

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**INSURANCE AMENDMENT BILL 1982**

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1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 29 April 1982

(*Treasurer*)

## A BILL

FOR

### An Act to amend the *Insurance Act 1973*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### PART I—PRELIMINARY

##### Short title, &c.

5

1. (1) This Act may be cited as the *Insurance Amendment Act 1982*.

(2) The *Insurance Act 1973*<sup>1</sup> is in this Act referred to as the Principal Act.

##### Commencement

2. (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Paragraph 3 (c) shall come into operation on a date to be fixed by Proclamation, being a date not earlier than the date of commencement of the *Companies Act* 1981.

(3) Paragraph 4 (a) shall come into operation, or shall be deemed to have come into operation, as the case requires, on the date fixed under section 195 of the *Commonwealth Functions (Statutes Review) Act* 1981. 5

(4) Section 23 shall come into operation on a date to be fixed by Proclamation.

(5) The amendment of sub-section 113 (4) of the Principal Act made by section 43 shall come into operation on the date on which that sub-section comes into operation. 10

## PART II—AMENDMENTS OF THE PRINCIPAL ACT

### Interpretation

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “accident insurance business” in sub-section (1) the following definitions: 15

“‘accounting records’, in relation to a body corporate, includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the body corporate are made up, and such other documents (if any) as are prescribed; 20

‘accounts’, except in sub-sections 44 (1), (2) and (3) and the Schedule, means ordinary accounts and statutory accounts”; 25

(b) by omitting from sub-section (1) the definition of “books” and substituting the following definitions:

“‘books’ includes any register or other record of information or any accounts or accounting records, however compiled, recorded or stored, and also includes any document; 30

‘charge’ means a charge created in any way and includes a mortgage or an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;”;

(c) by omitting from sub-section (1) the definition of “debenture” and substituting the following definition: 35

“‘debenture’ includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate in respect of money that is or may be deposited with or lent to the body corporate, whether constituting a charge on property of the body corporate or not, but does not include— 40

- 5 (a) a document that merely acknowledges the receipt of money by a body corporate in a case where, in respect of the money, the body corporate issues, in compliance with section 97 of the *Companies Act* 1981, a document prescribed by sub-section (2) of that section and complies with the other requirements of that section;
- (b) a cheque, order for the payment of money or bill of exchange; or
- 10 (c) for the purposes of the application of this definition to a provision of this Act in respect of which the regulations provide that the word 'debenture' does not include a prescribed document or a document included in a prescribed class of documents—that document or a document included in that class of documents, as the case may be;”;
- 15

(d) by inserting after the definition of “financial year” in sub-section (1) the following definition:

20 “‘floating charge’ includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge;”;

(e) by inserting after the definition of “Lloyd’s underwriter” in sub-section (1) the following definition:

25 “‘ordinary accounts’ means ledgers, journals, profit and loss accounts and balance-sheets, whether or not prepared for the purposes of any law (including this Act), and includes statements, reports and notes (other than auditors’ reports or directors’ reports) attached to, or intended to be read with, any of the foregoing, but does not include statutory accounts;”;

(f) by inserting after the definition of “profit and loss account” in sub-section (1) the following definition:

30 “‘quarterly statutory accounts’, in relation to a body corporate authorized under this Act to carry on insurance business, means the statements that the body corporate is required to lodge with the Commissioner under sub-section 44 (4);” ; and

(g) by adding at the end of sub-section (1) the following definitions:

35 “‘statutory accounts’, in relation to a body corporate authorized under this Act to carry on insurance business, means—

- (a) yearly statutory accounts of the body corporate;
- (b) quarterly statutory accounts of the body corporate; and
- 40 (c) if sub-section 44 (6) applies to the body corporate—statements that the body corporate is required to lodge with the Commissioner under that sub-section;

‘yearly statutory accounts’, in relation to a body corporate authorized under this Act to carry on insurance business, means

the accounts and statements that the body corporate is required to lodge with the Commissioner under sub-section 44 (1).”.

**Application of Act**

4. Section 5 of the Principal Act is amended—

- (a) by omitting paragraph (2) (b); 5
- (b) by omitting “or” from paragraph (2) (g);
- (c) by inserting after paragraph (2) (g) the following paragraph:
  - “(ga) a prescribed company, being the business of insuring against the whole or part of any loss in relation to the withdrawable share capital of, and loans (including deposits) to, building societies; or”; and 10
- (d) by adding at the end thereof the following sub-section:
  - “(4) In paragraph (2) (ga), ‘building society’ means a society registered or incorporated as a building society, co-operative housing society or similar society under the law in force in a State or Territory relating to such societies.”. 15

**Repeal of section 13**

5. Section 13 of the Principal Act is repealed.

**Public servant appointed as Commissioner may continue in office as public servant** 20

6. Section 14 of the Principal Act is amended by omitting from paragraph (2) (e) “sections 13 and 15 do not” and substituting “section 15 does not”.

**Termination of appointment**

7. Section 15 of the Principal Act is amended by inserting after paragraph (2) (a) the following paragraph: 25

“(aa) fails, without reasonable excuse, to comply with his obligations under sub-section 12 (3);”.

8. After section 19 of the Principal Act the following section is inserted:

**Delegation**

“19A. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act, other than— 30

- (a) this power of delegation; or
- (b) the Commissioner’s powers under section 23 or 24.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commissioner. 35

“(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.”.

9. Section 21 of the Principal Act is repealed and the following section is substituted:

**Certain persons not to carry on insurance business**

5 “21. (1) Subject to this Act, a person other than a body corporate or a Lloyd’s underwriter who carries on insurance business is, in respect of each day during which he so carries on insurance business (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

10 “(2) Subject to this Act, a body corporate that carries on insurance business without being authorized under this Act to do so is, in respect of each day during which it so carries on insurance business (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$20,000.

15 “(3) A Lloyd’s underwriter who carries on insurance business at any time after Part VII has ceased to have effect is, in respect of each day during which he so carries on insurance business (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$2,000.”

**Authority to commence carrying on insurance business**

20 **10.** Section 23 of the Principal Act is amended—

(a) by omitting “Treasurer” and substituting “Commissioner”;

(b) by omitting paragraph (a) and substituting the following paragraph:

“ (a) where the body corporate has a share capital—the paid-up share capital of the body corporate is not less than \$500,000;”;

25 (c) by omitting from paragraphs (b) and (c) “One hundred thousand dollars” and substituting “\$1,000,000”;

(d) by adding at the end of paragraph (e) “and”;

(e) by omitting from paragraph (f) “and” (last occurring); and

(f) by omitting paragraph (g).

30 **Authority to carry on insurance business for body corporate that carried on insurance business before 9 December 1971**

**11.** Section 24 of the Principal Act is amended—

(a) by omitting paragraph (a) and substituting the following paragraph:

35 “ (a) where the body corporate has a share capital—the paid-up share capital of the body corporate is not less than \$500,000;”;

(b) by omitting from sub-paragraphs (b) (i) and (c) (i) “One hundred thousand dollars” and substituting “\$1,000,000”;

(c) by omitting from sub-paragraphs (b) (ii) and (c) (ii) “fifteen per centum” and substituting “20%”;

40 (d) by adding at the end of paragraph (e) “and”;

(e) by omitting from paragraph (f) “and” (last occurring); and

(f) by omitting paragraph (g).

**Repeal of section 26**

12. Section 26 of the Principal Act is repealed.

**Refusal to grant authority**

13. (1) Section 27 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections: 5

“(1) Where the Commissioner decides not to grant an authority to a body corporate under section 23 or 24 because he is not satisfied with respect to the matters referred to in whichever of those sections is applicable, he shall inform the Treasurer accordingly and the Treasurer shall, after having considered that information— 10

- (a) grant the authority; or
- (b) refuse to grant the authority.

“(2) Where the Treasurer decides under sub-section (1) to refuse to grant an authority to a body corporate, he shall notify the body corporate, in writing, of his decision.”. 15

(2) The amendment made by sub-section (1) does not apply in relation to a decision of the Treasurer under section 23 of the Principal Act made before the commencement of this section.

14. (1) Section 29 of the Principal Act is repealed and the following section is substituted: 20

**Conditions to which authority is subject**

“29. (1) Subject to this Part, an authority granted to a body corporate under this Part is subject to the following conditions:

- (a) where the body corporate has a share capital—a condition that its paid-up share capital shall not at any time be less than \$500,000; 25
- (b) where the body corporate is incorporated in Australia—a condition that the value of its assets shall at all times exceed the amount of its liabilities by not less than—

- (i) \$1,000,000; or
- (ii) 20% of its premium income during its last preceding financial year, 30

whichever is the greater;

- (c) a condition that the value of the assets in Australia of the body corporate shall at all times exceed the amount of its liabilities in Australia by not less than— 35

- (i) \$1,000,000; or
- (ii) 20% of its premium income in Australia during its last preceding financial year,

whichever is the greater;



(d) a condition that the body corporate shall, at all times other than a time at which an exemption from the requirements of section 34 is in force in respect of it, have arrangements for reinsurance, being arrangements approved by the Commissioner under that section, or, if it has been granted an exemption under that section, shall comply with the terms and conditions of that exemption;

(e) where a change occurs in the particulars specified in the application for the authority and referred to in paragraph 22 (2) (a), (b), (c), (d), (e) or (f) or in the matters contained in a document required to accompany that application—a condition that the body corporate shall, within a period of 21 days after the change occurs, or within such further period as the Commissioner, within that period of 21 days, approves, gives to the Commissioner notice in writing signed by a director and specifying particulars of the change; and

(f) such other conditions (if any) as the Commissioner or the Treasurer, as the case may be, specifies in the authority.

“(2) The Commissioner may, by notice in writing served on the body corporate—

(a) impose further conditions to which the authority of the body corporate is subject; or

(b) revoke or vary any condition—

(i) imposed under paragraph (a); or

(ii) specified by him under paragraph (1) (f).

“(3) The Treasurer may, by notice in writing served on the body corporate—

(a) impose further conditions to which the authority of the body corporate is subject; or

(b) revoke or vary any condition—

(i) imposed under paragraph (a) or paragraph (2) (a); or

(ii) specified under paragraph (1) (f).”.

(2) For the purposes of section 29 of the Principal Act as amended by this Act, a condition specified in an authority under paragraph 29 (g) of the Principal Act shall be deemed to have been specified in the authority under paragraph 29 (1) (f) of the Principal Act as amended by this Act.

### Assets

15. (1) Section 30 of the Principal Act is amended—

(a) by omitting from paragraph (1) (c) “mortgaged or” (wherever occurring);

(b) by inserting after paragraph (1) (c) the following paragraph:

“(ca) where the whole or part of the undertaking, business or property of the body corporate is subject to a floating charge, that undertaking, business or property to the extent that it is so subject;”;

- (c) by omitting from paragraph (1) (e) “six” and substituting “3”;
- (d) by inserting after paragraph (1) (e) the following paragraph:  
 “(ea) where any premiums are due to the body corporate by intermediaries—
- (i) so much of the sum of those premiums so due by each intermediary as exceeds 4% of the total amount of premiums received in the course of insurance business by, or due to, the body corporate during its last preceding financial year; and 5
  - (ii) so much of the sum of those premiums so due by all those intermediaries as exceeds, in the aggregate, 20% of that total amount;” 10
- (e) by inserting after sub-section (2) the following sub-sections:
- “(2A) The Commissioner shall, in exercising his power of approval under sub-section (2) in relation to a loan to, debenture of, or a share in, a related body corporate made or held by a body corporate, have regard to all matters that he considers relevant and, in particular, to the following matters: 15
- (a) the proportion that the value of the loan, debenture or share, together with the aggregate value of all other loans to, debentures of, and shares in, the related body corporate made or held by the body corporate, whether approved under sub-section (2) or not, bears to the value of the assets of the body corporate not consisting of loans to, debentures of, or shares in, the related body corporate; 20
  - (b) the proportion that the value of the loan, debenture or share bears to the value of the assets of the related body corporate; 25
  - (c) the nature, and the degree of diversity, of the assets of the body corporate;
  - (d) the nature, and the degree of diversity, of the assets of the related body corporate; 30
  - (e) the nature of the business carried on by the related body corporate.
- “(2B) For the purposes of sub-section (2A), the value of a loan, debenture or share that is not an asset within the meaning of this Part shall be determined as if it were such an asset.”; 35
- (f) by omitting from sub-section (3) “six months but not more than twelve months” and substituting “3 months but not more than 9 months”; and
- (g) by adding at the end thereof the following sub-section: 40
- “(7) In paragraph (1) (ea), ‘intermediary’ in relation to a body corporate, means a person, other than a body corporate authorized under this Act to carry on insurance business, who, in or outside Australia, for reward, acts as an agent (whether for the body corporate or for any other person) in respect of the entering into of contracts of insurance under which the body corporate is the insurer.”. 45

(2) In relation to each of the 2 financial years of a body corporate commencing after the commencement of this section, section 30 of the Principal Act as amended by sub-section (1) applies to the body corporate as if—

- 5 (a) the reference in sub-paragraph 30 (1) (ea) (i) of the Principal Act to 4% were a reference to 5%; and
- (b) the reference in sub-paragraph 30 (1) (ea) (ii) of the Principal Act to 20% were a reference to 25%.

### Liabilities

10 **16.** Section 31 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “provisions” and substituting “provision”;
- (b) by omitting sub-sections (2) and (3) and substituting the following sub-sections:

15 “(2) For the purposes of this Act, a body corporate carrying on insurance business shall make in its accounts provision in respect of liabilities.

20 “(3) For the purposes of this Act, the Commissioner may, at any time, if he thinks fit, by notice in writing served on a body corporate carrying on insurance business, direct that the body corporate shall, within a specified period, not being less than 21 days, after the giving of the direction, make in its accounts provision, or further provision—

- (a) of a specified amount; or
- (b) of an amount determined in a specified manner,

25 in respect of liabilities.

“**(3A)** Part VI applies to a direction given under this section.

30 “**(3B)** Where a direction has been given to a body corporate under sub-section (3) and it appears to the Commissioner that the direction is no longer necessary or should be varied, the Commissioner shall, by notice in writing served on the body corporate, revoke or vary the direction.

“**(3C)** The powers of the Commissioner under this section are in addition to, and do not derogate from, the powers of the Commissioner or of the Treasurer under Part V.

35 “**(3D)** Where a body corporate in respect of which a direction has been given under sub-section (3) is commenced to be wound up, the direction ceases to have effect.

40 “**(3E)** A body corporate that fails to comply with a direction given to it under sub-section (3) is, in respect of each day during which it so fails to comply with the direction (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$10,000.”; and

- (c) by adding at the end thereof the following sub-section:  
 “(5) In this section, unless the contrary intention appears, ‘direction’ includes, where a direction is varied, the direction as varied.”.

**Valuation of assets** 5

- 17. Section 33 of the Principal Act is amended—
  - (a) by omitting from sub-section (3) “, (5)”;
  - (b) by omitting from sub-section (4) “(not being approved securities referred to in sub-section (5))”;
  - (c) by omitting sub-section (5); and 10
  - (d) by omitting from sub-section (6) “sub-sections (4) and (5)” and substituting “sub-section (4)”.

**Exemption from requirement relating to assets in Australia**

- 18. Section 35 of the Principal Act is amended by omitting from sub-section (1) “29 (d)” and substituting “29 (1) (c)”.
- 15

**Cancellation of authority**

- 19. Section 36 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(8) A reference in this section to a body corporate having no liabilities in respect of insurance business carried on by it in Australia shall be read as including a reference to a body corporate that has assigned the whole of its interests under all contracts of insurance in respect of insurance business carried on by it in Australia to another body corporate authorized under this Act to carry on insurance business.

20

- “(9) In sub-section (8)— 25  
 ‘assignment’ means an absolute assignment, but does not include an equitable assignment;  
 ‘interests’ includes rights and benefits.”.

**Exemption in respect of insurance business carried on for benefit of limited class of persons** 30

- 20. Section 37 of the Principal Act is amended—
  - (a) by omitting from sub-sections (1) and (4) “Two hundred thousand dollars” and substituting “\$500,000”;
  - (b) by inserting in sub-section (2) “or vary” after “revoke”;
  - (c) by inserting in sub-section (5) “, varied” after “given”; and 35
  - (d) by inserting in sub-section (5) “, variation” after “exemption” (last occurring).

**Interpretation**

- 21. Section 39 of the Principal Act is amended by omitting sub-section (1).

**Accounting records**

22. Section 40 of the Principal Act is amended—

(a) by omitting sub-section (3) and substituting the following sub-section:

“(3) The accounting records kept in accordance with sub-section (1) shall be kept in Australia.”;

(b) by omitting from sub-section (4) “referred to in sub-section (1) and the statements and records”;

(c) by omitting from sub-section (5) “, statements and records” (wherever occurring); and

(d) by omitting from sub-section (5) “(4)” and substituting “(3)”.

**Accounts and statements to be lodged with Commissioner**

23. (1) Section 44 of the Principal Act is amended by omitting sub-sections (4) and (5) and substituting the following sub-sections:

“(4) A body corporate authorized under this Act to carry on insurance business shall, within the period of 6 weeks after each 31 March, 30 June, 30 September and 31 December, lodge with the Commissioner—

(a) a statement of assets and liabilities on that day; and

(b) a statement of premiums and claims in respect of insurance business carried on by it during the period of 3 months ending on that day.

“(5) The statements lodged by a body corporate under sub-section (4) shall relate—

(a) to insurance business and other business carried on by it in Australia; and

(b) where the body corporate is incorporated in Australia—to all business of insurance and all other business carried on by it outside Australia.”.

(2) A date referred to in sub-section 44 (4) of the Principal Act as amended by sub-section (1) does not include a date before the commencement of this section.

**Audit of accounts**

24. Section 47 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) The body corporate shall make such arrangements as are necessary to enable the audit of the yearly statutory accounts in accordance with this Act.”; and

(b) by omitting from sub-section (2) “within the period of three months or, where sub-section 44 (6) applies to the body corporate, four months, after the end of each financial year of the body corporate” and substituting “for the purposes of this Part”.

**Extension of time**

25. Section 49 of the Principal Act is amended by omitting sub-section (2).

**Report of inspector**

**26. (1)** Section 60 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) An inspector, not being the Commissioner—

(a) may make one or more reports in writing to the Commissioner during the investigation of the whole or a part of the affairs of a body corporate and shall, if so directed in writing by the Commissioner, make such reports as are specified in the direction; and 5

(b) shall, on a completion or termination of the investigation, report in writing to the Commissioner on the result of the investigation. 10

“(1A) An inspector, being the Commissioner—

(a) may make one or more reports in writing to the Treasurer during the investigation of the whole or a part of the affairs of a body corporate and shall, if so directed in writing by the Treasurer, make such reports as are specified in the direction; and 15

(b) shall on a completion or termination of the investigation, report in writing to the Treasurer on the result of the investigation.”; 20

(b) by inserting after sub-section (4) the following sub-section:

“(4A) The Commissioner shall forward to the Treasurer a copy of a report made to him under this section together with such report (if any) as he wishes to make in relation to the first-mentioned report.”; 25

(c) by inserting in sub-section (5), “or forwarded” after “made”; and

(d) by omitting from sub-sections (6) and (7) “the report” (first occurring) and substituting “a report”.

**(2)** The amendments made by sub-section (1) do not apply in relation to a report made under sub-section 60 (1) of the Principal Act before the commencement of this section. 30

**Directions**

**27.** Section 62 of the Principal Act is amended—

(a) by inserting in sub-section (1) “give directions to the body corporate with respect to the carrying on of insurance business by the body corporate and, without limiting the generality of the directions that may be given, may” after “notice in writing served on the body corporate,”; 35

(b) by omitting from sub-section (2) “under” and substituting “of a direction of the kind referred to in”; 40

(c) by inserting in sub-section (6) “a direction given under” after “contravention of”;

(d) by omitting sub-sections (9) and (10) and substituting the following sub-sections:

5 “(9) A body corporate that contravenes or fails to comply with a direction given to it under sub-section (1), being a direction of the kind referred to in paragraph (1) (a), (b), (c) or (d), is, in respect of each day during which it so contravenes or fails to comply with the direction (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$20,000.

10 “(10) A body corporate shall not contravene or fail to comply with a direction given to it under sub-section (1), not being a direction of the kind referred to in paragraph (1) (a), (b), (c) or (d).

Penalty: \$20,000.”; and

- (e) by omitting from sub-section (12) “paragraph (1) (a), (b), (c) or (d)” and substituting “this section, being a direction of the kind referred to in paragraph (1) (a), (b), (c) or (d),”.

15 **Repeal of section 104**

28. Section 104 of the Principal Act is repealed.

29. Before section 105 of the Principal Act the following section is inserted in Part IX:

**Interpretation**

20 “104. In this Part—

‘prescribed body corporate’ means—

(a) a company referred to in sub-section 190 (1) of the *Commonwealth Functions (Statutes Review) Act 1981*; or

25 (b) a purchaser to which sub-section 191 (1) of that Act applies, not being a body corporate authorized under this Act to carry on insurance business;

‘relevant day’, in relation to a prescribed body corporate, means the day on which rights, property or assets referred to in paragraph 190 (1) (b) or 191 (1) (a) of the *Commonwealth Functions (Statutes Review) Act 1981* are transferred to the prescribed body corporate.”.

**Bodies corporate ceasing to carry on insurance business**

30. Section 105 of the Principal Act is amended—

- 35 (a) by omitting from sub-section (1) “carried on insurance business in Australia immediately before the date of commencement of section 21 and has” and substituting “, immediately before 1 August 1974, carried on insurance business in Australia and had”;

- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Where a prescribed body corporate—

- 40 (a) notifies the Commissioner in writing that it does not intend to make an application under Part III for an authority to carry on insurance business;

- (b) has not, within the period of 3 months after the relevant day of the body corporate, made such an application; or
- (c) has, after having made such an application, withdrawn the application or been refused an authority under section 27,

5

the Commissioner may, by notice in writing served on the body corporate, require it to furnish, within such period, not being less than 7 days, as he specifies in the notice, particulars of its proposals for and in relation to ceasing to carry on insurance business in Australia.”; and

10

- (c) by inserting in sub-section (2) “or (1A)” after “(1)”.

### **Notification of refusal of authority to carry on insurance business**

**31.** Section 105A of the Principal Act is amended—

- (a) by inserting in sub-section (1) “a prescribed body corporate and to” after “applies to”;
- (b) by omitting from sub-section (2) “date of commencement of section 21” and substituting “prescribed day”; and
- (c) by inserting after sub-section (2) the following sub-section:

15

“(2A) In sub-section (2), ‘prescribed day’ means—

- (a) in relation to a prescribed body corporate—the relevant day of the body corporate; or
- (b) in relation to any other body corporate—1 August 1974.”.

20

### **Persons ceasing to carry on insurance business**

**32.** Section 106 of the Principal Act is amended—

25

- (a) by omitting from sub-section (1) “has” and substituting “had”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) A person who fails to comply with a notice served on him under sub-section (1) is, in respect of each day during which he so fails to comply with the notice (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$2,000.”.

30

### **Person not to be deemed to be carrying on insurance business by reason only that he discharges liabilities**

**33.** Section 107 of the Principal Act is amended—

35

- (a) by omitting from paragraph (2) (a) “refusal; or” and substituting “refusal;”;
- (b) by inserting after paragraph (2) (a) the following paragraph:

“(aa) in the case of a prescribed body corporate that—

- (i) made an application under section 22 for an authority to carry on insurance business within the

40



period of 3 months after the relevant day of the body corporate; and

(ii) has withdrawn the application or been refused an authority under section 27,

5

the date of that withdrawal or refusal; or”.

34. After section 108 of the Principal Act the following section is inserted:

**Transitional provisions relating to successor of Housing Loans Insurance Corporation**

10 “108A. (1) A prescribed body corporate that has not been refused an authority under section 27 is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carries on such business during the period of 3 months after the relevant day of the body corporate.

“(2) A prescribed body corporate that—

15

(a) has, within the period of 3 months after the relevant day of the body corporate, made an application under section 22 for an authority to carry on insurance business; and

(b) has not withdrawn the application or been refused an authority under section 27,

20

is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carries on such business after the expiration of the period of 3 months after the relevant day of the body corporate.”.

25 **Transitional provisions relating to bodies corporate refused authorities under section 27**

35. Section 109 of the Principal Act is amended—

(a) by inserting in sub-section (1) “to a prescribed body corporate or” after “business” (first occurring); and

(b) by omitting sub-section (3) and substituting the following sub-section:

30

“(3) A body corporate that contravenes or fails to comply with a direction given to it under sub-section (1) is, in respect of each day during which it so contravenes or fails to comply with the direction (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$20,000.”.

35

**Power to require production of books**

36. Section 115 of the Principal Act is amended by omitting from sub-section (1) “is complying” and substituting “has complied, or is complying,”.

**Inspection of Register, accounts and auditors' certificates**

37. Section 123 of the Principal Act is amended—

(a) by inserting after paragraph (a) the following paragraph:

“(aa) inspect an auditor’s certificate lodged with the Commissioner under section 48;” and

5

(b) by inserting in paragraph (c) “auditor’s certificate,” after “such an”.

**Annual report**

38. Section 125 of the Principal Act is amended by omitting sub-section (2).

**Offences**

10

39. Section 128 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Where a body corporate is guilty of an offence against sub-section 21 (2), section 22, sub-section 31 (3E) or 37 (6), section 40, 44 or 48, sub-section 51 (5), 62 (9) or (10), 105 (15), 109 (3) or 113 (3), a director, officer or auditor of the body corporate who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the offence, shall be deemed to be also guilty of that offence and is punishable on conviction—

15

(a) in the case of an offence against sub-section 21 (2), 31 (3E), 62 (9), or 109 (3)—by a fine not exceeding \$2,000; or

20

(b) in the case of an offence against section 22, sub-section 37 (6), section 40, 44 or 48, sub-section 51 (5), 62 (10), 105 (15) or 113 (3)—by a fine not exceeding \$4,000.”.

40. After section 129 of the Principal Act the following sections are inserted:

25

**Joinder of charges and penalties for certain offences**

“129A. (1) Charges against the same person for any number of offences against sub-section 21 (1), (2) or (3), 31 (3E), 62 (9), 106 (2) or 109 (3) may be joined in the same information or complaint if those offences relate to doing or failing to do the same act or thing.

30

“(2) If a person is convicted of 2 or more offences referred to in sub-section (1), being offences related to doing or failing to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

35

**Continuing offences**

“129B. Where, by or under a provision of this Act, an act or thing is required to be done within a particular period or before a particular time, the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done.”.

40

**Schedule**

41. The Schedule to the Principal Act is amended by omitting from sub-paragraph 3 (6) “the prescribed form” and substituting “a form approved by the Treasurer by writing signed by him”.

5 **Amendments relating to accounts and accounting records**

42. The Principal Act is amended as set out in Schedule 1.

**Amendments relating to penalties**

43. The Principal Act is amended as set out in Schedule 2.

**Formal amendments**

10 44. The Principal Act is amended as set out in Schedule 3.

**Application of certain amendments**

15 45. An amendment made by paragraph 3 (e), section 14, paragraph 15 (1) (b), (c), (d) or (f) or section 18, 20, 22, 24 or 25 does not apply in relation to a financial year of a body corporate that commenced before the commencement of the amendment.

**PART III—INTERIM PROVISIONS****Interpretation**

46. (1) In this Part—

20 “prescribed body corporate” means a body corporate authorized under the Principal Act to carry on insurance business—

25 (a) whose premium income in respect of reinsurance business during its last financial year ending before the commencement of section 14 did not exceed 30% of its premium income in respect of reinsurance and other insurance business during that year; and

30 (b) which lodges with the Commissioner, within a period of 28 days before the commencement of its first interim year (or such period after the commencement of its first interim year as the Commissioner, by notice in writing given to the body corporate, in accordance with section 121 of the *Insurance Act* 1973, within that period of 28 days, allows), a notice in writing stating that it elects to be a body corporate to which this Part applies;

35 “interim year”, in relation to a body corporate, means one of the first 4 financial years of that body corporate commencing after the commencement of section 14.

(2) References in this Part to the premium income, and to the premium income in Australia, of a body corporate during its financial year have the same respective meanings as in Part III of the *Insurance Act* 1973.

**Notification in *Gazette* of prescribed bodies corporate**

47. The Commissioner shall cause the names of prescribed bodies corporate to be published in the *Gazette*.

**Interim application of section 29 of the *Insurance Act 1973* to prescribed bodies corporate**

48. Section 29 of the *Insurance Act 1973* applies to a prescribed body corporate—

- (a) in relation to an interim year of that body corporate specified in Table A of Schedule 4, as if a reference in that section to an amount specified in Column 1 of that Table were a reference to the amount specified in relation to that year opposite that first-mentioned amount; and
- (b) in relation to an interim year of that body corporate specified in Table B of Schedule 4, as if a reference in that section to 20% were a reference to the percentage specified in that Table in relation to that year.

**Directions**

49. (1) Where it appears to the Commissioner that, by reason of the activities of a prescribed body corporate in an interim year of that body corporate, the body corporate is, or is about to become, unable to meet its liabilities or has contravened or failed to comply with a provision of the *Insurance Act 1973* or with a condition or a direction applicable to it under that Act he may, by notice in writing served on the body corporate in accordance with section 121 of that Act—

- (a) give directions to the body corporate with respect to the carrying on of its insurance business; and
- (b) vary or revoke directions so given.

(2) A prescribed body corporate that contravenes or fails to comply with a direction given to it under sub-section (1) is, in respect of each day during which it so contravenes or fails to comply with the direction (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$20,000.

(3) Without limiting the directions that may be given to a body corporate under sub-section (1), the following directions may be given under that sub-section:

- (a) a direction that the body corporate shall not issue policies or undertake liability under contracts of insurance;
- (b) a direction that the body corporate shall not renew policies;
- (c) a direction that the body corporate shall not issue policies in respect of insurance business included in a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;
- (d) a direction that the body corporate shall not renew policies in respect of insurance business included in a class of insurance business specified in the direction;

(e) a direction that the body corporate shall limit the amount of its premium income during a specified financial year, or the amount of its premium income in Australia during a specified financial year, to a specified amount.

5 (4) Part VI of the *Insurance Act* 1973 applies to a direction given under sub-section (1), and, for the purposes of the definition of "reviewable decision of the Treasurer or the Commissioner" in sub-section 63 (1) of that Act, that Part shall be deemed so to apply by virtue of that Act.

10 (5) The powers conferred on the Commissioner by this section are in addition to, and do not derogate from, the powers conferred on the Commissioner or on the Treasurer by the *Insurance Act* 1973.

(6) Where a body corporate in respect of which a direction has been given under sub-section (1) is commenced to be wound up, the direction ceases to have effect.

15 (7) Nothing in this section affects the validity of a transaction entered into by a prescribed body corporate in contravention of a direction given under sub-section (1).

(8) A direction given under sub-section (1) has effect and shall be complied with notwithstanding anything in any law of a State or Territory.

20 (9) Section 129A of the *Insurance Act* 1973 applies to an offence against sub-section (2) as if references in that section to provisions of that Act included a reference to sub-section (2).

25 (10) Section 129B of the *Insurance Act* 1973 applies in relation to this section as if a reference in that section to a provision of that Act were a reference to this section.

(11) In this section, unless the contrary intention appears, "direction" includes, where a direction is varied, the direction as varied.

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**SCHEDULE 1**

Section 42

**AMENDMENTS RELATING TO ACCOUNTS AND ACCOUNTING RECORDS**

Provision amended	Omit—	Substitute—
Paragraph 22 (2) (g)	accounts	ordinary accounts
Paragraph 40 (1) (b)	accounts and statements referred to in sub-section 44 (1)	yearly statutory accounts
Paragraph 40 (1) (c)	accounts and statements	yearly statutory accounts
Sub-section 41 (1)	accounts	statutory accounts
Paragraph 41 (2) (a)	accounts	statutory accounts
Sub-section 42 (1)	accounts	statutory accounts
Sub-section 44 (7)	An account or statement lodged under any of the preceding provisions of this section, other than sub-section (3),	Statutory accounts lodged under sub-section (1), (4) or (6)
Sub-section 44 (8)	accounts and statements referred to in sub-section (1)	yearly statutory accounts
Sub-section 44 (9)	an account or statement	statutory accounts or a document referred to in sub-section (3)
Sub-section 45 (2)	A statement	Yearly statutory accounts
Sub-section 47 (1)	Accounts and statements required by sub-section 44 (1) to be lodged by a body corporate with the Commissioner	Yearly statutory accounts of a body corporate
Sub-section 47 (2)	accounts and statements in respect of that year	yearly statutory accounts
Sub-section 47 (3)	accounts and statements (wherever occurring)	yearly statutory accounts
Section 48	accounts and statements in respect of that year referred to in sub-section 44 (1)	yearly statutory accounts in respect of that year
Sub-section 49 (1)	an account, statement or certificate with him, extend, or further extend, the time for lodging the account, statement or certificate	with him statutory accounts, a certificate or a document referred to in sub-section 44 (3), extend, or further extend, the time for lodging the accounts, certificate or document
Paragraph 132 (c)	accounts and statements required under Part IV to be lodged with the Commissioner	statutory accounts and documents of the kind referred to in sub-section 44 (3)

**SCHEDULE 2**

Section 43.

**AMENDMENTS RELATING TO PENALTIES**

Provision amended	Omit—	Substitute—
Section 22	Ten thousand dollars	\$20,000
Sub-section 37 (6)	Ten thousand dollars	\$20,000
Section 40	Ten thousand dollars	\$20,000
Section 44	Ten thousand dollars	\$20,000
Section 48	Ten thousand dollars	\$20,000
Section 51	Ten thousand dollars	\$20,000
Sub-section 105 (15)	Ten thousand dollars	\$20,000
Sub-section 113 (3)	(a) Ten thousand dollars	\$20,000
	(b) Two thousand dollars	\$4,000
Sub-section 113 (4)	One thousand dollars	\$2,000

## SCHEDULE 3

Section 44

## FORMAL AMENDMENTS

Provision amended	Omit—	Substitute—
Sub-section 3 (1) (definition of "insurance business")	(a) 1959-1967 (b) 1904-1972 (c) 1953-1972	1959 1904 1953
Sub-section 3 (1) (definition of "life insurance business")	1945-1973	1945
Paragraph 5 (2) (e)	1946-1966	1946
Section 9	seven	7
Paragraph 14 (2) (c)	salary	remuneration
Section 20	1922-1973	1922
Section 22	(a) two (b) one director (c) five (wherever occurring) (d) fourteen	2 1 director 5 14
Section 23	9th December, 1971	9 December 1971
Sub-paragraph 30 (1) (b) (ii)	One thousand dollars (wherever occurring)	\$1,000
Paragraph 30 (1) (f)	1945-1973	1945
Paragraph 31 (1) (b)	1945-1973	1945
Section 35	six (wherever occurring)	6
Section 36	(a) twelve (wherever occurring) (b) one month (wherever occurring)	12 1 month
Sub-section 37 (4)	three	3
Section 40	seven	7
Section 43	seven	7
Section 44	(a) six (wherever occurring) (b) two (c) one director (d) four (e) five (f) seven	6 2 1 director 4 5 7
Sub-section 45 (1)	(a) two (b) one director	2 1 director
Section 48	(a) four (b) five	4 5
Paragraph 51 (1) (a)	seven	7
Paragraph 51 (1) (b)	six	6
Sub-section 52 (1)	fourteen	14
Sub-section 54 (3)	One thousand dollars or imprisonment for three months	\$1,000 or imprisonment for 3 months
Sub-section 56 (1)	(a) A person under this Part, (b) One thousand dollars or imprisonment for three months	A person \$1,000 or imprisonment for 3 months
Sub-section 61 (1)	One thousand dollars or imprisonment for three months	\$1,000 or imprisonment for 3 months
Paragraph 62 (1) (f)	twenty-one	21
Sub-section 93 (2)	fourteen	14
Sub-section 93 (3)	three (wherever occurring)	3
Paragraph 93 (6) (a)	(3);	(3); or
Paragraph 93 (6) (b)	three	3
Paragraph 93 (6) (d)	one month	1 month

## SCHEDULE 3—continued

Provision amended	Omit—	Substitute—
Paragraph 93 (6) (e)	one month	1 month
Paragraph 94 (2) (b)	thirty	30
Sub-section 105 (1)	(a) 1932-1973 (b) three (c) seven	1932 3 7
Sub-section 105 (2)	fourteen	14
Sub-section 105A (1)	the commencement of section 21	1 August 1974
Sub-section 106 (1)	(a) the date of commencement of section 21  (b) 1932-1973 (c) seven	1 August 1974  1932 7
Sub-section 107 (1)	the expiration of the period of six months after the date of commencement of that section	1 February 1975
Sub-paragraph 107 (2) (a) (i)	the date of commencement of section 21	1 August 1974
Sub-paragraph 107 (2) (a) (ii)	the date referred to in sub-paragraph (i)	1 August 1974
Paragraph 107 (2) (b)	the date of commencement of section 21	1 August 1974
Section 108	(a) the date of commencement of section 21 (wherever occurring) (b) three months after that date (wherever occurring) (c) that commenced on that date	1 August 1974 3 months after 1 August 1974 that commenced on 1 August 1974
Sub-section 109 (1)	the date of commencement of section 21	1 August 1974
Section 119	1959-1967	1959
Section 125	30th June	30 June
Sub-section 127 (2)	1905-1966	1905
Sub-section 128 (2)	One thousand dollars or imprisonment for three months	\$1,000 or imprisonment for 3 months
Section 129	three	3
Paragraph 132 (f)	(a) One thousand dollars (b) three	\$1,000 3
SCHEDULE— Paragraph 1	(a) twenty-eight (wherever occurring) (b) Five hundred thousand dollars (wherever occurring) (c) 31st December (wherever occurring)	28 \$500,000 31 December
SCHEDULE— Paragraph 2	(a) twenty-eight (b) 1959-1967 (wherever occurring) (c) 30th June (wherever occurring) (d) 31st December (wherever occurring) (e) sixty (wherever occurring)	28 1959 30 June 31 December 60
SCHEDULE— Paragraph 3	(a) 30th April (b) 31st December (wherever occurring) (c) six	30 April 31 December 6



## SCHEDULE 3—continued

Provision amended	Omit—	Substitute—
SCHEDULE— Paragraph 4	(a) 31st March (b) 31st December (wherever occurring) (c) twenty-eight (d) nine (e) six	31 March 31 December 28 9 6
SCHEDULE— Paragraph 5	twenty-eight	28
SCHEDULE— Sub-paragraph 6 (1)	fourteen	14
SCHEDULE— Sub-paragraph 7 (1)	fourteen	14
SCHEDULE— Paragraph 8	twenty-one	21
SCHEDULE— Sub-paragraph 9 (1)	1959-1967	1959
SCHEDULE— Paragraph 10	1936-1972 (wherever occurring)	1936

## SCHEDULE 4

Section 48

INTERIM APPLICATION OF SECTION 29 OF THE  
INSURANCE ACT 1973 TO PRESCRIBED BODIES CORPORATE

TABLE A

Column 1 Reference in Section 29 of the <i>Insurance Act 1973</i>	Column 2 First Interim Year	Column 3 Second Interim Year	Column 4 Third Interim Year	Column 5 Fourth Interim Year
(a) \$500,000	\$200,000	\$200,000	\$300,000	\$400,000
(b) \$1,000,000	\$100,000	\$250,000	\$500,000	\$750,000

TABLE B

First Interim Year	Second Interim Year	Third Interim Year	Fourth Interim Year
15%	15%	17.5%	17.5%

## NOTE

1. No. 76, 1973, as amended. For previous amendments, see No. 216, 1973; No. 157, 1976; and No. 31, 1977.