

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

INSURANCE (AGENTS AND BROKERS) BILL 1981

TABLE OF PROVISIONS

PART I—PRELIMINARY

Clause

1. Short title
2. Commencement
3. Extension to external Territories
4. Crown to be bound
5. Act not to affect other laws
6. Application of Act
7. State insurance
8. Conflict of laws
9. Definitions

PART II—GENERAL

10. Liability of insurer for agents and employees
11. Certain insurance intermediaries to be agents of insurers
12. Representations, & c., by intermediaries
13. Effect of payments to intermediaries
14. Liability in relation to binders
15. Disclosure by persons acting under binders in respect of insurance contracts
16. Disclosure by persons acting under binders in respect of claims

PART III—REGISTRATION OF INSURANCE BROKERS

17. Brokers not to carry on business unless registered
18. Applications for registration
19. Registration of brokers
20. Suspension or cancellation of registration

TABLE OF PROVISIONS—*continued*

| Clause | |
|--------|---|
| 21. | Trust bank accounts |
| 22. | Brokers not bound by certain agreements, & c. |
| 23. | Misdescription by brokers |
| 24. | Brokers to disclose agency |

PART IV—MISCELLANEOUS

| | |
|-----|--|
| 25. | Insurance brokers to give certain information |
| 26. | Restrictions as to receipt and payment of remuneration |
| 27. | Insurance moneys |
| 28. | Certain moneys to be trust moneys |
| 29. | Brokers not to be directors, & c. |
| 30. | Misdescription by insurance intermediaries |
| 31. | Liability of directors and employees |
| 32. | Decisions of Commissioners |
| 33. | Accounts and audit |
| 34. | Certain particulars to be included in reports |
| 35. | General penalty provisions |
| 36. | Prosecutions |
| 37. | Regulations |

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 28 May 1981)

(SENATOR EVANS)

No 118

A BILL

FOR

An Act relating to Insurance Intermediaries

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Insurance (Agents and Brokers) Act* 1981.

Commencement

2. (1) Parts I, II and IV come into operation on the date on which this Act receives the Royal Assent.

(2) Part III comes into operation on a date to be fixed by Proclamation.

Extension to external Territories

3. This Act extends to an external Territory that is for the time being declared by Proclamation to be a Territory to which this Act extends.

Crown to be bound

4. (1) This Act binds the Crown in right of the Commonwealth or a Territory and, except as otherwise provided by this Act, binds the Crown in right of a State.

(2) Nothing in this Act renders the Crown in right of the Commonwealth or of a State or Territory liable to be prosecuted for an offence under this Act or the regulations.

Act not to affect other laws

5. It is the intention of the Parliament that this Act is not, except insofar as this Act otherwise provides, to affect the operation of any other law of the Commonwealth, the operation of a law of a State or Territory or the operation of any principle of the common law or of equity.

Application of Act

6. Subject to section 7, this Act applies to and in relation to all contracts of insurance and proposed contracts of insurance other than—

- (a) contracts of reinsurance or proposed contracts of reinsurance; or
- (b) contracts of insurance entered into, or proposed to be entered into, by a registered medical benefits organization or a registered hospital benefits organization, as an insurer, in the course of its business as a registered organization within the meaning of Part VI of the *National Health Act 1953*.

State insurance

7. (1) This Act does not apply to or in relation to—

- (a) State insurance not extending beyond the limits of the State concerned; or
- (b) a contract of insurance entered into, or proposed to be entered into, by a State and another person as joint insurers.

(2) Notwithstanding paragraph (1) (b), this Act extends to and in relation to a contract of insurance (not being a contract of reinsurance) entered into, or proposed to be entered into, by a State and another person as joint insurers insofar as the contract, or the proposed contract, is in respect of insurance extending beyond the limits of the State concerned.

Conflict of laws

8. Where the proper law of a contract of, or in relation to, insurance would, but for a term of the contract or of some other contract, be the law of a State or Territory, this Act applies to and in relation to the contract notwithstanding that term.

Definitions

9. In this Act, unless the contrary intention appears—

“binder” means—

- (a) an authority given by a principal to an insurance intermediary to enter into, as agent for the principal, contracts of insurance on behalf of the principal as the insurer, but does not include such an authority that is limited to effecting contracts of insurance, or contracts of insurance of a particular class, by way of provisional cover unless there is also in existence an authority given by the principal to the insurance intermediary to enter into, as agent for the principal and otherwise than by way of provisional cover, contracts of insurance, or contracts of insurance of that class, respectively; or
- (b) an authority given by a principal to an insurance intermediary to deal with and settle, as agent for the principal, claims against the principal as an insurer;

“corporation” means a body corporate constituted by a law of the Commonwealth or of a State or Territory or a company;

“general insurance broker” means a person who is for the time being registered under Part III in respect of general insurance business;

“general insurance business” has the same meaning as “insurance business” has in the *Insurance Act 1973*;

“insurance broker” means a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds;

“insurance intermediary” means a person who—

- (a) for reward; and
- (b) as an agent for one or more insurers or as an agent for intending insureds,

arranges contracts of insurance in Australia or elsewhere and includes an insurance broker;

“insured”, in relation to a contract of life insurance, means a person (other than the insurer) who is entitled to a benefit under the contract, whether that person is the life insured or some other person, and “intending insured” has a corresponding meaning;

“life insurance broker” means a person who is for the time being registered under Part III in respect of life insurance business;

“life insurance business” has the same meaning as it has in the *Life Insurance Act 1945*;

“registered insurance broker” means a person who is for the time being registered under Part III, whether in respect of general insurance business or life insurance business or in respect of each of those businesses.

PART II—GENERAL**Liability of insurer for agents and employees**

10. (1) An insurer is responsible, as between the insurer and an insured or intending insured, for the conduct of his agent or employee, being conduct relied on in good faith by the insured or intending insured, in relation to any matter relating to insurance and is so responsible notwithstanding that the agent or employee did not act within the scope of his authority or employment, respectively.

(2) The responsibility of an insurer under sub-section (1) extends so as to make the insurer liable to an insured or intending insured in respect of any loss or damage suffered by the insured or intending insured as a result of the conduct of the agent or employee.

(3) Sub-section (1) or (2) does not affect any liability of an agent or employee of an insurer to an insured or intending insured.

(4) An agreement, insofar as it purports to alter or restrict the operation of sub-section (1) or (2), is void.

(5) An insurer shall not make, or offer to make, an agreement that is, or would be, void by reason of the operation of sub-section (4).

Penalty: In the case of a person not being a corporation, \$2500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

Certain insurance intermediaries to be agents of insurers

11. (1) An insurance intermediary, not being an insurance broker, shall be deemed, in relation to any matter relating to insurance and as between an insured or intending insured and an insurer, to be the agent of the insurer and not of the insured or intending insured.

(2) Sub-section (1) does not affect any liability to which, if that sub-section had not been enacted, an insurer would have been subject in respect of the conduct of an insurance intermediary.

Representations, &c., by intermediaries

12. (1) A person to whom this section applies shall not wilfully and with intent to deceive make a false statement, being a statement that the person intends to be acted upon—

- (a)** as to any premium that would be payable in respect of a proposed contract of insurance; or
- (b)** as to the effect of any of the terms of a contract of insurance or of a proposed contract of insurance.

Penalty: In the case of a person not being a corporation, \$10,000 or imprisonment for 2 years, or both; in the case of a corporation, \$30,000.

(2) A person to whom this section applies shall not wilfully and with intent to deceive, in relation to a proposed contract of insurance—

- (a) write on a form, being a form that is given or forwarded to the insurer, matter that is material to the contract and is false or misleading in a material particular;
- (b) omit to disclose to the insurer matter that is material to the proposed contract;
- (c) advise or induce the intending insured to write on a form, being a form that is given or forwarded to the insurer, matter that is false or misleading in a material particular; or
- (d) advise or induce the intending insured to omit to disclose to the insurer matter that is material to the proposed contract.

Penalty: In the case of a person not being a corporation, \$10,000 or imprisonment for 2 years, or both; in the case of a corporation, \$30,000.

(3) A person to whom this section applies shall not wilfully and with intent to deceive, in relation to a claim under a contract of insurance—

- (a) fill up, in whole or in part, a form, being a form that is given or forwarded to the insurer, in such a way that the form is false or misleading in a material particular;
- (b) omit to disclose to the insurer matter that is material to the claim;
- (c) induce the insured to fill up, in whole or in part, a form, being a form that is given or forwarded to the insurer, in such a way that the form is false or misleading in a material particular; or
- (d) advise or induce the insured to omit to disclose to the insurer matter that is material to the claim.

Penalty: In the case of a person not being a corporation, \$10,000 or imprisonment for 2 years, or both; in the case of a corporation \$30,000.

(4) It is an offence under sub-section (1) or (2) notwithstanding that a contract of insurance does not come into being.

(5) The persons to whom this section applies are—

- (a) insurance intermediaries; and
- (b) agents and employees of insurance intermediaries and of insurers.

Effect of payments to intermediaries

13. (1) Where a contract of insurance is arranged by an insurance intermediary, payment to the insurance intermediary of moneys payable by the insured to the insurer under or in relation to the contract, whether in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of the liability of the insured to the insurer in respect of those moneys.

(2) Payment by an insurer to an insurance intermediary of moneys payable to an insured, whether in respect of a claim, return of premiums or otherwise, under or in relation to a contract of insurance, does not discharge any liability of the insurer to the insured in respect of those moneys.

(3) An agreement, insofar as it purports to alter or restrict the operation of sub-section (1) or (2), is void.

(4) Sub-section (3) does not render void an agreement between an insurance intermediary and an insured insofar as the agreement allows the insurance intermediary to set off against moneys payable to the insured moneys payable by the insured to the insurance intermediary in respect of premiums.

Liability in relation to binders

14. Where a contract of insurance is entered into, or a claim under a contract of insurance is dealt with or settled, by an insurance intermediary who acted under a binder in relation to the contract or claim, the intermediary shall, with respect to the contract or claim, and with respect to all matters relating to the contract or claim, be deemed to be the agent of the insurer and not of the insured for all purposes, including the operation of sub-section 10 (1), and shall be so deemed notwithstanding that the intermediary did not act within the scope of his authority under the binder.

Disclosure by persons acting under binders in respect of insurance contracts

15. (1) An insurance intermediary who intends to act under a binder in effecting a contract of insurance on behalf of his principal shall not enter into the contract unless he has first informed the insured that, in effecting the contract, he will be acting under an authority given to him by the insurer to effect the contract and that he will be effecting the contract as agent of the insurer and not of the insured.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

(2) A contract made in contravention of sub-section (1) is voidable at the option of the insured, subject to—

- (a) the rights of third parties acquired without notice and for good or valuable consideration; and
- (b) compliance with the principles of the common law and of equity with respect to the avoidance of contracts.

Disclosure by persons acting under binders in respect of claims

16. (1) An insurance intermediary who intends to act under a binding in dealing with or settling a claim under a contract of insurance shall not deal with or settle the claim on behalf of his principal unless he has first informed the insured that, in dealing with or settling the claim, he will be acting under an authority given to him by the insurer to deal with or settle the claim and that he will be dealing with or settling the claim as agent of the insurer and not of the insured.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

(2) A settlement of a claim made in contravention of sub-section (1) is voidable at the option of the insured, subject to—

- (a) the rights of third parties acquired without notice and for good or valuable consideration; and

- (b) compliance with the principles of the common law and of equity with respect to the avoidance of contracts.

PART III—REGISTRATION OF INSURANCE BROKERS

Brokers not to carry on business unless registered

17. (1) A person (whether an individual or a corporation) shall not, after the expiration of 6 months after the commencement of this Part, carry on business as an insurance broker, whether alone or in partnership, in relation to life insurance business or general insurance business—

- (a) unless he is registered under this Part in respect of life insurance business or general insurance business, respectively; and
- (b) if there are liabilities prescribed for the purposes of this paragraph—unless there is in force a contract of insurance with an insurer approved by the Life Insurance Commissioner or the Insurance Commissioner, respectively, under which the person is indemnified in respect of the prescribed liabilities arising out of or in the course of his business as an insurance broker.

Penalty: In the case of a person not being a corporation, \$10,000, or \$2,500 in respect of each day during which the contravention continues, whichever is the greater, or imprisonment for 2 years, or both; in the case of a corporation, \$50,000, or \$10,000 in respect of each day during which the contravention continues, whichever is the greater.

(2) If this Act is extended to an external Territory, sub-section (1) has effect, in that Territory, as if the reference to the commencement of this Part were a reference to the date on which this Act commenced to have effect in that Territory or the date on which Part III came into operation, whichever date is the later.

(3) A person may be registered in respect of both life insurance business and general insurance business.

(4) Sub-section (1) does not apply to a person who arranges contracts of insurance incidentally to carrying on a business (other than the business of insurance) or engaging in a profession or occupation and not otherwise.

Applications for registration

18. (1) A person who desires to be registered under this Part in respect of life insurance business may apply to the Life Insurance Commissioner accordingly and a person who desires to be registered under this Part in respect of general insurance business may apply to the Insurance Commissioner accordingly.

(2) An application under sub-section (1) shall be in accordance with the prescribed form.

(3) A person shall not wilfully and with intent to deceive—

- (a) make a false or misleading statement in a prescribed form furnished to a Commissioner; or
- (b) furnish to a Commissioner in connexion with an application under sub-section (1) information that is false or misleading in a material particular.

Penalty: In the case of a person not being a corporation, \$10,000 or imprisonment for 2 years, or both; in the case of a corporation, \$30,000.

Registration of brokers

19. (1) The relevant Commissioner shall—

- (a) if a contract of insurance is required under paragraph 17 (1) (b) and he is satisfied that there is in force such a contract in respect of the applicant;
 - (b) if, in the case of an applicant already carrying on business as an insurance broker, the applicant has furnished to the Commissioner audited accounts of that business to the satisfaction of the Commissioner;
 - (c) unless the applicant or a director, employee or agent of the applicant has been convicted of an offence as referred to in sub-section 20 (1); and
 - (d) if the applicant has paid such fee, not exceeding \$250, as is prescribed,
- register the applicant and give him a certificate of registration.

(2) Registration has effect for a period of 1 year.

(3) The relevant Commissioner shall, upon application by a registered insurance broker, cancel the registration of the broker under this section.

Suspension or cancellation of registration

20. (1) The relevant Commissioner may suspend, for such period as the Commissioner considers to be appropriate, or cancel, the registration of a person under this Part if the person, or a director, employee or agent of the person, is convicted of an offence—

- (a) under this Act or under any law, whether of the Commonwealth, of a State or Territory, or of some other country, in respect of conduct relating to insurance; or
- (b) in respect of dishonest conduct,

being an offence that, in the opinion of the Commissioner, renders the person unfit to carry on business as an insurance broker.

(2) While the registration of a person under this Part is suspended, the person shall be deemed not to be registered under this Part.

(3) Notwithstanding sub-section (2), a person whose registration is suspended may carry on such of his business as an insurance broker as the relevant Commissioner specifies, for such time and subject to such conditions (if any) as the relevant Commissioner specifies.

(4) A person shall not carry on business as an insurance broker after the time specified under sub-section (3) in relation to him or fail to comply with a condition under that sub-section that is applicable to him.

Penalty: In the case of a person not being a corporation, \$10,000, or \$2,500 in respect of each day during which the contravention continues, whichever is the greater, or imprisonment for 2 years, or both; in the case of a corporation, \$50,000, or \$10,000 in respect of each day during which the contravention continues, whichever is the greater.

(5) Where the relevant Commissioner cancels the registration of a person, he may specify a period during which the person is to be disqualified from registration.

(6) A person shall not be registered under this Part while his registration is suspended or while he is disqualified from registration.

Trust bank accounts

21. (1) A registered insurance broker shall pay into an account maintained by him solely for the purposes of this section all moneys received by him for or on account of another person in the course of his business as an insurance broker or in relation to his settling a claim under a contract of insurance.

Penalty: In the case of a person not being a corporation, \$2,500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

(2) An account maintained for the purposes of sub-section (1) shall be called an "Insurance Broking Account", with or without other words of description.

(3) A registered insurance broker shall not, except with the consent in writing of the relevant Commissioner, withdraw moneys from an account maintained by him under sub-section (1) except—

- (a) for payment to or for a person entitled to receive payment of them, including himself insofar as he is entitled to receive payment for himself;
- (b) for investment as provided by sub-section (4); or
- (c) moneys that were paid into the account in error.

Penalty: In the case of a person not being a corporation, \$2,500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

(4) A registered insurance broker may invest in prescribed securities moneys standing to the credit of an account maintained by him under sub-section (1), being moneys representing premiums in respect of general insurance business.

(5) A registered insurance broker shall pay moneys received from the realisation of an investment made under sub-section (4) into an account maintained by him under sub-section (1).

Penalty: In the case of a person not being a corporation, \$2,500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

(6) If, upon the realisation of an investment made under sub-section (4), an amount is received in respect of the realisation that is less than the amount invested, the registered insurance broker shall pay an amount equal to the difference between the amount invested and the amount received into the account from which the moneys were withdrawn for investment.

Penalty: In the case of a person not being a corporation, \$2,500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

(7) If, upon the realisation of an investment under sub-section (4), an amount is received in respect of the realisation that is greater than the amount invested, the registered insurance broker may retain for his own benefit the amount by which the amount received exceeds the amount invested and need not pay it into, or retain it in, an account maintained under sub-section (1).

(8) Interest, dividends or other income received by a registered insurance broker from an account maintained under sub-section (1) or an investment made under sub-section (4) may be retained by the broker for his own benefit and need not be paid into, or retained in, an account maintained under sub-section (1).

(9) Moneys received by a registered insurance broker as mentioned in sub-section (1) or (5), both before and after those moneys are paid into an account maintained under sub-section (1), and moneys paid into such an account under sub-section (6), are subject to a trust in favour of the respective persons entitled to them and are not capable of being attached or otherwise taken in execution or of being made subject to a set-off, charge or charging order or to any process of a like nature.

(10) Securities in which moneys are invested under sub-section (4) are subject to a trust in favour of the respective persons entitled to the moneys represented by those securities and are not capable of being taken in execution or of being made subject to a charge or charging order or to any process of a like nature.

(11) This section does not make a banker subject to any liability by reason only of a failure of a registered insurance broker to comply with any of the provisions of this section.

Brokers not bound by certain agreements, &c.

22. (1) A life insurance broker is not bound by an agreement, arrangement or understanding with an insurer insofar as the agreement, arrangement or understanding requires the broker to effect or arrange some or all contracts of life insurance, or some or all contracts of life insurance of a particular class, with that insurer only and with no other insurer.

(2) A general insurance broker is not bound by an agreement, arrangement or understanding with an insurer insofar as the agreement, arrangement or understanding requires the general insurance broker to effect or arrange some or all contracts of insurance (other than contracts of life insurance), or some or

all contracts of insurance (other than contracts of life insurance) of a particular class, with that insurer only and with no other insurer.

(3) Sub-section (1) or (2) does not apply to so much of an agreement as relates to contracts of insurance effected under a binder.

(4) The operation of sub-sections (1) and (2) extends to agreements, arrangements and understandings made or entered into before the commencement of this Part or, in relation to an external Territory to which this Act extends, before this Part commences to have effect in that Territory.

(5) A person shall not—

(a) make, or offer to make, an agreement or arrangement, or enter into, or offer to enter into, an understanding that, under the preceding provisions of this section, would not be binding on him; or

(b) act upon or under such an agreement, arrangement or understanding.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

Misdescription by brokers

23. (1) A life insurance broker (not being also a general insurance broker) shall not describe himself or his business in a way that would be likely to lead a person into believing that he was a general insurance broker as well as a life insurance broker.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(2) A general insurance broker (not being also a life insurance broker) shall not describe himself or his business in a way that would be likely to lead persons into believing that he was a life insurance broker as well as a general insurance broker.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(3) A registered insurance broker shall not describe himself or his business in a way that would be likely to lead a person into believing that the broker was an insurer.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(4) A registered insurance broker shall not begin to carry on business under a name that would be likely to lead a person into believing that the broker was an insurer.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

Brokers to disclose agency

24. (1) A life insurance broker (not being also a general insurance broker) shall not, as agent of an insurer in respect of general insurance business, do any

act, for or in relation to an intending insured, in respect of insurance other than life insurance unless he has first informed the intending insured that, in doing that act, he would be acting as agent of the insurer and not of the intending insured.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

(2) A general insurance broker (not being also a life insurance broker) shall not, as agent of an insurer in respect of life insurance business, do any act, for or in relation to an intending insured, in respect of life insurance unless he has first informed the intending insured that, in doing that act, he would be acting as agent of the insurer and not of the intending insured.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

PART IV—MISCELLANEOUS

Insurance brokers to give certain information

25. (1) An insurance broker shall, as soon as it is reasonably practicable for him to do so, give to the insured and the insurer under a contract of insurance arranged or effected by the broker particulars in writing of any remuneration or other benefit received, or to be received, by the broker from or on behalf of the insurer or from or on behalf of the insured, respectively, in relation to the contract.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

(2) Sub-section (1) does not have effect where the contract of insurance was effected under a binder and the broker has complied with the requirements of section 15.

(3) An insurance broker shall, as soon as is reasonably practicable after he has arranged a contract of insurance (including a contract of insurance effected by him under a binder), inform the insured of the name of the insurer and of a place of business of the insurer.

Penalty: In the case of a person not being a corporation, \$2,500; in the case of a corporation, \$10,000.

(4) It is a sufficient compliance with so much of sub-section (3) as requires the insurance broker to inform the insured of the name of the insurer if, in relation to a contract of insurance with Lloyd's underwriters, or with Lloyd's underwriters and others, the insurance broker informs the insured that the contract was arranged with "Lloyd's", or with "Lloyd's" and other specified insurers, as the case may be.

(5) In sub-section (4), "Lloyd's underwriters" has the same meaning as it has in the *Insurance Act 1973*.

Restrictions as to receipt and payment of remuneration

26. (1) An insurance broker shall not receive from an insurer or from a person on behalf of an insurer a gift, gratuity, benefit or other reward (however described) except as remuneration for services rendered to the insurer—

- (a) in arranging or effecting a particular contract of insurance;
- (b) in connexion with dealing with or settling a claim under a particular contract of insurance; or
- (c) otherwise than in connexion with the broker arranging or effecting contracts of insurance or dealing with or settling claims under contracts of insurance.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(2) An insurer shall not pay to an insurance broker, and an insurance broker shall not receive from an insurer, in respect of the arranging of contracts of insurance by that insurance broker with the insurer, remuneration at a rate or on a basis that has been varied having regard to any one or more of the following:

- (a) the number of contracts so arranged;
- (b) the total amount of premiums paid or payable under contracts so arranged;
- (c) the total amount of sums insured under contracts so arranged.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(3) Sub-section (1) or (2) does not have effect in relation to contracts of insurance effected under a binder or in relation to claims dealt with or settled under a binder, respectively, provided that the broker has complied with the requirements of section 15 or 16, as the case may be.

Insurance moneys

27. Moneys paid or payable to an insurance broker under a contract of insurance indemnifying the broker in respect of any liability to an insurer, insured or intending insured are not—

- (a) in the event of the bankruptcy, insolvency or winding-up of the broker; or
- (b) in the event of the estate of the broker being administered under Part XI of the *Bankruptcy Act* 1966 or under the law of a State or Territory providing for the administration of insolvent estates of deceased persons,

available for division among the creditors of the broker generally but shall be paid to the person whose claim against the broker was subject to the indemnity under the contract of insurance.

Certain moneys to be trust moneys

28. (1) Moneys paid to a person (not being a registered insurance broker) as agent of an insurer, being moneys paid in relation to a contract of insurance

or proposed contract of insurance, are subject to a trust in favour of the insurer and are not capable of being attached or otherwise taken in execution or of being made subject to a set-off, charge or charging order or to any process of a like nature.

(2) The person—

- (a) shall, as soon as it is reasonably practicable, pay the moneys to the insurer; and
- (b) shall not use the moneys for any other purpose.

Penalty: In the case of a person not being a corporation, \$2,500 or imprisonment for 6 months, or both; in the case of a corporation, \$10,000.

(3) An act is an offence against sub-section (2) notwithstanding that it was done with the consent of the insurer.

Brokers not to be directors, &c.

29. (1) An insurance broker, or a director, employee or agent of an insurance broker, shall not be or act as an insurer or as a director or employee of an insurer.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(2) An insurer, or a director or employee of an insurer, shall not be or act as an insurance broker or as a director, employee or agent of an insurance broker.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(3) In this section, a reference to an insurer or to an insurance broker, being a company, includes a reference to a company that is the holding company or a subsidiary of the insurer or insurance broker.

(4) This section has effect notwithstanding anything in the *Insurance Act 1973* or the *Life Insurance Act 1945*.

Misdescription by insurance intermediaries

30. (1) An insurance intermediary (not being a registered insurance broker) shall not describe himself or his business in a way that would be likely to lead a person into believing that he was an insurance broker.

Penalty: In the case of a person not being a corporation, \$5,000 or imprisonment for one year, or both; in the case of a corporation, \$20,000.

(2) This section has effect only after the expiration of 6 months after the date on which Part III comes into operation or, in an external Territory to which this Act extends, only after the expiration of 6 months after the date on which Part III comes into operation or after the date on which this Act comes into operation in that Territory, whichever date is the later.

Liability of directors and employees

31. A director of a company, or an employee or agent, whether of a corporation or of an individual, who knowingly permits or authorises a

contravention of this Act by the corporation or individual is guilty of an offence against this Act and is punishable by the penalty provided in respect of that contravention.

Decisions of Commissioners

32. (1) A Commissioner shall not make a decision under this Act that would be adverse to a person without giving to the person an opportunity of being heard and of presenting evidence.

(2) An application may be made to the Administrative Appeals Tribunal for a review of a decision of a Commissioner under this Act.

Accounts and audit

33. The regulations may make provision as to the inspection or audit of the books, accounts and records kept by registered insurance brokers.

Certain particulars to be included in reports

34. The Life Insurance Commissioner and the Insurance Commissioner shall, in each report to the Treasurer under section 11 of the *Life Insurance Act* 1945 or section 125 of the *Insurance Act* 1973, respectively, furnished after the date of commencement of Part III, make reference to the working of this Act so far as it concerns him and shall include in the report particulars as to—

- (a) the number of persons registered by him for the time being as life insurance brokers or general insurance brokers, respectively;
- (b) any suspensions or cancellations effected by him under section 20 during the period to which the report relates;
- (c) any prosecutions for offences against this Act during that period;
- (d) any insolvency of an insurance intermediary that came to his notice during that period; and
- (e) such other matters (if any) as are prescribed.

General penalty provisions

35. (1) A person who—

- (a) does an act or thing that he is forbidden to do by or under a provision of this Act;
- (b) does not do an act or thing that he is required or directed to do by or under a provision of this Act; or
- (c) otherwise contravenes or fails to comply with a provision of this Act,

is, unless that provision or another provision of this Act provides that he is guilty of an offence, guilty of an offence by virtue of this sub-section.

(2) A person who is guilty of an offence against this Act, whether by virtue of sub-section (1) or otherwise, is punishable, upon conviction, by a penalty not exceeding the penalty applicable to the offence.

Prosecutions

36. (1) An offence against this Act punishable by a pecuniary penalty exceeding \$5,000 (whether the penalty applies to an individual or a corporation) or by a term of imprisonment exceeding one year is an indictable offence.

(2) Where a person is charged with an indictable offence against this Act, a court of summary jurisdiction may, with the consent of the defendant and of the prosecution, and if the court is satisfied that it is proper to do so, determine the charge summarily.

(3) Where, in accordance with sub-section (2) a court of summary jurisdiction convicts a person of an offence against this Act, the court may, unless a lower penalty applies, impose in respect of that offence a fine not exceeding \$5,000 or a period of imprisonment not exceeding 1 year, or both.

(4) An offence against this Act, other than an offence which by virtue of sub-section (1) is an indictable offence, may be prosecuted summarily.

Regulations

37. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that this Act requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a)** prescribing penalties, not exceeding a fine of \$1,000, in respect of contraventions of the regulations; and
- (b)** prescribing fees payable in respect of any matter under this Act or the regulations.

(2) The regulations may make different provisions with respect to life insurance business and general insurance business.

