



# Insurance Laws Amendment Act 1991

No. 1 of 1992

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# Insurance Laws Amendment Act 1991

No. 1 of 1992

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**An Act to amend the *Insurance Act 1973* and the *Life Insurance Act 1945*, and for related purposes**

[Assented to 6 January 1992]

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

- 5      1. This Act may be cited as the *Insurance Laws Amendment Act 1991*.

### Commencement

2. This Act commences on the day on which it receives the Royal Assent.

## **PART 2—AMENDMENT OF THE INSURANCE ACT 1973**

### **Principal Act**

3. In this Part, “**Principal Act**” means the *Insurance Act 1973*<sup>1</sup>.

### **Interpretation**

4. Section 3 of the Principal Act is amended by inserting the following definitions: 5

“**‘actuary’** has the meaning given by section 3A;

**‘outstanding claims provision’**, in relation to a body corporate, means so much of the total provision for liabilities made in its accounts as consists of provision for claims, reduced by any allowance made in its accounts for reinsurance recoverables in respect of the claims;” 10

5. After section 3 of the Principal Act the following section is inserted:

### **Interpretation—actuaries**

“3A. (1) Unless the contrary intention appears, a reference in this Act to an actuary is 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 a person in respect of whom there is in force an approval by the Commissioner under subsection (2). 20

“(2) The Commissioner may approve, in writing, a person who is not a Fellow of The Institute of Actuaries of Australia as an actuary for the purposes of this Act if the Commissioner is satisfied that the person has actuarial qualifications and experience that fit the person to perform the functions of an actuary under this Act.”. 25

### **Authority to commence carrying on insurance business**

6. Section 23 of the Principal Act is amended:

(a) by omitting from paragraph (a) “\$500,000” and substituting “\$2,000,000”;

(b) by omitting from paragraphs (b) and (c) “\$1,000,000” and substituting “\$2,000,000”. 30

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

7. Section 24 of the Principal Act is amended:

(a) by omitting from paragraph (a) “\$500,000” and substituting “\$2,000,000”; 35

(b) by omitting from paragraphs (b) and (c) “\$1,000,000” and substituting “\$2,000,000”;

(c) by omitting from subparagraphs (b) (ii) and (c) (ii) “made,” and substituting “made; or”; 40

- (d) by inserting after subparagraph (b) (ii) the following subparagraph:

“(iii) 15% of its outstanding claims provision as at the end of its financial year last preceding the financial year in which the application is made;”;

- (e) by omitting from paragraphs (b) and (c) “greater” and substituting “greatest”;

- (f) by inserting after subparagraph (c) (ii) the following subparagraph:

“(iii) 15% of its outstanding claims provision in respect of liabilities in Australia as at the end of its financial year last preceding the financial year in which the application is made;”.

**Conditions to which authority is subject**

8. Section 29 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “\$500,000” and substituting “\$2,000,000”;

- (b) by omitting from paragraphs (1) (b) and (c) “\$1,000,000” and substituting “\$2,000,000”;

- (c) by omitting from subparagraphs (1) (b) (ii) and (c) (ii) “year,” and substituting “year; or”;

- (d) by inserting after subparagraph (1) (b) (ii) the following subparagraph:

“(iii) 15% of its outstanding claims provision as at the end of its last preceding financial year;”;

- (e) by omitting from paragraphs (1) (b) and (c) “greater” and substituting “greatest”;

- (f) by inserting after subparagraph (1) (c) (ii) the following subparagraph:

“(iii) 15% of its outstanding claims provision in respect of liabilities in Australia as at the end of its last preceding financial year;”.

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

9. Section 37 of the Principal Act is amended by omitting “Treasurer” (wherever occurring) and substituting “Commissioner”.

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

10. (1) Section 44 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (e) “premium income and earned premiums” and substituting “premiums and of reinsurance expense”;

- (b) by inserting in paragraph (2)(g) “expense and of claims recoveries revenue” after “claims”;
  - (c) by inserting in paragraph (2)(h) “and of claims recoveries” after “claims”;
  - (d) by omitting from paragraph (2)(j) “management” and substituting “general”;
  - (e) by omitting paragraph (2)(k) and substituting the following paragraph:
    - “(k) except in relation to a body corporate to which subsection (6) applies—a statement:
      - (i) of the cost of meeting claims; and
      - (ii) of reinsurance recoverables.”.
- (2) Section 44 of the Principal Act is amended:
- (a) by omitting from subsection (6) all the words after “weeks” and substituting “after the last day of each quarter of the year, lodge with the Commissioner a statement of claims that:
    - (a) are in respect of liabilities in Australia; and
    - (b) exceed a prescribed amount; and
    - (c) were notified to the body corporate during that quarter.”;
  - (b) by inserting after subsection (6) the following subsection:
    - “(6A) In subsection (6):  
‘quarter’ means the period of 3 months ending on 31 March, 30 June, 30 September or 31 December.”.
11. After section 48 of the Principal Act the following sections are inserted:
- Actuarial investigation of outstanding claims provision**
- “48A. (1) This section applies to bodies corporate authorised under this Act to carry on insurance business.
- “(2) The Commissioner may, by notice in writing given to a body corporate, require the body corporate to appoint an actuary to:
- (a) carry out an investigation of the whole or a specified part of the body corporate’s outstanding claims provision as at a particular time; and
  - (b) make a report on that investigation.
- “(3) The actuary must not be an officer of the body corporate.
- “(4) The body corporate must, within 7 days after the date on which the notice was given, advise the Commissioner, in writing, of the name of the actuary.
- “(5) If the Commissioner notifies the body corporate that the actuary is not acceptable to the Commissioner, the body corporate must, within 7 days after the date on which the notice was given:

- (a) appoint a different actuary; and
- (b) advise the Commissioner, in writing, of the name of the actuary so appointed.

5 “(6) The Commissioner may, within 7 days after the advice was given under subsection (4) or (5), notify the body corporate, in writing, that the actuary is not acceptable to the Commissioner.

“(7) The body corporate must cause the actuary’s report to be given to the Commissioner:

- 10 (a) within 30 days after the date on which the notice was given to the body corporate under subsection (2); or
- (b) within such further time as the Commissioner, by written notice, allows.

“(8) The actuary’s report:

- 15 (a) must be signed by the actuary; and
- (b) must contain a statement of the actuary’s opinion about each of the following:
  - (i) the adequacy of the amount of the whole or the part, as the case requires, of the outstanding claims provision;
  - 20 (ii) the accuracy of any relevant valuations made by the actuary;
  - (iii) the assumptions used by the actuary in making those valuations;
  - (iv) the relevance and appropriateness of the information on which those valuations were based;
  - 25 (v) the accuracy of the information on which those valuations were based.

“(9) A body corporate that contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding \$10,000.

“(10) In this section:

30 ‘officer’, in relation to a body corporate, has the same meaning as in the *Corporations Act 1989*.

**Commissioner may reconsider delegate’s decisions under subsection 48A (7)**

“48B. (1) If:

- 35 (a) a delegate of the Commissioner makes a decision under paragraph 48A (7) (b) allowing, or refusing to allow, further time; and
  - (b) the body corporate concerned is dissatisfied with the decision;
- 40 the body corporate may, by written notice given to the Commissioner within 21 days after the day on which the decision first comes to the notice of the body corporate, request the Commissioner to reconsider the decision.

“(2) The reasons for making the request must be set out in the request.

“(3) Upon receipt of the request, the Commissioner must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the Commissioner thinks fit.

“(4) If the Commissioner does not confirm, revoke or vary the decision before the end of the period of 21 days after the day on which the Commissioner received the request under subsection (1) to reconsider the decision, the Commissioner is taken, at the end of that period, to have confirmed the decision under subsection (3).

“(5) If the Commissioner confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the Commissioner must, by written notice given to the applicant, inform the applicant of the result of the reconsideration of the decision.”.

### **Interpretation**

12. Section 50 of the Principal Act is amended by omitting from subsection (1) the definition of “inspector”.

### **Investigation of body corporate by Commissioner or inspector**

13. Section 52 of the Principal Act is amended:

(a) by omitting from subsection (1) all of the words after “why” and substituting “the Commissioner should not, on specified grounds:

(c) investigate the whole or any part of the business of the body corporate; or

(d) appoint a person to make such an investigation and report to the Commissioner the results of his or her investigation.”;

(b) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:

“(2) If:

(a) the body corporate fails, within the period specified in the notice, to show cause to the satisfaction of the Commissioner why an investigation should not be made; and

(b) the Commissioner is satisfied that, in relation to the insurance business carried on by the body corporate, it is in the public interest that an investigation should be made;

the Commissioner may:

(c) make the investigation himself or herself; or

- (d) by signed instrument, appoint a person (in this Part called the ‘**inspector**’) to make the investigation.

“(3) If:

- (a) the Commissioner has decided that an investigation of a body corporate (in this section called the ‘**first body corporate**’) should be made; and

- (b) another body corporate (in this section called the ‘**associated body corporate**’) is, or has at some relevant time been, associated with the first body corporate; and

- (c) the Commissioner believes on reasonable grounds that it is necessary for the purposes of the investigation to investigate the whole or a part of the affairs of the associated body corporate;

the Commissioner may:

- (d) make an investigation into the whole or that part of the affairs of the associated body corporate; or

- (e) authorise the inspector to make such an investigation.

“(4) Before commencing an investigation of a body corporate, the Commissioner or the inspector, as the case may be, must serve on the body corporate:

- (a) in all cases—a written notice by the Commissioner specifying the matters into which the investigation is to be made, being the whole or some part of affairs of the body corporate; and

- (b) in the case of the inspector—a copy of the instrument appointing the inspector.

“(5) The inspector is to be a person resident in Australia.

“(6) The inspector is taken, for the purposes of section 126, to be a member of the staff assisting the Commissioner.”.

### **Repeal of section 53**

14. Section 53 of the Principal Act is repealed.

### **Entry on premises**

15. Section 54 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Where an inspector empowered to investigate” and substituting “If the Commissioner or the inspector, while investigating”;

- (b) by omitting from subsection (2) “An inspector” and substituting “The Commissioner or the inspector”;

- (c) by inserting in subsection (2) “the Commissioner or” after “possession of”;

- (d) by omitting from subsection (3) “an inspector” and substituting “the Commissioner or the inspector”.

**Powers of the Commissioner or the inspector**

**16.** Section 55 of the Principal Act is amended:

- (a) by omitting from subsection (1) “An inspector” and substituting “The Commissioner or the inspector”;
- (b) by omitting from subsection (1) and (2) “the inspector” (wherever occurring) and substituting “the Commissioner or the inspector”;
- (c) by omitting from subsections (2) and (3) “an inspector” and substituting “the Commissioner or the inspector”.

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**Persons to comply with requirements of the Commissioner or the inspector**

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**17.** Section 56 of the Principal Act is amended:

- (a) by omitting “an inspector” (wherever occurring) and substituting “the Commissioner or the inspector”;
- (b) by omitting from subsection (2) “the inspector” (wherever occurring) and substituting “the Commissioner or the inspector”.

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**Person may be represented by a legal practitioner**

**18.** Section 57 of the Principal Act is amended:

- (a) by omitting “an inspector” and substituting “the Commissioner or the inspector”;
- (b) by omitting from paragraph (b) “the inspector” (wherever occurring) and substituting “the Commissioner or the inspector”.

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**Notes of examination of person**

**19.** Section 58 of the Principal Act is amended:

- (a) by omitting from subsection (1) “An inspector” and substituting “The Commissioner or the inspector”;
- (b) by omitting from subsection (2) “the inspector” and substituting “the Commissioner or the inspector”;
- (c) by omitting subsection (3) and substituting the following subsection:

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“(3) If the inspector causes notes to be recorded under this section, the notes must be given to the Commissioner with the report of the investigation concerned.”.

**Delegation**

**20.** Section 59 of the Principal Act is amended:

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- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(1) The Commissioner or the inspector may, by instrument in writing signed by him or her, delegate to a member of the staff assisting the Commissioner any or all of his or her powers under this Part.”;

40

(b) by omitting subsections (4) and (5).

**Report of the Commissioner or the inspector**

21. Section 60 of the Principal Act is amended:

5 (a) by omitting from subsection (1) “An inspector, not being the Commissioner—” and substituting “The inspector.”;

(b) by omitting subsection (1A) and substituting the following subsection:

10 “(1A) The Commissioner must, on a completion or termination of an investigation made by the Commissioner, make a report in writing on the result of the investigation.”;

(c) by omitting from subsections (2) and (3) “the inspector” (wherever occurring) and substituting “the Commissioner or the inspector”;

15 (d) by omitting from subsection (4) “An inspector” and substituting “The Commissioner or the inspector”;

(e) by omitting from subsection (4) all of the words after “a specified person has committed a criminal offence”;

(f) by omitting subsection (4A) and substituting the following subsection:

20 “(4A) If the inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, the inspector must advise the Commissioner, in writing, of that opinion.”;

25 (g) by omitting from subsections (5), (6) and (7) “Treasurer” and substituting “Commissioner”;

(h) by omitting from subsection (5) “or forwarded” and substituting “by or”.

**Directions**

30 22. Section 62 of the Principal Act is amended by omitting “Treasurer” (wherever occurring) and substituting “Commissioner”.

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

23. Section 105 of the Principal Act is amended by inserting in subsection (7) “, as in force before the commencement of the *Insurance Laws Amendment Act 1991*”, before “apply”.

35 24. After section 117 of the Principal Act the following section is inserted:

**Bankrupts and persons convicted of certain offences not to be directors, principal executive officers etc. of authorised insurers**

40 “117A. (1) For the purposes of this section, a person is a disqualified person if, at any time, whether before or after the commencement of this section:

- (a) the person has been convicted of an offence against or arising out of this Act; or
- (b) the person has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of: 5
  - (i) conduct relating to insurance; or
  - (ii) dishonest conduct; or
- (c) the person has:
  - (i) become bankrupt; or
  - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or 10
  - (iii) compounded with his or her creditors.

“(2) A disqualified person must not:

- (a) be, or act as, a director or principal executive officer of a body corporate (other than a foreign body corporate) authorised under this Act to carry on insurance business; or 15
- (b) be, or act as, a local executive officer of a foreign body corporate authorised under this Act to carry on insurance business.

Penalty: Imprisonment for 2 years.

“(3) A body corporate (other than a foreign body corporate) authorised under this Act to carry on insurance business must not permit a disqualified person to be, or act as, a director or principal executive officer of the body corporate. 20

Penalty: \$25,000.

“(4) A foreign body corporate authorised under this Act to carry on insurance business must not permit a disqualified person to be, or act as, a local executive officer of the body corporate. 25

Penalty: \$25,000.

“(5) In a prosecution under subsection (3) or (4), it is a defence if the defendant proves that: 30

- (a) the defendant did not know, and had no reasonable grounds to suspect, that the person was a disqualified person; and
- (b) the defendant had made all reasonable efforts to ascertain whether the person was a disqualified person.

“(6) A failure to comply with this section does not affect the validity of an appointment or transaction. 35

“(7) A reference in subsection (1) to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence. 40

“(8) In this section:

**‘foreign body corporate’** means a body corporate that is not incorporated in Australia;

**‘local executive officer’** in relation to a foreign body corporate, means:

(a) a natural person:

- 5 (i) who is a resident of Australia; and
- (ii) who is solely or principally responsible for the management of the insurance business of the body corporate in Australia; or

(b) an agent of the body corporate appointed under section 118;

10 **‘principal executive officer’**, in relation to a company, means the principal executive officer of the body corporate for the time being, by whatever name called, and whether or not he or she is a director.”.

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

15 **25.** Section 123 of the Principal Act is amended by adding at the end the following subsections:

“(2) A person may, on application in accordance with the regulations and on payment of the prescribed fee (if any):

(a) inspect:

- 20 (i) such other accounts or statements lodged with the Commissioner under section 44; or
- (ii) such parts of such other accounts or statements lodged with the Commissioner under section 44;

as:

- 25 (iii) are specified by the Commissioner by notice published in the *Gazette*; and
- (iv) were lodged by bodies corporate of a kind specified in the notice; and

(b) make a copy of, or take extracts from:

- 30 (i) if subparagraph (a) (i) applies—such an account or statement; or
- (ii) if subparagraph (a) (ii) applies—such parts of such an account or statement.”.

35 “(3) For the purposes of this section, if information contained in a document lodged with the Commissioner has been stored in electronic form by the Commissioner, a person is taken to have made a copy of, or taken an extract from, that document if the Commissioner gives the person a printout of, or of the relevant parts of, the information.

40 “(4) If an applicant under subsection (1) or (2) requests that a copy be provided in an electronic form, the Commissioner may provide the relevant information:

- (a) on a data processing device; or
- (b) by way of electronic transmission.

“(5) In this section:

‘**data processing device**’ means any article or material (for example, a disc) from which information is capable of being reproduced with or without the aid of any other article or device.”.

**Offences**

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26. Section 128 of the Principal Act is amended:

- (a) by inserting in subsection (1) “48A (9),” before “51 (5)” (first occurring);
- (b) by omitting from subsection (1) “or 109 (3)” (first occurring) and substituting “, 109 (3) or 117A (3) or (4)”;
- (c) by inserting in paragraph (1) (a) “48A (9),” before “62 (9)”;
- (d) by omitting from paragraph (1) (b) “or 105 (15)” and substituting “, 105 (15) or 117A (3) or (4)”.

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**Costs of investigations**

27. Section 131 of the Principal Act is amended by omitting “, 53”.

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**Application of amendments—section 29 of the Principal Act**

28. The amendments made by section 8 apply to the conditions applicable to a body corporate during a financial year of the body corporate that commences after the commencement of this section.

**Application of amendments—accounts and statements**

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29. The amendments made by subsection 10 (1) apply to the accounts and statements of a body corporate for a financial year of the body corporate ending on or after 30 June 1992.

**Application of amendments—accounts of reinsurers**

30. The amendments made by subsection 10 (2) apply in relation to:

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- (a) months in a quarter that commences after the commencement of this section; and
- (b) quarters that commence after the commencement of this section.

**Transitional—phasing-in of capital and solvency requirements**

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31. (1) In this section:

“**amended Act**” means the Principal Act as amended by this Act;

“**insurance company**” means a body corporate authorised under the *Insurance Act 1973* to carry on insurance business;

“**interim year**” in relation to an insurance company, means one of the first 3 financial years of the insurance company commencing after the commencement of this section.

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(2) Section 29 of the amended Act applies to an insurance company in relation to an interim year of that insurance company specified in

the following table as if a reference in that section to the amount specified in the left-hand column of the table were a reference to the amount specified in whichever of the right-hand columns is applicable:

Reference in section 29	1st interim year	2nd interim year	3rd interim year
\$2,000,000	\$1,000,000	\$1,500,000	\$1,500,000

- 5     (3) Section 29 of the amended Act applies to an insurance company in relation to an interim year of that insurance company specified in the following table as if a reference in that section to a percentage specified in the left-hand column of the table were a reference to the percentage specified in whichever of the right-hand columns is applicable:

Reference in section 29	1st interim year	2nd interim year	3rd interim year
15%	5%	10%	12.5%

10    **Transitional—exemptions under section 37**

- 15     32. In spite of the amendments made by section 9 of this Act, the Principal Act continues to apply, in relation to an exemption given by the Treasurer under section 37 of the Principal Act before the commencement of this section, as if those amendments had not been made.

**Transitional—investigations**

- 20     33. In spite of the amendments made by sections 12 to 21 (inclusive) and 27 of this Act, the Principal Act continues to apply, in relation to any matter, investigation or other thing arising out of a notice served under subsection 52 (1) of the Principal Act before the commencement of this section, as if those amendments had not been made.

**Transitional—pre-commencement directions under section 62 of the Principal Act given by Treasurer**

- 25     34. In spite of the amendments made by section 22 of this Act, the Principal Act continues to apply, in relation to a direction given by the Treasurer under section 62 of the Principal Act before the commencement of this section, as if those amendments had not been made.

**Transitional—section 123 of the Principal Act**

- 30     35. (1) In this section:  
“amended Act” means the Principal Act as amended by this Act.

(2) For the purposes of the amended Act, regulations made for the purposes of section 123 of the Principal Act have effect as if they were

made for the purposes of subsections 123 (1) and (2) of the amended Act.

### **PART 3—AMENDMENT OF THE LIFE INSURANCE ACT 1945**

#### **Principal Act**

36. In this Part, “**Principal Act**” means the *Life Insurance Act 1945*. 5

#### **Interpretation**

37. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘**eligible asset**’ has the meaning given by section 4B;”.

38. After section 4A of the Principal Act the following section is 10  
inserted:

#### **Interpretation—eligible assets**

“4B. (1) A reference in this Act to an eligible asset of a company (in this section called the ‘**first company**’) is a reference to an asset of the first company other than an asset invested in a related company. 15

“(2) A reference in subsection (1) to an asset invested in a related company does not include a reference to an asset where:

(a) both of the following conditions are satisfied:

- (i) the related company is a subsidiary of the first company;
- (ii) no part of the asset is re-invested, whether directly or indirectly, through one or more interposed bodies corporate, trusts or partnerships, with a company that: 20

(A) is related to the first company; and;

(B) is not a subsidiary of the first company; or

(b) the investment consists of a loan to (including deposit with), or a share in, or debentures of: 25

(i) a bank as defined by subsection 5 (1) of the *Banking Act 1959*; or

(ii) a bank constituted by a law of a State; or

(c) the investment consists of a loan to (including deposit with) a prescribed dealer in the short-term money market. 30

“(3) In this section:

‘**debenture**’ has the same meaning as in section 39;

‘**investment**’ has the same meaning as in section 39;

‘**prescribed dealer in the short-term money market**’ has the same meaning as in section 39; 35

‘**share**’ has the same meaning as in section 39.”.

**Registration of companies**

39. Section 19 of the Principal Act is amended:

(a) by inserting in paragraph (2) (aa) “is incorporated in Australia and” after “company”;

5 (b) by omitting from paragraph (2) (aa) “\$2,000,000” and substituting “\$10,000,000”;

(c) by inserting after paragraph (2) (aa) the following paragraphs:

10 “(ab) where the company is incorporated in Australia but does not have a share capital—that the value of the eligible assets of the company is not less than \$10,000,000;

(ac) where the company is a foreign company—that the value of the eligible assets in Australia of the company is not less than \$10,000,000;”.

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

**Capital and solvency requirements**

“19A. (1) A company that is incorporated in Australia, is registered under this Act and has a share capital must at all times have an adjusted paid-up share capital of not less than \$10,000,000.

20 “(2) The reference in subsection (1) to the adjusted paid-up share capital of a company is a reference to the sum of its paid-up share capital and the amount standing to the credit of its share premium account.

25 “(3) A company that is incorporated in Australia and is registered under this Act but does not have a share capital must at all times have eligible assets (other than assets in a statutory fund) the value of which is not less than \$10,000,000.

30 “(4) A foreign company that is registered under this Act must at all times have eligible assets in Australia (other than assets in a statutory fund) the value of which is not less than \$10,000,000.

35 “(5) A company that is registered under this Act must at all times have eligible assets (other than assets in a statutory fund) the value of which exceeds the amount of its liabilities (other than liabilities in respect of share capital or liabilities that may be met by applying assets in a statutory fund) by \$5,000,000.”.

**Actuarial reports, abstracts and statements of life insurance business**

41. Section 48 of the Principal Act is amended by omitting from subsection (1) all the words from and including “5 years” to and including “Division” and substituting “12 months”.

**Accounts, balance-sheets etc. to be signed and lodged with Commissioner**

**42.** Section 52 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “5 months” and substituting “3 months”;
- (b) by omitting from paragraph (2) (b) “6 months” and substituting “15 weeks”.

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**43.** After section 54B of the Principal Act the following section is inserted:

**Inquiry by Commissioner and direction not to deal with certain assets**

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“54C. (1) This section applies to a company registered under this Act if it appears to the Commissioner that the company is, or is likely to become, unable to meet its liabilities.

“(2) The Commissioner may, by notice in writing served on the company, direct it to give to the Commissioner, within such period as is specified in the notice, such information in writing about the affairs of the company as is specified in the notice.

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“(3) The period specified in a notice under subsection (2) must end later than 7 days after the date of service of the notice.

“(4) The Commissioner may, by written notice served on the company, direct it, in relation to an asset specified in the notice:

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- (a) in any case—not to dispose of or otherwise deal with the asset during such period as is specified in the notice; or
- (b) if the asset is in Australia—not to remove the asset from Australia during such period as is specified in the notice.

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“(5) The period specified in a notice under subsection (4) must end earlier than 6 months after the date of service of the notice.

“(6) A failure to comply with subsection (4) does not affect the validity of a transaction.

“(7) A direction under subsection (4) in respect of a company ceases to have effect if the company is commenced to be wound up.

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“(8) A company which contravenes a direction given to it under this section is guilty of an offence punishable on conviction by a fine not exceeding \$1,000,000.”.

**44.** After section 57 of the Principal Act the following section is inserted:

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**Directions during or after investigation**

“57A. (1) If an investigation under this Division in respect of any company is being or has been made and it appears to the Commissioner:

- (a) that the company is, or is about to become, unable to meet its liabilities; or

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- (b) the company has contravened a provision of this Act; or
- (c) the company has contravened a condition or direction applicable to it under this Act;

5 the Commissioner may, by written notice served on the company, give directions to the company about its life insurance business.

“(2) The directions the Commissioner may give under this section include, but are not limited to, directions that the company is not to issue any further policies (other than paid up policies as required by this Act).

10 “(3) A direction issued to a company under this section must not remain in force for more than 12 months.

“(4) Subsection (3) does not prevent the Commissioner from issuing further directions to the company.

15 “(5) If it appears to the Commissioner that a direction is no longer necessary or should be varied, the Commissioner must, by notice served on the company, revoke or vary the direction.

“(6) If a company to which a direction has been issued applies to the Commissioner, in writing, for the direction to be revoked or varied, the Commissioner must:

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- (a) if it appears to the Commissioner 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.

“(7) The Commissioner must serve on the company written notice of a decision made under subsection (6).

25 “(8) A failure to comply with a direction under this section does not affect the validity of a transaction.

“(9) A direction under this section in respect of a company ceases to have effect if the company is commenced to be wound up.

30 “(10) A company which contravenes a direction given to it under this section is guilty of an offence punishable on conviction by a fine not exceeding \$20,000.

“(11) In this section:

‘direction’ includes, if a direction is varied, the direction as varied.”.

#### **Review of certain decisions**

35 **45.** Section 138 of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (g) of the definition of “reviewable decision” in subsection (1);
- (b) by inserting after paragraph (g) of the definition of “reviewable decision” in subsection (1) the following paragraph:

- “(ga) a direction given under subsection 57A (1) or a decision under subsection 57A (5) or (6);”;
- (c) by omitting “(4).” from paragraph (h) of the definition of “reviewable decision” in subsection (1) and substituting “(4); or”;
- (d) by adding at the end of the definition of “reviewable decision” in subsection (1) the following paragraph:
  - “(i) a direction given under subsection 54C (4).”.

46. After section 146 of the Principal Act the following section is inserted:

**Bankrupts and persons convicted of certain offences not to be directors, principal executive officers etc. of registered life insurers**

“146A. (1) For the purposes of this section, a person is a disqualified person if, at any time, whether before or after the commencement of this section:

- (a) the person has been convicted of an offence against or arising out of this Act; or
- (b) the person has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of:
  - (i) conduct relating to insurance; or
  - (ii) dishonest conduct; or
- (c) the person has:
  - (i) become bankrupt; or
  - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounded with his or her creditors.

“(2) A disqualified person must not:

- (a) be, or act as, a director or principal executive officer or the appointed actuary of a company (other than a foreign company) registered under this Act; or
- (b) be, or act as, a local executive officer or the appointed actuary of a foreign company registered under this Act.

Penalty: Imprisonment for 2 years.

“(3) A company (other than a foreign company) registered under this Act must not permit a disqualified person to be, or act as, a director or principal executive officer or the appointed actuary of the company.

Penalty: \$25,000.

“(4) A foreign company registered under this Act must not permit a disqualified person to be, or act as, a local executive officer or the appointed actuary of the company.

Penalty: \$25,000.

“(5) In a prosecution under subsection (3) or (4), it is a defence if the defendant proves that:

- (a) the defendant did not know, and had no reasonable grounds to suspect, that the person was a disqualified person; and
- 5 (b) the defendant had made all reasonable efforts to ascertain whether the person was a disqualified person.

“(6) A failure to comply with this section does not affect the validity of an appointment or transaction.

- 10 “(7) A reference in subsection (1) to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence.

“(8) In this section:

- 15 ‘**local executive officer**’, in relation to a foreign company, means:

- (a) a natural person:
  - (i) who is a resident of Australia; and
  - (ii) who is solely or principally responsible for the management of the life insurance business of the company in Australia; or
- 20 (b) the principal officer of the company appointed under section 21;

- 25 ‘**principal executive officer**’, in relation to a company, means the principal executive officer of the company for the time being, by whatever name called, and whether or not he or she is a director.”.

### **Phasing-in of capital and solvency requirements**

47. (1) In this section:

“**interim year**”, in relation to a company, means:

- 30 (a) so much of the first financial year of the company ending after the commencement of this section as occurs after the commencement of this section; or
- (b) one of the 3 subsequent financial years of the company.

- 35 (2) Section 19A of the *Life Insurance Act 1945* applies to a company registered under that Act in relation to an interim year of that company specified in the following table as if a reference in that section to an amount specified in the left-hand column of the table were a reference to the amount specified in whichever of the right-hand columns is applicable:

*Insurance Laws Amendment No. 1, 1992*

Reference in section 19A	1st interim year	2nd interim year	3rd interim year	4th interim year
\$10,000,000	\$3,000,000	\$4,000,000	\$6,000,000	\$8,000,000
\$5,000,000	\$1,500,000	\$2,000,000	\$3,000,000	\$4,000,000

**Application—lodgment of annual returns**

48. The amendments made by section 42 of this Act apply to accounts, balance-sheets, abstracts, statements and returns in respect of a financial year of a company ending after the commencement of this section.

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**NOTES**

1. No. 76, 1973, as amended. For previous amendments, see No. 216, 1973; No. 157, 1976; No. 31, 1977; Nos. 92 and 177, 1981; No. 26, 1982; Nos. 54 and 129, 1983; No. 72, 1984; No. 187, 1985; No. 168, 1986; No. 99, 1987; Nos. 38 and 87, 1988; No. 16, 1989; and No. 32, 1991.
2. No. 28, 1945, as amended. For previous amendments, see Nos. 65 and 80, 1950; No. 94, 1953; No. 3, 1958; No. 93, 1959; No. 29, 1961; No. 145, 1965; Nos. 78 and 216, 1973; No. 32, 1977; No. 177, 1978; Nos. 92 and 176, 1981; No. 143, 1983; No. 74, 1984; No. 65, 1985; No. 99, 1987; No. 38, 1988; and No. 16, 1989.

*[Minister's second reading speech made in—  
House of Representatives on 6 June 1991  
Senate on 21 August 1991]*