



Life Insurance Policy Holders' Protection Levies Collection Act 1991

No. 3 of 1992

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Life Insurance Policy Holders' Protection Levies Collection Act 1991

No. 3 of 1992

An Act to provide for the collection and application of the levies imposed by regulations under the *Life Insurance Policy Holders' Protection Levies Act 1991*, and for other 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 *Life Insurance Policy Holders' Protection Levies Collection Act 1991*.

Commencement

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

Object of Act

3. The object of this Act is to provide a measure of financial protection for the policy holders of: 5

- (a) Occidental Life Insurance Company of Australia Limited; and
- (b) Regal Life Insurance Limited.

Application of Life Insurance Act

4. Part I of the *Life Insurance Act 1945* applies in relation to this Act in a corresponding way to the way in which it applies in relation to that Act. 10

Interpretation

5. In this Act, unless the contrary intention appears:

“associate” has the same meaning in relation to a person as that expression has in relation to a person in section 26AAB of the *Income Tax Assessment Act 1936*; 15

“Australian policy” means a life policy that is registered in a register kept at a registry in a State or a Territory;

“Australian proportion”, in relation to the value of the assets in a leviable fund of a company as at a particular time, means the amount equal to: 20

- (a) if the company gives to the Commissioner, within the period and in the manner and form specified in the regulations, a certificate by the appointed actuary—so much of the value of the assets as at that time as is attributable to Australian policies; 25
- or

- (b) in any other case—the value of the assets as at that time;

“bank” has the same meaning as in the *Banking Act 1959*;

“company” includes a body corporate that has ceased to carry on life insurance business in Australia; 30

“eligible company” means:

- (a) Occidental Life Insurance Company of Australia Limited; or
- (b) Regal Life Insurance Limited;

“final winding-up payment” means a payment under section 21; 35

“Fund” means the Life Insurance Policy Holders’ Protection Fund established by section 15;

“grant” means a payment under section 23 by way of a grant of financial assistance from the Fund;

“grant determination” means a determination under section 23; 40

“grant repayment” means a repayment under Part 5;

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“late payment penalty” means penalty payable under section 11;

“leviable fund”, in relation to a company, means a statutory fund maintained by the company other than:

- 5 (a) in all cases—a fund where no part of the value of the assets in the fund is attributable to Australian policies; or
- (b) in the case of an eligible company—a fund in respect of which a declaration under section 8 is in force;

“levy” means protection levy;

“person” includes:

- 10 (a) a body politic; or
- (b) a body corporate; or
- (c) a partnership; or
- (d) any other unincorporated association or body of persons; or
- (e) a person in a particular capacity of trustee;

15 **“protection levy”** means a levy imposed by regulations under the *Life Insurance Policy Holders' Protection Levies Act 1991*;

“separate notional account” means a separate notional account kept in accordance with section 18;

20 **“value”**, in relation to an asset of a company, in relation to a particular time, means the amount that, if:

- (a) a financial year of the company had ended at that time; and
- (b) the company had lodged accounts for that financial year with the Commissioner under section 52 of the *Life Insurance Act 1945*; and
- 25 (c) those accounts had been prepared in accordance with the applicable accounting principles;

would have been shown in those accounts as the value of the asset as at that time;

“winding-up advance” means a payment under section 20;

30 **“winding-up advance payment day”** has the meaning given by section 20;

“winding-up day”, in relation to the Fund, means the day on which a declaration that the Fund is to be wound up is made under section 21.

35 **Company's statutory accounts to be *prima facie* evidence of value of its assets**

6. (1) This section applies if:

- (a) a company has prepared accounts for a financial year in accordance with section 44 of the *Life Insurance Act 1945*; and
- 40 (b) the company has lodged those accounts with the Commissioner under section 52 of that Act; and
- (c) an amount is shown in those accounts as the value of an asset of the company as at the end of the financial year.

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(2) For the purposes of this Act, the accounts are *prima facie* evidence of the value of the asset as at the end of that financial year of the company.

(3) The Commissioner may certify that a document is a copy of the accounts. 5

(4) This section applies to the certified copy as if it were the original.

Commissioner to notify Australian proportion of value of assets in statutory funds

7. (1) As soon as practicable after the Commissioner receives a certificate under this Part by the appointed actuary of a company with respect to the Australian proportion of the value of the assets in a statutory fund of a company as at a particular time, the Commissioner must cause to be given to the company a notice setting out the amount that, in the Commissioner's opinion, is the Australian proportion of that value. 10 15

(2) For the purposes of this Act, a notice under subsection (1) is *prima facie* evidence that the amount specified in the notice is correct.

Non-leviable funds—eligible companies

8. (1) The Commissioner must declare a statutory fund maintained by an eligible company to be a non-leviable fund for the purposes of this Part if the Commissioner is satisfied that the statutory fund is in deficit. 20

(2) The Commissioner, in making a decision under subsection (1), must have regard to: 25

- (a) any advice received from the judicial manager or liquidator of the company concerned; and
- (b) other relevant matters.

(3) A declaration under subsection (1) is to be in writing and the Commissioner must cause a copy of the declaration to be served on the judicial manager or liquidator of the eligible company concerned. 30

**PART 2—COLLECTION OF LIFE INSURANCE POLICY
HOLDERS' PROTECTION LEVIES**

By whom levy payable

9. A levy imposed on the assets of a company is payable by the company. 35

When levy due for payment

10. A levy payable by a company is due and payable on the 28th day after the day on which the regulation imposing the levy took effect.

Penalty for non-payment of levy

5 11. (1) If any levy payable by a company remains unpaid after the time when it became due for payment, the company is liable to pay to the Commonwealth, by way of penalty, an amount calculated at the rate of 20% per year on the amount unpaid, computed from that time.

(2) The Commissioner may remit the whole or a part of an amount payable under this section.

Recovery of levy and late payment penalty

10 12. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) late payment penalty that is due and payable.

Levy may be paid out of statutory funds

15 13. In spite of anything in the *Life Insurance Act 1945*, the assets in a statutory fund may be applied in making a payment of levy.

Manner of payment of levy etc.

20 14. The regulations may make provision for and in relation to:
(a) exemptions from levy and remissions of levy; and
(b) the manner of payment for levy and late payment penalty; and
(c) the refund (or other application) of overpayments.

PART 3—LIFE INSURANCE POLICY HOLDERS' PROTECTION FUND

Life Insurance Policy Holders' Protection Fund

25 15. (1) An account called the Life Insurance Policy Holders' Protection Fund is established by this subsection.

(2) The Fund is a trust account for the purposes of section 62A of the *Audit Act 1901*.

30 (3) So far as practicable, money in the Fund that is not required for the purpose of making payments out of the Fund must be invested in accordance with section 62B of the *Audit Act 1901*.

Payments into Fund

35 16. There are to be paid into the Fund:
(a) amounts of levy; and
(b) income from the investment of money in the Fund; and
(c) grant repayments.

Purposes of Fund

17. The purposes of the Fund are as follows:

- (a) making grants; and
- (b) making winding-up advances; and
- (c) making final winding-up payments.

5

Separate notional accounts to be kept within Fund

18. (1) A separate notional account must be kept within the Fund for each company.

(2) The following amounts are credits to a company's separate notional account:

10

- (a) levy paid by the company;
- (b) amounts calculated using the formula:

$$\text{Non-levy amount} \times \frac{\text{Individual balance}}{\text{Total balance}}$$

where:

"Non-levy amount" means:

15

- (i) income from the investment of money in the Fund; or
- (ii) a grant repayment;

"Individual balance" means the number of dollars in the last credit balance of the company's separate notional account before the income was derived or the repayment was made, as the case may be;

20

"Total balance" means the total number of dollars in the amount last standing to the credit of the Fund before the income was derived or the repayment was made, as the case may be.

(3) The following amounts are debits to a company's separate notional account:

25

- (a) amounts calculated using the formula:

$$\text{Grant} \times \frac{\text{Individual balance}}{\text{Total balance}}$$

where:

"Grant" means the amount of a grant;

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"Individual balance" means the number of dollars in the last credit balance of the company's separate notional account before the grant was paid;

"Total balance" means the total number of dollars in the amount last standing to the credit of the Fund before the grant was paid;

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- (b) winding-up advances paid to the company;
- (c) final winding-up payments paid to the company.

(4) This section has effect subject to a scheme covered by section 19.

Transfer of equity in Fund

19. A scheme confirmed by the Court under Division 9 of Part III of the *Life Insurance Act 1945* may make provision for and in relation to the transfer of the whole or a part of:

- (a) the separate notional account of a company; and
- (b) the entitlements of a company under section 20 or 21.

Winding-up advances

20. (1) If the Commissioner is satisfied that further grants are unlikely to be paid for a considerable period, the Commissioner may, by notice published in the *Gazette*, determine that a specified day is a winding-up advance payment day.

(2) On a winding-up advance payment day, there is payable by the Commonwealth to each company whose separate notional account has a credit balance so much of the money in the Fund as represents that balance.

(3) Subsection (2) has effect subject to a scheme covered by section 19.

(4) A winding-up advance payment day must not be a day on which a regulation imposing a levy takes effect.

Winding-up of Fund

21. (1) If the Commissioner is satisfied that there are unlikely to be further payments to or from the Fund (other than income from the investment of money in the Fund), the Commissioner may, by notice published in the *Gazette*, declare that the Fund is to be wound up.

(2) On the winding-up day, there is payable by the Commonwealth to each company whose separate notional account has a credit balance so much of the money in the Fund as represents that balance.

(3) If, on a particular day after the winding-up day, an amount is paid into the Fund, there is payable by the Commonwealth to each company whose separate notional account has a credit balance so much of the money in the Fund as represents that balance.

(4) Subsections (2) and (3) have effect subject to a scheme covered by section 19.

**PART 4—GRANTS OF FINANCIAL ASSISTANCE FROM THE
FUND**

**Judicial manager or liquidator of eligible company may apply for grant
of financial assistance from the Fund**

22. (1) The judicial manager or liquidator of an eligible company may apply to the Commissioner for a grant of financial assistance from the Fund. 5

(2) An application must:

(a) be in writing; and

(b) be accompanied by such information as the Commissioner requires. 10

Grants of financial assistance from the Fund

23. (1) After considering the application, the Commissioner may determine that the eligible company is entitled to be paid a specified amount by the Commonwealth by way of a grant of financial assistance from the Fund. 15

(2) The Commissioner must not make a grant determination unless the Commissioner is satisfied:

(a) that the assets of the eligible company are insufficient to meet the liabilities of the eligible company covered by sub-subparagraphs 24 (1) (a) (i) (A), (B) and (C); or 20

(b) that it would be imprudent to realise the assets of the eligible company in order to meet the liabilities of the eligible company covered by sub-subparagraphs 24 (1) (a) (i) (A), (B) and (C).

(3) The Commissioner must cause a copy of a grant determination to be served on the judicial manager or liquidator of the eligible company concerned. 25

Conditions to which grant of financial assistance is subject

24. (1) A grant made to an eligible company is subject to the following conditions: 30

(a) a condition that the grant will be applied only:

(i) in any case—to meet the following liabilities of the eligible company:

(A) not more than 90% of so much of an amount due and payable by the eligible company under a life policy as is not excessive; 35

(B) not more than 90% of so much of an amount due and payable by the eligible company in respect of the surrender of a life policy as is not excessive;

(C) liabilities in respect of administrative expenses reasonably incurred by the eligible company in 40

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- meeting liabilities covered by sub-subparagraph (A) or (B);
- (D) such other liabilities (if any) as are specified by the Commissioner in the grant determination; or
- 5 (ii) if a scheme for the transfer or amalgamation of the whole or a part of the life insurance business of the eligible company is confirmed by the Court under Division 9 of Part III of the *Life Insurance Act 1945*—in payment to
- 10 another company, in accordance with the scheme, of the whole or a part of such of the liabilities of the eligible company as are covered by subparagraph (i);
- (b) a condition that the grant will be applied within such period as is specified in the grant determination;
- (c) a condition that a grant will not be invested except with a bank;
- 15 (d) such other conditions (if any) as are specified by the Commissioner in the grant determination.
- (2) Without limiting the generality of the conditions that may be specified under paragraph (1) (d), the conditions may:
- 20 (a) require the judicial manager or liquidator to prepare and give reports to the Commissioner; and
- (b) provide that, except with the written consent of the Commissioner, no part of the grant will be applied in a manner which benefits, or is capable of benefiting, whether directly or indirectly, through one or more interposed companies,
- 25 partnerships or trusts, any person:
- (i) who had authority to direct, or had control over, any part of the financial affairs of the eligible company at any time during a financial year of the eligible company during which acts or things which contributed to the
- 30 eligible company's financial difficulties were done or omitted to be done; or
- (ii) who may have contributed to the eligible company's financial difficulties; or
- (iii) who had any responsibility, whether under contract or otherwise, for managing or investing assets in a statutory fund of the eligible company at any time during a financial year of the eligible company during which acts or things which contributed to the eligible company's financial difficulties were done or omitted to be done; or
- 35 (iv) who may have profited, or stood to profit, either directly or indirectly, through one or more interposed companies, partnerships or trusts, from the eligible company's financial difficulties; or
- 40

- (v) who is an associate of a person covered by subparagraph (i), (ii), (iii) or (iv); and
- (c) provide that, except with the written consent of the Commissioner, the grant will be applied only in relation to such of the liabilities of the eligible company covered by subparagraph (1) (a) (i) as relate to a specified statutory fund of the eligible company. 5
- (3) For the purposes of this section, if the surrender value of a life policy cannot be readily ascertained from the policy, the amount due and payable by the company concerned in respect of the surrender of the policy is taken to be: 10
- (a) if the surrender value of the policy can be readily ascertained in accordance with the rules set out in Part II of the Sixth Schedule to the *Life Insurance Act 1945*—the amount calculated in accordance with those rules; or 15
- (b) in any other case—such amount as is ascertained in accordance with a written notice given to the company by the Commissioner.

PART 5—REPAYMENT OF GRANTS OF FINANCIAL ASSISTANCE 20

Repayment of overpayments of grants

25. If the amount of a grant paid to an eligible company at a particular time exceeds the total amount for which the grant may be applied at that time, the company is liable to repay to the Commonwealth the amount of the excess. 25

Repayment of grant if conditions are contravened

26. If a condition applicable to a grant paid to an eligible company is contravened, the company is liable to repay to the Commonwealth the amount of the payment.

Repayment of grant if a specified contingency happens 30

27. (1) If:

- (a) a grant has been paid to an eligible company; and
- (b) a contingency or event is specified in the grant determination for the purposes of this section; and
- (c) that contingency or event occurs; 35

then, on the occurrence of that contingency or event, the company is liable to repay to the Commonwealth the amount of the payment.

(2) The contingencies or events that may be specified in the grant determination include, but are not limited to, the satisfaction (in whole or in part) of a debt, a chose in action or any other right. 40

Remission of grant repayments

28. The Commissioner may remit the whole or a part of a grant repayment payable under section 26 or 27.

Recovery of grant repayments

5 29. A grant repayment may be recovered by the Commonwealth as a debt due to the Commonwealth.

Grant repayments may be paid out of statutory funds

10 30. In spite of anything in the *Life Insurance Act 1945*, the assets in a statutory fund of an eligible company may be applied in making a grant repayment.

Manner in which grant repayments are to be made

31. The regulations may make provision for and in relation to the manner in which grant repayments are to be made.

Priority of grant repayments

15 32. (1) In spite of anything contained in any other law of the Commonwealth or in any law of a State or a Territory:

20 (a) a grant repayment has priority over all other debts (other than amounts payable under section 221P or subsection 221YHJ (3) or 221YHZD (3) of the *Income Tax Assessment Act 1936*), whether preferential, secured or unsecured; and

25 (b) if an amount is payable by a company under a provision of the *Income Tax Assessment Act 1936* mentioned in paragraph (a)—a grant repayment payable by the company ranks equally with the amount payable under that provision of the *Income Tax Assessment Act 1936* in priority to all other debts, whether preferential, secured or unsecured.

30 (2) Subsection (1) does not operate so as to make a grant repayment payable in priority to any costs, charges or expenses of the judicial management or winding-up of an eligible company that are lawfully payable out of the assets of the company unless the Crown in right of a State or Territory or any other creditor:

 (a) is entitled to payment of a debt in priority to any or all of those costs, charges and expenses; and

 (b) has not waived that priority.

35 (3) A reference in subsection (2) to the costs, charges or expenses of the judicial management or winding-up of a company includes a reference to the remuneration of the judicial manager or liquidator.

**PART 6—PROVISIONS RELATING TO THE JUDICIAL
MANAGER OR LIQUIDATOR OF AN ELIGIBLE COMPANY**

Grants to be under the control of the judicial manager or liquidator

33. (1) Grants paid to an eligible company are under the control of the judicial manager or liquidator of the company. 5

(2) The judicial manager or liquidator of an eligible company is responsible for ensuring that the company complies with this Act.

Judicial manager or liquidator under the control of the Court

34. (1) The judicial manager or liquidator of an eligible company must act under the control of the Court and may apply to the Court at any time for instructions in relation to any matter arising under this Act. 10

(2) The judicial manager or liquidator of an eligible company must give particulars of the application to the Commissioner.

(3) The Commissioner is entitled to be heard on the application. 15

(4) The Court may give such directions to the judicial manager or liquidator of an eligible company as appear to the Court to be necessary or desirable with respect to the operation of this Act.

(5) Directions may be given:

(a) on the Court's own initiative; or 20

(b) on the application of the Commissioner; or

(c) on the application of the judicial manager or liquidator concerned.

Application of Division 8 of Part III of the Life Insurance Act

35. Division 8 of Part III of the *Life Insurance Act 1945* has effect as if the provisions of this Act were provisions of that Division. 25

PART 7—DECISION-MAKING PRINCIPLES

Decision-making principles

36. (1) The Commissioner may, by signed instrument, formulate principles (in this section called "**decision-making principles**") to be complied with by him or her in making decisions under section 11, 23 or 28. 30

(2) In making a decision under section 11, 23 or 28, the Commissioner must comply with any relevant decision-making principles. 35

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Regulations

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

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

PART 10—CONSEQUENTIAL AMENDMENTS

Consequential amendments

42. The Acts specified in the Schedule are amended as set out in the Schedule. 10

SCHEDULE

Section 42

CONSEQUENTIAL AMENDMENTS

Crown Debts (Priority) Act 1981

Section 4:

Add at the end “or of section 32 of the *Life Insurance Policy Holders' Protection Levies Collection Act 1991*”. 15

Income Tax Assessment Act 1936

Subsection 221P (2):

Insert “of this Act or under Part 5 of the *Life Insurance Policy Holders' Protection Levies Collection Act 1991*” after “221YHZD (3)” (wherever occurring). 20

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