

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 November 1983

(Minister Assisting the Treasurer)

A BILL

FOR

An Act to amend the *Life Insurance Act 1945*

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

Short title, &c.

1. (1) This Act may be cited as the *Life Insurance Amendment Act 1983*.

5 (2) The *Life Insurance Act 1945*¹ is in this Act referred to as the Principal Act.

Commencement

2. The provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.

10 **Interpretation**

3. Section 4 of the Principal Act is amended—

(a) by inserting in the definition of “company” in sub-section (1) “, except as provided in sub-sections (9) and (10),” before “means”; and

(b) by adding at the end thereof the following sub-sections:

“(9) In this Act, ‘holding company’, ‘related company’ and ‘subsidiary’ have the same respective meanings as they would have in the *Companies Act 1981* if references in section 7 of that Act to corporations were references to companies. 5

“(10) A reference in sub-section (9) to a company, and a reference in any other provision of this Act to a holding company or a related company, is not confined to a company as defined in sub-section (1).”.

Actuaries

4. Section 4A of the Principal Act is amended— 10

(a) by omitting sub-sections (1) and (2) and substituting the following sub-section:

“(1) A reference in this Act to an actuary shall, unless the contrary intention appears, be read as a reference to a person who is ordinarily resident in Australia and— 15

(a) is a Fellow of The Institute of Actuaries of Australia; or

(b) is approved by the Commissioner under sub-section (3).”; and

(b) by omitting from sub-section (3) “a body referred to in paragraph (1) (a), (b), (c) or (d)” and substituting “The Institute of Actuaries of Australia”. 20

Terms and conditions of appointment

5. Section 9A of the Principal Act is amended by omitting paragraph

(4) (a) and substituting the following paragraph:

“(a) the reference to a corporation that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another corporation were a reference to a corporation that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and” 25

Annual report and returns

6. Section 11 of the Principal Act is amended by omitting from sub-section 30

(1) “three” and substituting “5”.

Registration of companies

7. Section 19 of the Principal Act is amended by inserting after paragraph

(2) (a) the following paragraph:

“(aa) where the company has a share capital—that the sum of its paid-up share capital and the amount standing to the credit of its share premium account is not less than \$2,000,000;”. 35

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

Conditions

5 “20. (1) The Commissioner or the Treasurer may at any time, by notice in writing served on a company, impose conditions to which the registration of the company is subject.

10 “(2) Subject to sub-section (4), where the registration of a company is subject to a condition, and it appears at any time to the Commissioner or the Treasurer that the condition is no longer necessary or should be varied, the Commissioner or the Treasurer shall, by notice in writing served on the company, revoke or vary the condition.

15 “(3) Subject to sub-section (4), where a company whose registration is subject to a condition applies to the Commissioner or the Treasurer, by notice in writing, for the condition to be revoked or varied, the Commissioner or the Treasurer shall—

(a) if it appears to him that the condition is no longer necessary or should be varied—revoke or vary the condition; or

(b) in any other case—refuse to revoke or vary the condition,
and shall serve on the company notice in writing of his decision.

20 “(4) The Commissioner is not empowered by sub-section (2) or (3) to revoke or vary a condition imposed or varied by the Treasurer.

“(5) In this section, unless the contrary intention appears, ‘condition’ includes, where a condition is varied, the condition as varied.

25 “(6) If a direction given or issued under section 40, 52 or 58 is inconsistent with a condition imposed under this section, the direction is invalid to the extent of the inconsistency.”.

9. Section 39 of the Principal Act is repealed and the following section is substituted:

Investment of statutory funds

30 “39. (1) Subject to this Act, the assets of a fund of a company may be invested (subject to any provisions in the instruments constituting the company or in the articles of association or other rules of the company that impose restrictions upon the manner in which the assets of the company may be invested) in such manner as the company thinks fit.

35 “(2) Subject to sub-sections (3) and (4), a company shall not, except with the approval of the Commissioner, invest any assets of a fund of the company—

(a) in a related company (other than a subsidiary); or

(b) under a trust scheme.

“(3) Sub-section (2) does not prevent a company from investing, without obtaining the approval of the Commissioner, any assets of a fund of the company—

- (a) by way of a loan to (including deposit with) or any shares in or debentures of, a bank as defined by sub-section 5 (1) of the *Banking Act 1959* or a bank constituted by a law of a State; or 5
- (b) by way of a loan to (including deposit with) a prescribed dealer in the short-term money market.

“(4) Sub-section (2) does not prevent a company from investing, without obtaining the approval of the Commissioner, any moneys of a fund of the company under trust schemes if the sum of those moneys and the value of the assets of the fund consisting of investments under trust schemes does not exceed 5% of the value of the assets of the fund. 10

“(5) In determining whether to grant or refuse approval under sub-section (2) to a proposed investment of assets of a fund of a company (in this sub-section referred to as the ‘investing company’) in a related company or under a trust scheme, the Commissioner shall 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 assets of the fund consisting of investments in related companies or under trust schemes, as the case may be, bears, respectively, to the total value of the assets of that fund and to the total value of the assets of all funds of the investing company; 20
- (b) the proportion that the value of assets of the fund invested in the related company or under the scheme, as the case may be, bears to the total value of the assets of the investing company; 25
- (c) the overall financial strength of the investing company, including, in particular, the nature and the degree of diversity of the assets of the company;
- (d) the viability of the related company or the scheme, as the case may be, including its past profitability and its likely future profitability; 30
- (e) in the case of a proposed investment in a related company—the nature of the business carried on by the company;
- (f) in the case of a proposed investment under a trust scheme—the nature of the assets of the scheme; and 35
- (g) whether or not the proposed investment is likely to be in the best interests of the investing company and its policy owners.

“(6) A transaction shall not be invalidated by reason only that it has been entered into in contravention of sub-section (2), but nothing in this sub-section shall affect the liability of any person to a penalty in respect of any such contravention. 40

“(7) A company shall, within 6 weeks after each 31 December and 30 June, lodge with the Commissioner a statement, in accordance with a form approved by him, of such particulars of investments made by the company—

- (a) in related companies (including subsidiaries); and
 - (b) under trust schemes,
- as are specified in the form.

5 “(8) Where, in relation to the investment of moneys of a fund of a company, reference is made in this section to a related company, or to a subsidiary, the reference shall, unless the contrary intention appears, be read as a reference to a company that is related to, or a reference to a company that is a subsidiary of, as the case may be, the first-mentioned company.

10 “(9) A reference in this section to investment in a company shall be read as a reference to an investment by way of a loan to, or in shares in or debentures of, that company.

“(10) For the purposes of a provision of this section—

- 15 (a) the value as at a particular date (whether or not that date is referred to in that provision) of the assets, or of particular assets, of a fund of a company is the amount disclosed as the value of the assets, or of the particular assets, as the case may be—
 - 20 (i) in the last balance-sheet prepared by the company under paragraph 44 (1) (d) and lodged under sub-section 52 (2);
 - (ii) if no balance-sheet has been so lodged, in the last audited balance-sheet of the company; or
 - (iii) if there is no such audited balance-sheet, in a balance-sheet that is prepared by the company as at a date fixed by the Commissioner by notice in writing and is audited by a person approved under section 47;
- 25 (b) the value as at a particular date (whether or not that date is referred to in that provision) of the assets of a company is that amount disclosed as the value of the assets—
 - 30 (i) in the last balance-sheet prepared by the company under paragraph 44 (1) (d) and lodged under sub-section 52 (2);
 - (ii) if no balance-sheet has been so lodged, in the last audited balance-sheet of the company; or
 - 35 (iii) if there is no such audited balance-sheet, in a balance-sheet that is prepared by the company as at a date fixed by the Commissioner by notice in writing and is audited by a person approved under section 47;
- (c) an investment by way of a loan shall be deemed to be made on the day on which the loan agreement is entered into; and
- (d) assets of a fund of a company includes assets consisting of investments made before the commencement of this section.

40 “(11) In this section—

‘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—

- (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; 5
- (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

'fund', in relation to a company, means a statutory fund maintained by that company;

'moneys', in relation to a fund, means moneys that are assets of that fund; 20

'share', in relation to a company, means a share in the capital of the company, and includes stock;

'trust scheme' means a contract, scheme or arrangement made for the purpose of, or having the effect of, providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of property of any description, including choses in action and money." 25

Provisions in relation to the establishment of statutory funds in respect of classes of life insurance business

10. Section 40 of the Principal Act is amended— 30

(a) by inserting after sub-section (9) the following sub-sections:

“(10) Where it appears at any time to the Commissioner that a direction given to a company under sub-section (8) is no longer necessary or should be varied, the Commissioner shall, by notice in writing served on the company, revoke or vary the direction. 35

“(11) Where a company to which a direction under sub-section (8) has been given applies to the Commissioner, by notice in writing, for the direction to be revoked or varied, the Commissioner shall—

- (a) if it appears to him that the direction is no longer necessary or should be varied—revoke or vary the direction; or 40
- (b) in any other case—refuse to revoke or vary the direction, and shall serve on the company notice in writing of his decision.”; and

(b) by adding at the end thereof the following sub-section:

“(14) In this section, unless the contrary intention appears, ‘direction’ includes, where a direction is varied, the direction as varied.”.

5 **Accounts, balance-sheets, &c., to be signed and lodged with Commissioner**

11. Section 52 of the Principal Act is amended—

(a) by inserting after sub-section (3) the following sub-sections:

10 “(4) Where it appears at any time to the Commissioner that a direction given to a company under sub-section (3) is no longer necessary or should be varied, the Commissioner shall, by notice in writing served on the company, revoke or vary the direction.

15 “(5) Where a company to which a direction under sub-section (3) has been given applies to the Commissioner, by notice in writing, for the direction to be revoked or varied, the Commissioner shall—

(a) if it appears to him that the direction is no longer necessary or should be varied—revoke or vary the direction; or

(b) in any other case—refuse to revoke or vary the direction, and shall serve on the company notice in writing of his decision.”; and

(b) by adding at the end thereof the following sub-section:

20 “(7) In this section, unless the contrary intention appears, ‘direction’ includes, where a direction is varied, the direction as varied.”.

12. Section 54 of the Principal Act is repealed and the following sections are substituted:

Commissioner may demand information

25 “54. The Commissioner may demand in writing from a company—

(a) information that relates to any matter in connection with the business of the company or of a subsidiary of the company; or

(b) a copy of any document in the possession of the company that relates to any such matter.

30 **Power to require production of books**

35 “54A. (1) For the purpose of ascertaining whether a company has complied, or is complying with the provisions of this Act, the Commissioner or a person authorized by him, in writing, for the purposes of this section may require an officer of the company to produce to him any books required by or under this Act to be kept by the company and may inspect, take extracts from and make copies of any such books.

40 “(2) For the purpose of facilitating consideration of an application made, whether before or after the commencement of this sub-section, by a company for registration under this Act, the Commissioner or a person authorized by him, in writing, for the purposes of this section may require an officer of the company to produce to him any books of the company and may inspect, take extracts from and make copies of any such books.

“(3) An officer of a company shall comply with a requirement made under sub-section (1) or (2).

“(4) In this section, ‘officer’ includes a director or secretary, or an employee concerned in the management, of the company.

“(5) A person shall not obstruct or hinder the Commissioner or person authorized by him for the purposes of this section while the Commissioner or that person is exercising a power under this section.

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Penalty: \$1,000 or imprisonment for 3 months.

Access to premises

“54B. (1) For the purpose of ascertaining whether a company has contravened or failed to comply with the provisions of this Act, an authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the company.

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“(2) Where an authorized person has reason to believe that—

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(a) a company has contravened or failed to comply with the provisions of this Act; and

(b) there are, on any premises, books of the company,

the authorized person may make an application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the company.

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“(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation—

(a) that there is reasonable ground for believing that—

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(i) the company has contravened or failed to comply with the provisions of this Act; and

(ii) there are, on the premises, books of the company; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act,

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the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, and if necessary by force, for the purpose of searching for, inspecting, taking extracts from and making copies of any such books.

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“(4) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may search for, inspect, take extracts from and make copies of any books of the company.

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“(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under sub-section (3) or in pursuance of sub-section (4).

Penalty: \$1,000 or imprisonment for 3 months.

5 “(6) A reference in this section to an authorized person shall be read as a reference to the Commissioner or a person authorized by him, in writing, for the purposes of this section.”.

Power to make investigation

10 **13.** Section 55 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) a company has failed to comply with a provision of this Act, a direction given to the company under this Act or a condition imposed on the company under section 20;”.

Action after completion of investigation

15 **14.** Section 58 of the Principal Act is amended by adding at the end thereof the following sub-sections:

20 “(3) Where it appears at any time to the Commissioner that a direction issued to a company under paragraph (1) (b) is no longer necessary or should be varied, the Commissioner shall, by notice in writing served on the company, revoke or vary the direction.

“(4) Where a company to which a direction under paragraph (1) (b) has been issued applies to the Commissioner, by notice in writing, for the direction to be revoked or varied, the Commissioner shall—

25 (a) if it appears to him that the direction is no longer necessary or should be varied—revoke or vary the direction; or

(b) in any other case—refuse to revoke or vary the direction, and shall serve on the company notice in writing of his decision.

“(5) In this section, unless the contrary intention appears, ‘direction’ includes, where a direction is varied, the direction as varied.”.

30 **Review of certain decisions**

15. Section 138 of the Principal Act is amended—

(a) by inserting in the definition of “person affected by a reviewable decision” in sub-section (1) “the company in relation to which the decision was made and” after “means”;

35 (b) by omitting paragraph (a) of that definition and substituting the following paragraph:

“(a) in the case of a refusal under section 4A to approve a person as an actuary for the purposes of this Act—that person; or”;

40 (c) by inserting before paragraph (a) of the definition of “reviewable decision” in sub-section (1) the following paragraph:

“(aa) a refusal to give an approval under sub-section 4A (3);”;

(d) by inserting after paragraph (b) of that definition the following paragraph:

“(ba) a decision under section 20;”;

(e) by inserting in paragraph (e) of that definition “or a decision under sub-section 40 (10) or (11)” after “sub-section 40 (8)”;

(f) by omitting from paragraph (g) of that definition “or a direction given under that sub-section” and substituting “, a direction given under sub-section 52 (3) or a decision under sub-section 52 (4) or (5)”;

(g) by adding at the end of paragraph (h) of that definition “or a decision under sub-section 58 (3) or (4)”;

(h) by adding at the end thereof the following sub-section:

“(16) In relation to a decision of the Treasurer under section 20, references in this section to the Commissioner shall be read as references to the Treasurer.”.

Statements to accompany notification of decisions

16. After section 138 of the Principal Act the following section is inserted:

“138A. (1) Where notice in writing is given to a person affected by a reviewable decision that the reviewable decision has been made, that notice shall include a statement to the effect that—

(a) the person may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Treasurer or the Commissioner, as the case may be, in accordance with sub-section 138 (2); and

(b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with a decision made by the Treasurer or the Commissioner upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

“(2) Where the Treasurer or the Commissioner confirms or varies a reviewable decision under sub-section 138 (4) and gives to a person notice in writing of the confirmation or variation of the decision, that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

“(3) Any failure to comply with the requirements of sub-section (1) or (2) in relation to a reviewable decision or a decision under sub-section 138 (4) does not affect the validity of that decision.

“(4) In this section, ‘person affected by a reviewable decision’ and ‘reviewable decision’ have the same respective meanings as in sub-section 138 (1).”.

Documents lodged or furnished under laws relating to acquisition of shares

17. Section 139A of the Principal Act is amended by omitting sub-section (2).

Offences

5 18. Section 148 of the Principal Act is amended by inserting after paragraph (1) (a) the following paragraph:

“(aa) a condition imposed under section 20;”.

Formal amendments

19. The Principal Act is amended as set out in the Schedule.

SCHEDULE
FORMAL AMENDMENTS

Section 19

Provision amended	Omit—	Substitute—
Sub-section 4 (1) (definition of “Commonwealth securities”)	1936-1973	1936
Sub-section 4 (1) (definition of “financial year”)	twelve	12
Sub-section (4) (1) (definition of “industrial policy”)	two	2
Sub-section 4 (1) (paragraph (aa) of the definition of “life insurance business”)	1904-1972	1904
Sub-section 4 (1) (definition of “public securities”)	1936-1973	1936
Sub-section 11 (3)	fifteen	15
Sub-section 23A (1)	twelve	12
Sub-section 40 (3)	six	6
Sub-section 40 (7)	six	6
Sub-section 42B (1)	1936-1973	1936
Sub-section 48 (1)	five	5
Sub-section 52 (1)	two	2
Sub-section 52 (2)	ten	10
Paragraph 52 (2) (a)	five	5
Paragraph 52 (2) (b)	six	6
Sub-section 52 (2)	three	3
Sub-section 52 (3)	fourteen	14
Sub-section 55 (1)	fourteen	14
Sub-section 58 (2)	twelve	12
Sub-section 69 (2)	ten	10
Paragraph 75 (1) (b)	fifteen	15
Paragraph 75 (1) (e)	fifteen	15
Paragraph 84 (b)	three	3
Sub-section 85 (1)	ten; sixteen	10 16
Sub-section 85 (2)	sixteen	16
Sub-section 85 (3)	sixteen	16
Paragraph 86 (1) (a)	twenty-one	21
Sub-section 92 (1)	1966-1973	1966
Sub-section 92 (2)	1966-1973	1966
Sub-section 94 (1)	1966-1973	1966
Sub-section 96 (1)	three	3
Sub-section 97 (1)	six	6
Sub-section 97 (2)	six	6
Paragraph 100 (1) (a)	three	3
Sub-section 100 (4)	three	3
Sub-paragraph 100 (4) (a) (ii)	twenty-eight	28
Paragraph 100 (4) (b)	twenty-eight	28
Sub-section 101 (1)	four	4
Sub-section 101 (2)	two; eight	2 8
Sub-section 101 (3)	two; twelve	2 12
Sub-section 101 (4)	three	3
Paragraph 103 (1) (b)	two	2
Paragraph 103A (4) (b)	two	2
Sub-section 106 (1)	three	3
Section 108 (definition of “repayment of premiums”)	8 per centum per annum	8% per year
Section 109	ten (twice occurring)	10
Section 110	ten	10
Sub-section 111 (4)	ten	10
Sub-section 111 (6)	ten	10
Section 112	ten (wherever occurring)	10
Sub-section 114 (1) (definition of “child’s advancement policy”)	twenty-one	21
Sub-section 114 (1) (definition of “vesting age”)	twenty-five; ten	25 10

SCHEDULE—continued

Provision amended	Omit—	Substitute—
Sub-section 119 (8)	six	6
Sub-section 123 (1)	twenty-eight; sixteen	28 16
Section 124	twenty-eight	28
Paragraph 128 (1A) (a)	two (twice occurring)	2
Sub-section 128 (2)	two	2
Sub-section 140 (2)	three	3
Sub-section 144 (1)	three	3
Sub-section 148 (4)	three	3
Paragraph 150 (b)	four	4

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