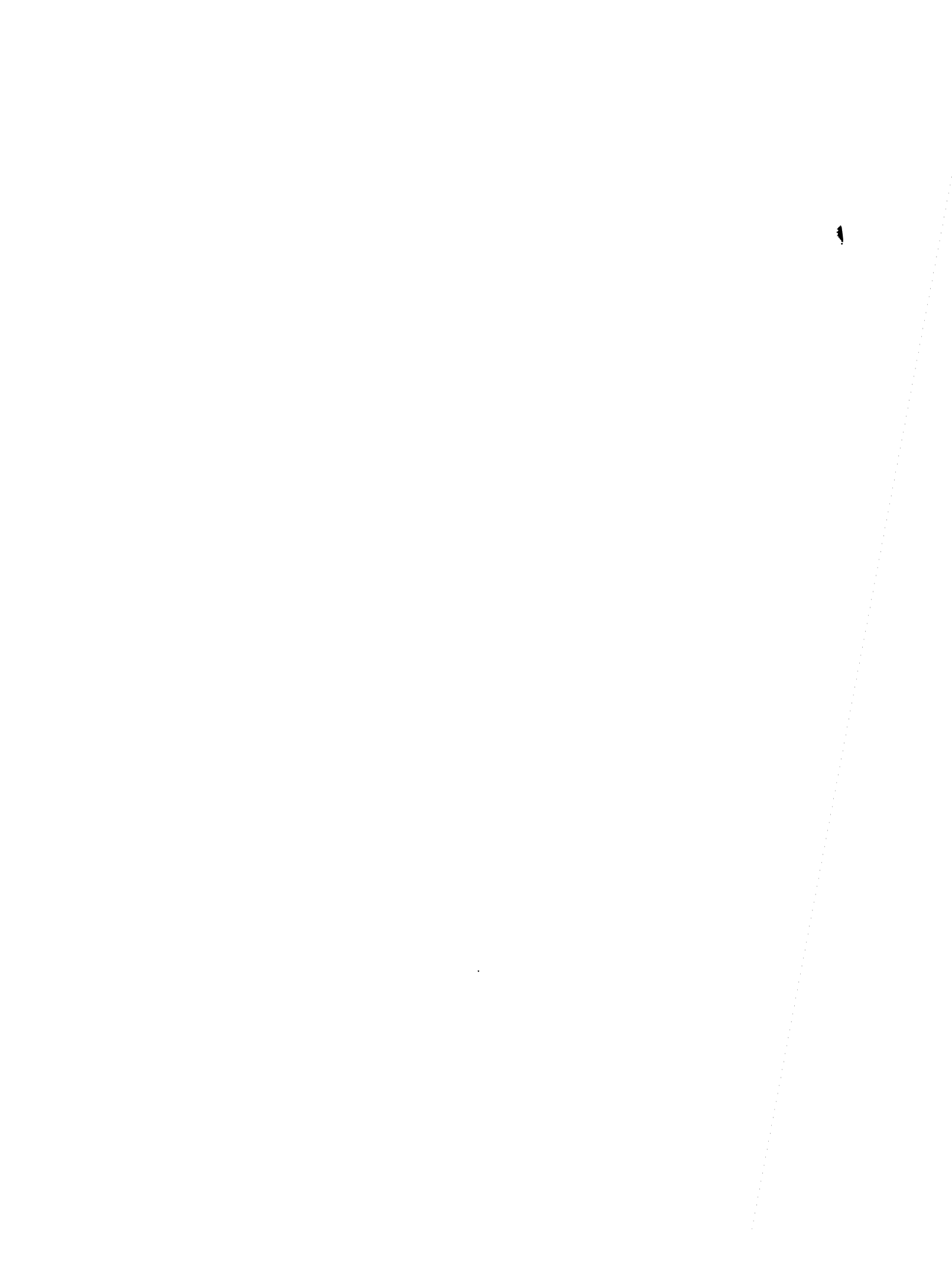
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*(As read a first time)*

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

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1990

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Presented and read a first time, 8 November 1990

*(Minister assisting the Treasurer)*

## A BILL

FOR

### **An Act to provide for the sale of the assets, and the abolition, of the Housing Loans Insurance Corporation, and for related purposes**

The Parliament of Australia enacts:

#### **Short title**

1. This Act may be cited as the *Housing Loans Insurance Corporation (Sale of Assets and Abolition) Act 1990*.

#### **5 Commencement**

2. (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), sections 22, 23 and 24 commence on a day to be fixed by Proclamation.

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(3) If the sections referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on sale day, they commence on the first day after the end of that period.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears: 5
- “**buyer**” means the company with which the sale agreement is made;
- “**company**” means a body corporate;
- “**contract of insurance**” means a contract of insurance under the Corporation Act;
- “**Corporation**” means the Housing Loans Insurance Corporation 10  
established by the Corporation Act;
- “**Corporation Act**” means the *Housing Loans Insurance Act 1965*;
- “**Corporation employee**” means a person who, immediately before sale day, is:
- (a) a member of the Corporation, other than a part-time member; 15  
or
- (b) an officer appointed, or employee engaged, by the Corporation under section 28 of the Corporation Act;
- “**Insurance Account**” means the account required by section 9;
- “**management period**” means the period referred to in subsection 8 (1); 20
- “**Minister**” means the Minister for Finance;
- “**pre-sale contract**” means a contract of insurance in force immediately before sale day;
- “**property**” includes:
- (a) rights and interests as a tenant under a lease; and 25
- (b) rights and interests as a licensee; and
- (c) rights and interests as a mortgagee or as the holder of other securities; and
- (d) copyright, including copyright in computer programs; and
- (e) other rights and interests; 30
- “**remuneration**”, in relation to an employee, includes:
- (a) a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; and
- (b) superannuation benefits provided by the employee’s employer;
- “**residual assets**” means the property of the Corporation immediately 35  
before the repeal of the Corporation Act;
- “**sale agreement**” means the agreement under section 5;
- “**sale assets**” means the Corporation’s property sold under the sale agreement;
- “**sale day**” means the day on whose commencement the sales under the 40  
sale agreement have effect;

“**subsidiary**”, in relation to a company, means another company that is a subsidiary of the company in accordance with section 4.

(2) Except so far as the contrary intention appears, expressions used in this Act have the same meaning as in the Corporation Act.

## 5 Subsidiaries

4. For the purposes of this Act, the question whether a company is a subsidiary of another company is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Companies Act 1981*.

## 10 Agreement for sale of Corporation business

5. (1) The Minister may, on behalf of the Commonwealth, enter into a written agreement with a company for:

- (a) the sale of the goodwill of the Corporation; and
- (b) the sale of all or some of the property of the Corporation.

15 (2) The sale of the goodwill is to be made to the company or a subsidiary of it.

(3) The sale of particular property is to be made to the company or a subsidiary of it.

(4) The agreement is to comply with sections 8, 9 and 12.

20 (5) The agreement is to specify, or set out a way of finding out, the day on whose commencement the sales under the agreement are to have effect.

## Corporation to cease business on sale

25 6. The Corporation must not enter into a contract of insurance on or after sale day.

## Pending proceedings about sale assets

30 7. If, immediately before sale day, the Corporation was a party to proceedings pending in a court in respect of a sale asset, the company to which the assets are sold under the sale agreement is, on sale day, substituted for the Corporation as the party to the proceedings and has the same rights in the proceedings as the Corporation would have had.

## Management of pre-sale contracts

8. (1) The sale agreement is to provide that the buyer or a subsidiary of the buyer is to manage pre-sale contracts in force during a period:

- 35 (a) beginning on sale day; and
- (b) whose length is specified in, or is to be calculated in accordance with, the agreement.

(2) Throughout the management period, pre-sale contracts have effect as if:

(a) the Commonwealth were substituted for the Corporation as a party to them; and

(b) references in them to the Corporation were (except in relation to matters that occurred before sale day) references to the Commonwealth. 5

(3) The company managing the pre-sale contracts in force during the management period is to do so as a paid agent of the Commonwealth. 10

**Account for making payments under pre-sale contracts**

9. The sale agreement is to provide that, throughout the management period, the company managing pre-sale contracts is to maintain an account with a bank specified for the purpose in the agreement.

**Payments into Insurance Account**

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10. (1) There is payable into the Insurance Account from time to time such amounts as the Treasurer considers necessary to make possible payments under those contracts during the management period.

(2) Amounts payable into the Insurance Account under subsection (1) are payable out of the Consolidated Revenue Fund which is appropriated accordingly. 20

**Payments out of Insurance Account**

11. (1) Money is not to be paid out of the Insurance Account except in accordance with this section.

(2) Where the buyer or a subsidiary of the buyer becomes liable to make a payment under a pre-sale contract during the management period, the amount may be paid out of the Insurance Account. 25

(3) Interest from the investment of money standing to the credit of the Insurance Account is to be paid into, and credited to, the Insurance Account. 30

(4) At the end of the management period, all money standing to the credit of the Insurance Account is to be paid to the Commonwealth.

**Insurer under pre-sale contracts after management period**

12. (1) The sale agreement is to provide that pre-sale contracts in force at the end of the management period are to have effect after that period as if: 35

(a) the buyer or a subsidiary of the buyer identified for the purpose in the agreement were substituted for the Corporation as a party to them; and

(b) references in them to the Corporation were (except in relation to matters that occurred before the end of the management period) references to the buyer or that subsidiary, as the case may be;

5 and, by force of this subsection, those contracts have effect accordingly.

(2) The sale agreement may provide for payment by the Commonwealth to the buyer or the subsidiary in return for the assumption of risks by the buyer or the subsidiary because of subsection (1).

#### 10 **Guarantee by Commonwealth**

13. The Commonwealth guarantees the payment of all money payable under pre-sale contracts to persons insured under them.

#### **Corporation records in Archives**

15 14. The buyer or a subsidiary of the buyer may have access to records of the Corporation in the custody of the Archives, including exempt records, where access is necessary to obtain information in relation to the business formerly carried on by the Corporation, being information for use in the business of mortgage insurance carried on by the buyer or the subsidiary.

#### 20 **Certain Corporation employees taken to have resigned**

25 15. (1) Subject to subsection (2), where, before sale day, a Corporation employee does not accept an offer of employment beginning on sale day made by the buyer or a subsidiary of the buyer, the employee is taken to have resigned on sale day from the employee's appointment or engagement under the Corporation Act.

(2) Subsection (1) does not apply to a Corporation employee:

- 30 (a) who declines the offer of employment because the remuneration payable to the employee under the terms and conditions of employment offered is less than the remuneration payable to the employee by the Corporation immediately before sale day; or
- (b) whom the Minister declares, in writing, is a person whom the Minister considers had good reasons not to accept the offer of employment.

#### 35 **Certain Corporation employees taken to have failed to accept offer**

40 16. Where the Minister is satisfied that a Corporation employee was not offered employment by the buyer or a subsidiary of the buyer before sale day because of an act or omission of the employee by which the employee sought to dissuade the buyer or a subsidiary of the buyer from making a reasonable offer of employment, the Minister may, by notice in the *Gazette*, declare that, for the purposes of subsection 15 (1),

the employee is taken to have failed, before sale day, to accept an offer of employment beginning on sale day made by the buyer or a subsidiary of the buyer.

**Public Service rights**

17. Subject to the regulations, where a Corporation employee has rights because of the *Public Service Act 1922* and the employee: 5

(a) accepts an offer of employment from the buyer or a subsidiary of the buyer before sale day; or

(b) is taken to have resigned on sale day from the employee's appointment or engagement under the Corporation Act; 10

the employee is taken to have resigned from the Australian Public Service, and had his or her rights because of the *Public Service Act 1922* (other than rights in respect of superannuation) abolished, on sale day.

**Comcare rights** 15

18. Where, before sale day, a Corporation employee suffered an injury, within the meaning of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, then, after sale day, the Commonwealth is liable, in respect of that injury, to the extent that the Corporation would have been liable if the Corporation Act had not been repealed. 20

**Secrecy provisions**

19. (1) In this section:

"Corporation officer" means:

(a) a member of the Corporation; or 25

(b) the Managing Director of the Corporation; or

(c) the Deputy Managing Director of the Corporation; or

(d) an officer or employee of the Corporation.

(2) Section 43 of the Corporation Act does not prevent the Corporation or any Corporation officer giving any records, documents or information relating to the Corporation's business to the buyer or a subsidiary of the buyer in accordance with the sale agreement. 30

(3) A Corporation officer is a Commonwealth officer for the purposes of section 70 of the *Crimes Act 1914*.

(4) Where a person who was a Corporation officer before sale day is employed by the buyer or a subsidiary of the buyer after sale day, the officer may publish or communicate any fact or document which came to the officer's knowledge, or into the officer's possession, because of being a Corporation officer, to the extent that the publication or communication is necessary for the proper performance of the officer's duties as an employee of the buyer or the subsidiary. 40



**Liabilities of Corporation may be transferred**

20. The sale agreement may provide for the transfer of liabilities of the Corporation to the buyer or a subsidiary of the buyer.

**Final report by Corporation**

5 21. (1) As soon as practicable after sale day, the Corporation must prepare and give to the Treasurer, for presentation to the Parliament, a report of its operations during the period beginning on 1 July 1990 and ending on sale day, together with financial statements in respect of that period in such form as the Minister approves.

10 (2) The report is to set out:

- (a) all directions given by the Treasurer to the Corporation under subsection 17 (3C), section 20, or subsection 31A (4) or 31C (1), of the Corporation Act; and
  - 15 (b) all determinations made by the Treasurer under subsection 25 (4) or 31B (1) or (2) of that Act;
- during the period.

(3) When giving final statements to the Treasurer, the Corporation must also give them to the Auditor-General who is to report, to the Treasurer:

- 20 (a) whether the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of affairs, of the Corporation; and
- 25 (c) whether the receipt, investment and expenditure of money, and the acquisition and disposal of assets, by the Corporation during the period have been in accordance with the Corporation Act; and
- 30 (d) on other matters arising out of the statements that the Auditor-General considers should be reported to the Treasurer.

(4) The Treasurer is to cause a copy of the report and financial statements of the Corporation, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Treasurer.

35 **Repeal of Corporation Act**

22. The Corporation Act is repealed.

**Residual assets to vest in Commonwealth**

23. (1) On the repeal of the Corporation Act, the residual assets vest in the Commonwealth.

40 (2) Vesting of the residual assets in the Commonwealth does not take away or limit any other person's rights in respect of the assets

except to the extent that any rights against the Corporation become rights against the Commonwealth.

(3) The Commonwealth is liable to pay or discharge all debts, liabilities and obligations of the Corporation, including liabilities under section 38 of the Corporation Act, in respect of any residual asset which vests in the Commonwealth to the extent the Corporation was liable immediately before the repeal.

(4) Any contracts in respect of a residual asset to which the Corporation was a party immediately before the repeal have effect on and after the repeal as if:

- (a) the Commonwealth were substituted for the Corporation as a party to them; and
- (b) references in them to the Corporation were (except in relation to matters that occurred before the repeal) references to the Commonwealth.

(5) If, immediately before the repeal, proceedings to which the Corporation was a party are pending in a court, then, on and after the repeal, the Commonwealth is substituted for the Corporation in the proceedings and has the same rights as the Corporation would have had in the proceedings.

**Minister may dispose of or deal with residual assets**

24. The Minister may, on behalf of the Commonwealth, dispose of or otherwise deal with the residual assets vested in it under section 23.

**Exemption from taxation**

25. (1) Tax under a law of the Commonwealth or a State or Territory is not payable in relation to anything done (including a transaction entered into or an instrument made, executed, lodged or given) that the Minister, by signed instrument, certifies was a thing done for the purposes of this Act.

(2) Subject to subsection 23 (3), the Commonwealth is not liable for any rates, taxes or charges in relation to residual assets.

**Delegation by Minister**

26. The Minister may, by signed instrument, delegate all or any of his or her powers under paragraph 15 (2) (b), section 16 or 24 or subsection 25 (1) to an officer of the Department of Finance who holds a Senior Executive Service office within the meaning of the *Public Service Act 1922*.

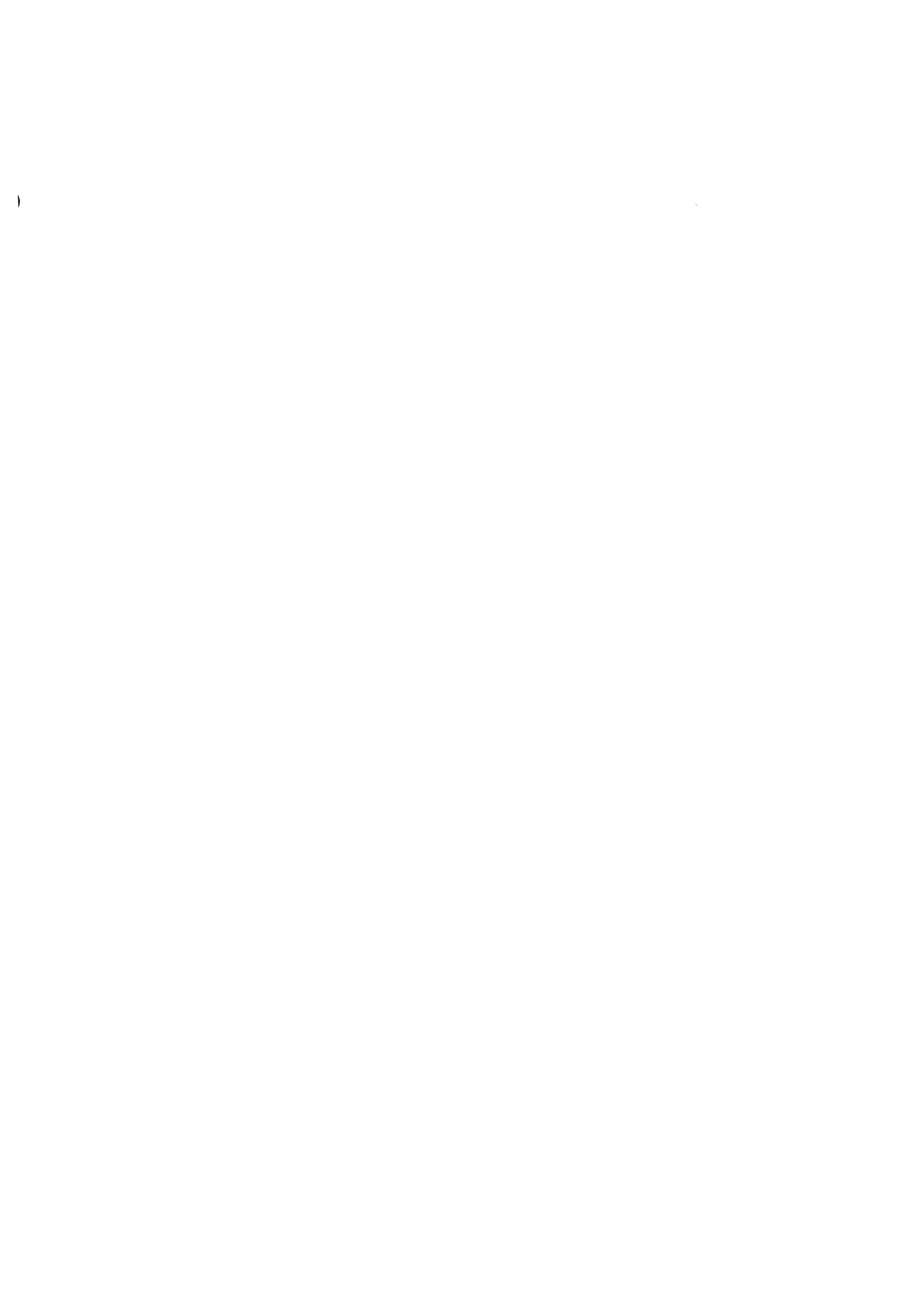
**Regulations**

27. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted to be prescribed by this Act; or

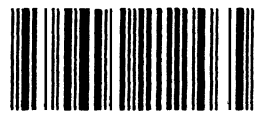
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.











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