



Insurance Acquisitions and Takeovers Act 1991

No. 6 of 1992

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CONSEQUENTIAL AMENDMENTS



Insurance Acquisitions and Takeovers Act 1991

No. 6 of 1992

**An Act relating to the ownership and control of
Australian-registered insurance companies, 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 *Insurance Acquisitions and Takeovers Act 1991*.

Commencement

2. (1) Subject to this section, this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

5

Objects of Act and simplified outline of Act

3. The following is a statement setting out the objects of this Act and a simplified outline of this Act:

10

OBJECTS OF ACT

- To set out rules about the **control** of, and the **compulsory notification** of proposals relating to:
 - (a) the **acquisition** or **issue** of **shares** in Australian-registered insurance companies and related companies (Part 2); or
 - (b) the **acquisition** or **leasing** of **assets** of Australian-registered insurance companies (Part 3); or
 - (c) the entering into of **agreements** relating to **directors** of Australian-registered insurance companies (Part 4).
- To protect the **public interest** in a number of ways, including:
 - (a) ensuring that the affairs of Australian-registered insurance companies are carried out in a **prudential manner**; and
 - (b) preventing **unsuitable persons** from being in a **position of influence** over Australian-registered insurance companies; and
 - (c) preventing the **undue concentration of economic power** in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system.

SIMPLIFIED OUTLINE OF ACT

- A proposal must be **notified** to the Minister.
- A proposal can be **stopped** if the Minister makes a **temporary restraining order** or a **permanent restraining order**.
- A proposal can be **carried out** if:
 - (a) the Minister makes a **go-ahead decision**; or
 - (b) the Minister takes no action before a **time limit** runs out.
- If an unauthorised proposal is carried out, the Minister can make a **divestment order**.
- This Act is enforced by **criminal sanctions** and **court orders**.

Interpretation

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

“accounting period” means:

- 5 (a) in relation to a company authorised under the *Insurance Act 1973* to carry on insurance business—the company’s financial year (within the meaning of that Act); or
(b) in relation to a company registered under the *Life Insurance Act 1945*—the company’s financial year (within the meaning of that Act);

10 **“acquisition”** includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law; or
(b) an acquisition by way of enforcement of a security held solely for the purposes of a moneylending agreement;

15 **“agreement”** means any agreement, whether formal or informal and whether express or implied, but does not include a moneylending agreement;

“arrangement” has the meaning given by section 6;

“asset” includes an interest in an asset;

“associate” has the meaning given by section 7;

20 **“associate-inclusive control interest”** has the meaning given by section 14;

“Australia” includes the external Territories;

25 **“Australian general insurance industry”** means so much of the Australian insurance industry as does not consist of the Australian life insurance industry;

“Australian-registered insurance company” means:

- (a) a company authorised under the *Insurance Act 1973* to carry on insurance business; or
(b) a company registered under the *Life Insurance Act 1945*;

30 but does not include:

- (c) a company any part of the activities of which consists of State banking not extending beyond the limits of the State concerned (within the meaning of paragraph 51 (xiii) of the Constitution); or
35 (d) a company any part of the activities of which consists of State insurance not extending beyond the limits of the State concerned (within the meaning of paragraph 51 (xiv) of the Constitution);

“book outstanding claims provision”, in relation to a company, in relation to a particular date, means:

- 40 (a) if the company was authorised under the *Insurance Act 1973* to carry on insurance business at the end of the last accounting period of the company before that date—the company’s outstanding claims provision as at the end of that accounting period; or

- (b) in any other case—the company’s outstanding claims provision as at that date;
- “book unearned premiums provision”**, in relation to a company, in relation to a particular date, means:
- (a) if the company was authorised under the *Insurance Act 1973* to carry on insurance business at the end of the last accounting period of the company before that date—the company’s unearned premiums provision as at the end of that accounting period; or 5
 - (b) in any other case—the company’s unearned premiums provision as at that date; 10
- “book value”**, in relation to an asset held by a company at a particular time, means:
- (a) if the company:
 - (i) was authorised under the *Insurance Act 1973* to carry on insurance business; or 15
 - (ii) was registered under the *Life Insurance Act 1945*; at the end of the last accounting period of the company before that time—the value of the asset as at the end of that accounting period; or 20
 - (b) in any other case—the value of the asset as at that time;
- “Commissioner”** means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987*, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act; 25
- “company”** means a body corporate;
- “constituent document”**, in relation to a company, means:
- (a) the memorandum and articles of association of the company; or
 - (b) any rules or other documents constituting the company or governing its activities; 30
- “contract of insurance”** includes a contract of life insurance and **“insurer”** has a corresponding meaning;
- “contract of life insurance”** includes a life policy, or a sinking fund policy, within the meaning of the *Life Insurance Act 1945*; 35
- “direct control interest”** has the meaning given by section 15;
- “director”** includes any person occupying the position of director of a company, by whatever name called;
- “discretionary trust”** means a trust where:
- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and 40
 - (b) the exercise of the power or discretion, or the failure to exercise

the power or discretion, has the effect of determining, to any extent, either or both of the following:

- (i) the identities of those who may benefit under the trust;
- (ii) how beneficiaries are to benefit, as between themselves, under the trust;

5

“Federal Court” means the Federal Court of Australia;

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

“interest in an asset” has the meaning given by section 10;

10

“interest in a share” has the meaning given by section 11;

“lending money” includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money;

15

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

“moneylending agreement” means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business;

20

“non-arm’s length arrangement” means an arrangement where the parties to the arrangement are not dealing with each other at arm’s length in relation to the arrangement;

“non-arm’s length transaction” means a transaction where the parties to the transaction are not dealing with each other at arm’s length in relation to the transaction;

25

“officer”, in relation to a company, includes:

- (a) a director, secretary or employee of the company; or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument;
- or
- (c) a liquidator of the company appointed in a voluntary winding up;

30

“outstanding claims provision”, in relation to a company, 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;

35

“prudential conduct”, in relation to a company, means the conduct by the company of its affairs (whether or not relating to the insurance business or life insurance business of the company):

40

(a) in such a way as:

- (i) to keep itself in a sound financial position; and
- (ii) not to cause or promote instability in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; and

- (b) with integrity, prudence and professional skill;
- “relative”**, in relation to a person, means:
- (a) the person’s spouse; or
 - (b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person; or 5
 - (c) a parent or remoter lineal ancestor of the person; or
 - (d) a son, daughter or remoter issue of the person; or
 - (e) a brother or sister of the person;
- “reviewable decision”** means a decision of the Minister under Part 2, 3 or 4 (other than section 28, 42 or 56) or paragraph 66 (1) (b); 10
- “share”**, in relation to a company, means a share in the share capital of the company, and includes:
- (a) stock into which any or all of the share capital of the company has been converted; or 15
 - (b) an interest in such a share or in such stock;
- “total book net liabilities”**, in relation to a company’s contracts of life insurance, in relation to a particular date, means:
- (a) if the company was registered under the *Life Insurance Act 1945* at the end of the last accounting period of the company before that date—the total net liabilities in respect of all of the company’s contracts of life insurance as at the end of that accounting period; or 20
 - (b) in any other case—the total net liabilities in respect of all of the company’s contracts of life insurance as at that date; 25
- “unearned premiums provision”**, in relation to a company, means so much of the total provision for liabilities made in its accounts as consists of provision for unearned premiums;
- “value”**, in relation to an asset of a company, in relation to a particular time, means the amount that, if: 30
- (a) an accounting period of the company had ended at that time; and
 - (b) the company had lodged accounts for that accounting period with the Commissioner under section 44 of the *Insurance Act 1973* or section 52 of the *Life Insurance Act 1945*, as the case requires; and 35
 - (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; 40
- “voting power”** has the meaning given by section 13.

What is contrary to the public interest

5. (1) For the purposes of the application of this Act to an Australian-registered insurance company, a particular matter is taken to be contrary to the public interest if it is:

- 5 (a) likely to adversely affect the prudential conduct of the affairs of the company; or
- (b) likely to result in an unsuitable person being in a position of influence over the company; or
- 10 (c) likely to unduly concentrate economic power in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; or
- (d) contrary to the national interest.

(2) For the purposes of this section, a person is taken to be an unsuitable person to be in a position of influence over a company if 15 the person is not a fit and proper person to be in such a position of influence.

(3) For the purposes of this section, a person is taken to be in a position of influence over a company if:

- 20 (a) the person, either alone or together with one or more associates, is in a position to control 15% or more of the voting power in the company; or
- (b) one or more directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person acting 25 alone or of the person acting together with one or more associates; or
- (c) the person has power, either acting alone or together with one or more associates, to appoint or remove a director of the company; or
- 30 (d) the person is a director of the company; or
- (e) the person takes part in the management of the company.

Entering into an agreement or arrangement

6. (1) For the purposes of this Act, a person is taken to have 35 proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.

(2) A reference in this Act to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.

40 (3) A reference in this Act to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:

- (a) entering into an agreement; or
- (b) creating a trust, whether express or implied; or
- (c) entering into a transaction;

and a reference in this Act to an arrangement is to be construed accordingly. 5

(4) A reference in this Act to an arrangement does not include a reference to a moneylending agreement.

Associates

7. (1) For the purposes of this Act, the following persons are associates of a person: 10

- (a) a relative of the person;
- (b) a partner of the person;
- (c) a corporation of which the person is an officer;
- (d) if the person is a company—an officer of the company;
- (e) an employee or employer of the person; 15
- (f) an officer of a company of which the person is an officer;
- (g) an employee of a natural person of whom the person is an employee;
- (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subsection benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts; 20
- (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person; 25
- (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company; 30
- (k) a company in which the person has, apart from this paragraph, an associate-inclusive control interest of not less than 15%;
- (l) a person who is, because of this subsection, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph). 35

(2) If a person (in this subsection called the “**first person**”) enters, or proposes to enter, into an arrangement with another person (in this subsection called the “**second person**”) that relates to any of the following matters: 40

- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;

- (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
- (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;

5
10 then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Act in relation to the matter concerned.

Proposals to acquire shares or assets

8. (1) For the purposes of this Act, a person is taken to propose to acquire shares or assets if the person:

- (a) makes an offer to acquire the shares or assets; or
- 15 (b) makes or publishes a statement (however expressed) that expressly or impliedly invites a holder of the shares or assets to offer to dispose of the shares or assets; or
- (c) takes part in, or proposes to take part in, negotiations with a view to the acquisition of the shares or assets.

20 **(2)** A reference in this section to an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is the insurer.

Meaning of “entitled to acquire”

25 **9.** For the purposes of this Act, a person is entitled to acquire anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

Meaning of “interest in an asset”

30 **10. (1)** Subject to this section, a person holds an interest in an asset if the person has any legal or equitable interest in the asset.

(2) Without limiting the generality of subsection (1), a person is taken to hold an interest in an asset if:

- (a) the person has entered into a contract to purchase the asset; or
- 35 (b) the person has a right (otherwise than because of having an interest under a trust) to have the asset transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
- 40 (c) the person has a right to acquire the asset, or an interest in the asset, under an option (whether the right is exercisable presently

or in the future and whether or not on the fulfilment of a condition); or

- (d) the person is otherwise entitled to acquire the asset or an interest in the asset.

(3) A person is taken to hold an interest in an asset even if the person holds the interest in the asset jointly with another person. 5

(4) For the purposes of this Act, an interest in an asset must be disregarded if it is held by a person whose ordinary business includes the lending of money and the person holds the interest solely by way of security for the purposes of a moneylending agreement. 10

(5) An interest in an asset is not to be disregarded only because of:

- (a) its remoteness; or
(b) the manner in which it arose; or
(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction. 15

Meaning of “interest in a share”

11. (1) Subject to this section, a person holds an interest in a share if the person has any legal or equitable interest in the share.

(2) Without limiting the generality of subsection (1), a person is taken to hold an interest in a share if: 20

- (a) the person has entered into a contract to purchase the share; or
(b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or 25

(c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or 30

- (d) the person is otherwise entitled to acquire the share or an interest in the share; or
(e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share. 35

(3) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.

(4) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share. 40

(5) An interest in a share is not to be disregarded only because of:

- (a) its remoteness; or
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

5 Certain interests in shares to be disregarded

12. For the purposes of this Act, the following interests must be disregarded:

- 10 (a) an interest in a share of a person whose ordinary business includes the lending of money if the person holds the interest solely by way of security for the purposes of a moneylending agreement;
- (b) an interest in a share of a person, being an interest held by the person because the person holds a prescribed office;
- 15 (c) an interest of a prescribed kind in a share, being an interest of such person as is prescribed.

Voting power

13. (1) A reference in this Act to the voting power in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:

- 20 (a) the making of distributions of capital or profits of the company to its shareholders;
- (b) the constituent document of the company;
- (c) any variation of the share capital of the company.

25 **(2)** A reference in this Act to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:

- (a) whether or not having legal or equitable force; and
- (b) whether or not based on legal or equitable rights.

30 **(3)** If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.

(4) If a company:

- (a) is limited both by shares and by guarantee; or
- 35 (b) does not have a share capital;

this section has effect as if the members or policy holders of the company were shareholders in the company.

Associate-inclusive control interest in a company

14. (1) A particular type of associate-inclusive control interest that a person holds in a company at a particular time is the aggregate of:

- (a) the direct control interests in the company of that type that the person holds at that time; and
- (b) the direct control interests in the company of that type held at that time by associates of the person.

(2) In calculating the associate-inclusive control interest that a person holds in a company, a direct control interest held because of subsection 15(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

Direct control interests in a company

15. (1) A person holds a direct control interest in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.

(2) A person also holds a direct control interest in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.

(3) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.

(4) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.

(5) If:

- (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (in this subsection called the “**first level company**”); and
- (b) the first level company holds the same type of direct control interest in another company (in this subsection called the “**second level company**”);

the person is taken to hold that type of direct control interest in the second level company equal to the percentage calculated using the formula:

$$\text{First level percentage} \times \text{Second level percentage}$$

where:

“**First level percentage**” means the percentage of the direct control interest held by the person in the first level company;

“**Second level percentage**” means the percentage of the direct control interest held by the first level company in the second level company.

5 **Power to appoint director**

16. (1) A reference in this Act to a power to appoint a director includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.

10 (2) For the purposes of this Act, a person is taken to have the power to appoint a director if:

(a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or

15 (b) a person’s appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

Deemed notices—options

17. For the purposes of this Act, if a person gives a notice to the Minister stating that the person has or proposes to acquire an option to acquire shares or assets, the notice has effect as if it included a statement that the person proposes to acquire the shares or assets.

Application of Act

18. (1) This Act extends to all the external Territories.

25 (2) This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

(3) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

30 (4) The Crown in a capacity covered by subsection (3) is not liable to be prosecuted for an offence against, or arising out of, this Act.

Severability

19. (1) If this Act would be wholly or partly invalid apart from this subsection, this Act has effect as if each reference in this Act to an Australian-registered insurance company were, by express provision, confined to an Australian-registered insurance company that:

(a) carries on as its sole or principal business the business of insurance; or

(b) carries on as its principal business the business of banking; or

40 (c) is a financial or trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51 (xx) of the Constitution); or

- (d) is a foreign corporation (within the meaning of paragraph 51 (xx) of the Constitution); or
- (e) is incorporated in a Territory.

(2) Without prejudice to its effect apart from this subsection, this Act also has the effect that it would have if each reference in paragraphs 21 (1) (a), 22 (a) and 23 (a) to a company were, by express provision, confined to an Australian-registered insurance company. 5

**PART 2—CONTROL OF ACQUISITION OR ISSUE OF SHARES
IN AUSTRALIAN-REGISTERED INSURANCE COMPANIES
AND RELATED COMPANIES 10**

Division 1—Interpretation

Interpretation

20. In this Part:

- “breach of condition offence” means an offence against subsection 27 (3);
- “conditional go-ahead decision” means a go-ahead decision that is subject to conditions; 15
- “divestment order” means an order under section 30;
- “go-ahead decision” means a decision under subsection 27 (1);
- “permanent restraining order” means an order under section 29;
- “temporary restraining order” means an order under section 28; 20
- “trigger proposal” has the meaning given by section 22.

When share acquisition agreements entered into

21. (1) For the purposes of this Part, if:

- (a) a person enters into an agreement under which the person acquires shares in a company; and 25
- (b) the provisions of the agreement that relate to the acquisition of the shares concerned do not become binding until the fulfilment of a condition or conditions set out in the agreement;

the person is taken not to have entered into the agreement until the time when those provisions become binding. 30

(2) Paragraph (1) (b) does not apply to a condition relating to anything done, or omitted to be done, by:

- (a) the Minister under this Act; or
- (b) a Minister under the *Foreign Acquisitions and Takeovers Act 1975*. 35

Meaning of “trigger proposal”—proposals to acquire or issue shares in Australian-registered insurance companies and related companies

22. If:

- (a) either:

- (i) a person proposes, or 2 or more persons under an arrangement propose, to acquire shares in a company; or
 - (ii) a company proposes to issue shares; and
- 5 (b) the proposed acquisitions or the proposed issue would have the result, in relation to an Australian-registered insurance company, that:
- 10 (i) in the case of an Australian-registered insurance company where no person has an associate-inclusive control interest of 15% or more—the associate-inclusive control interest of a person in the company would be 15% or more; or
 - (ii) in the case of an Australian-registered insurance company where a particular type of associate-inclusive control interest of a person is 15% or more:
 - 15 (A) that type of associate-inclusive control interest of that person in the company would be increased; or
 - (B) if that person has no associate-inclusive control interest of another particular type in the company or has such an interest of less than 15%—that person would have such an interest of 15% or more; or
 - 20 (C) if another person has no associate-inclusive control interest of a particular type in the company or has such an interest of less than 15%—that other person would have such an interest of 15% or more;

the proposal is a trigger proposal for the purposes of this Part.

When trigger proposal carried out

23. For the purposes of this Part, if:
- 30 (a) either:
 - 35 (i) a person (in this section called the “**first person**”) enters, or 2 or more persons (in this section called the “**first persons**”) under an arrangement enter, into one or more agreements under which the first person or the first persons acquire shares in a company; or
 - (ii) a company issues shares; and
 - (b) the acquisitions have, or the issue has, a result mentioned in paragraph 22 (b);
- the following provisions have effect:
- 40 (c) if subparagraph (a) (i) applies—the first person or each of the first persons, as the case requires, is taken to have carried out a trigger proposal;
 - (d) if subparagraph (a) (ii) applies—the company is taken to have carried out a trigger proposal.

Division 2—Notification and time limits

Compulsory notification of trigger proposal

24. If:

- (a) a person or company carries out a trigger proposal; and
- (b) the person or company did not, before entering into the agreement or issuing the shares, as the case may be, give to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (c) either:
 - (i) the person or company knew that the proposal concerned was a trigger proposal; or
 - (ii) the person or company had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether it was a trigger proposal;

the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

30-day time limit for Minister to make a decision 20

25. If:

- (a) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- (b) 30 days pass after the day on which the Minister receives the notice and by the end of that period:
 - (i) the Minister has not:
 - (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the end of 10 days after the day on which the decision is made; or
 - (B) made a temporary restraining order or a permanent restraining order in relation to the acquisition or issue specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
 - (ii) the person or company has not carried out the proposal;
- (c) to make a temporary restraining order, a permanent restraining

the Minister is not empowered:

order or a divestment order in relation to the acquisition or issue, as the case requires; or

- (d) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

5 **Trigger proposal must not be carried out before a go-ahead decision is given or time limit runs out**

26. If:

- (a) a person or company carries out a trigger proposal; and
- 10 (b) before entering into the agreement or issuing the shares, as the case may be, the person or company gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and
- 15 (c) the person entered into the agreement or the company issued the shares before:
 - (i) the end of 40 days after the date on which the Minister received the notice; or
 - (ii) the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice;
- 20 whichever first occurs;

the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

Division 3—Go-ahead decisions

25 **Unconditional or conditional go-ahead decision**

27. (1) The Minister may make a decision (in this Part called a "go-ahead decision") that the Commonwealth Government has no objection to a trigger proposal, either:

- (a) unconditionally; or
- 30 (b) so long as the person or company concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.

35 (2) If the Minister makes a go-ahead decision, the person or company must be given written advice of the decision, and of the conditions (if any) applicable to the decision, before the end of 10 days after the day on which the decision is made.

(3) If:

- (a) the person or company is given written advice of the go-ahead decision within the period of 10 days; and
- 40 (b) the person or company carries out the proposal; and

- (c) the decision is subject to conditions; and
 - (d) the person or company does not comply with the conditions;
- the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

5

(4) If the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister is not empowered to make a temporary restraining order or a permanent restraining order in relation to the trigger proposal.

Division 4—Temporary restraining orders, permanent restraining orders and divestment orders

10

Temporary restraining order

28. (1) The Minister may make an order (in this Part called a “**temporary restraining order**”) prohibiting any or all of the proposed acquisitions, or prohibiting the proposed issue, as the case may be, to which the trigger proposal relates.

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(2) The Minister’s powers under subsection (1) are to be exercised for the purpose of enabling due consideration to be given to the question whether a go-ahead decision or permanent restraining order should be made.

(3) A temporary restraining order has effect for such period, not exceeding 60 days after the order comes into operation, as is specified in the order.

20

(4) If:

(a) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person’s intention to enter into the agreement or the company’s intention to issue the shares, as the case requires; and

25

(b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or issue specified in the notice; and

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(c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and

35

(d) 60 days pass after the day on which the temporary restraining order is published and by the end of that period:

(i) the Minister has not:

(A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or

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company before the end of 10 days after the day on which the decision is made; or

5 (B) made a further temporary restraining order in relation to the acquisition or issue, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; or

10 (C) made a permanent restraining order in relation to the acquisition or issue, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and

(ii) the person or company has not carried out the proposal; the Minister is not empowered:

15 (e) to make a temporary restraining order, permanent restraining order or divestment order in relation to the acquisition or issue; or

(f) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

(5) If:

20 (a) before entering into the agreement or issuing the shares, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement or the company's intention to issue the shares, as the case requires; and

25 (b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or issue specified in the notice; and

30 (c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and

(d) before the end of 60 days after the day on which the temporary restraining order is published, the Minister makes a further temporary restraining order in relation to the acquisition or issue; and

35 (e) the further temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made and before the first-mentioned temporary restraining order ceases to have effect; and

40 (f) 60 days pass after the day on which the further temporary restraining order is published and by the end of that period:

(i) the Minister has not:

(A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or

company before the end of 10 days after the day on which the decision is made; or

(B) made a permanent restraining order in relation to the acquisition or issue, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and 5

(ii) the person or company has not carried out the proposal; the Minister is not empowered:

(g) to make a temporary restraining order, permanent restraining order or divestment order in relation to the acquisition or issue; 10
or

(h) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

Permanent restraining order

29. If the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest, the Minister may make an order (in this Part called a “**permanent restraining order**”) prohibiting any or all of the proposed acquisitions, or the proposed issue, as the case may be, to which the trigger proposal relates. 15

Divestment order 20

30. (1) If:

- (a) a person or company has carried out a trigger proposal; and
- (b) the Minister is satisfied that the result of the trigger proposal is contrary to the public interest;

the Minister may make an order (in this Part called a “**divestment order**”) directing a person acquiring the shares to dispose of those shares within a specified time to a person, or to any of the persons, approved in writing by the Minister. 25

(2) Before the end of the time specified in a divestment order applicable to a person (including that time as extended under this subsection), the Minister may, by notice in writing served on the person, vary the order by extending or further extending that time. 30

(3) The Minister must not refuse to approve a person for the purposes of subsection (1) unless the Minister is satisfied that it would be contrary to the public interest for that person to acquire the shares concerned. 35

(4) If:

- (a) a person or company is given written advice of a go-ahead decision before the end of 10 days after the day on which the decision is made; and 40
- (b) the person or company carries out the proposal concerned;

the Minister must not make a divestment order in relation to the acquisition or issue unless:

- (c) the person or company is convicted of a breach of condition offence in relation to the acquisition or issue; or
- 5 (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or company in respect of a breach of condition offence in relation to the acquisition or issue.

Offence of contravening temporary restraining order, permanent restraining order or divestment order

- 10 31. A person who contravenes a temporary restraining order, permanent restraining order or divestment order is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

Publication of orders

- 15 32. A temporary restraining order, permanent restraining order or divestment order is to be in writing signed by the Minister and has no effect unless it is published in the *Gazette* within 10 days after the day on which it is made.

When orders come into operation

- 20 33. (1) A temporary restraining order or a permanent restraining order comes into operation on the day on which it is published in the *Gazette*.

- 25 (2) A divestment order comes into operation on such date as is specified in the order, being a date not earlier than 30 days after the date of publication of the order in the *Gazette*.

Revocation of orders

- 30 34. (1) The Minister may, at any time, by notice published in the *Gazette*, revoke a temporary restraining order, a permanent restraining order or a divestment order.

- (2) The Minister must not revoke a permanent restraining order or divestment order if the Minister is satisfied that it would be contrary to the public interest to do so.

PART 3—CONTROL OF ACQUISITION OR LEASING OF ASSETS OF AUSTRALIAN-REGISTERED INSURANCE COMPANIES

35

Division 1—Interpretation

Interpretation

35. In this Part:
40 “breach of condition offence” means an offence against subsection 41 (3);
“conditional go-ahead decision” means a go-ahead decision that is subject to conditions;

- “divestment order”** means an order under section 44;
“go-ahead decision” means a decision under subsection 41 (1);
“permanent restraining order” means an order under section 43;
“temporary restraining order” means an order under section 42;
“trigger proposal” has the meaning given by section 36. 5

Meaning of “trigger proposal”—proposals to acquire or lease assets of Australian-registered insurance companies

36. If any of the following paragraphs applies:

- (a) both of the following conditions are satisfied:
- (i) one or more persons propose to acquire assets of an Australian-registered insurance company under a non-arm’s length transaction; 10
 - (ii) the sum of:
 - (A) the value of the assets proposed to be acquired; and 15
 - (B) the total value of any assets of the company acquired by the persons or their associates under non-arm’s length transactions in the 12-month period before the date of the proposed acquisition; 20is 15% or more of the total book value of the assets of the company as at that date;
- (b) both of the following conditions are satisfied:
- (i) one or more persons propose to enter into a non-arm’s length arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of an Australian-registered insurance company; 25
 - (ii) the sum of:
 - (A) the value of the assets concerned; and
 - (B) if the persons or their associates have entered into one or more non-arm’s length arrangements relating to the leasing or letting on hire of, or the granting of other rights to use, assets of the company, being arrangements entered into in the 12-month period before the date when the proposed arrangement referred to in subparagraph (i) will be entered into—the total value of those assets; 30is 15% or more of the total book value of the assets of the company as at that date; 35
- (c) all of the following conditions are satisfied:
- (i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of life insurance where the company is the insurer; 40

(ii) the company is registered under the *Life Insurance Act 1945*;

(iii) the sum of:

(A) the total net liabilities in respect of those contracts; and

(B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of life insurance where the company is the insurer, being acquisitions that occurred in the 12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total net liabilities in respect of those contracts;

is 15% or more of the total book net liabilities in respect of all of the company's contracts of life insurance as at that date;

(d) all of the following conditions are satisfied:

(i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of insurance where the company is the insurer;

(ii) the company is authorised under the *Insurance Act 1973* to carry on insurance business;

(iii) the sum of:

(A) any reduction in the company's unearned premiums provision resulting from the acquisition; and

(B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of insurance where the company is the insurer, being acquisitions that occurred in the 12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total of any reductions in the company's unearned premiums provision resulting from those acquisitions;

is 15% or more of the company's book unearned premiums provision as at that date;

(e) all of the following conditions are satisfied:

(i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of insurance where the company is the insurer;

(ii) the company is authorised under the *Insurance Act 1973* to carry on insurance business;

(iii) the sum of:

(A) any reduction in the company's outstanding claims provision resulting from the acquisition; and

(B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of insurance where the company is the insurer, being acquisitions that occurred in the 12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total of any reductions in the company's outstanding claims provision resulting from those acquisitions;

is 15% or more of the company's book outstanding claims provision as at that date;

the proposal is a trigger proposal for the purposes of this Part.

When trigger proposal carried out

37. For the purposes of this Part, if one or more persons:

(a) acquire assets as mentioned in paragraph 36 (a); or

(b) enter into an arrangement as mentioned in paragraph 36 (b); or

(c) acquire interests, rights or benefits as mentioned in paragraph 36 (c), (d) or (e);

the person is, or each of the persons are, taken to have carried out a trigger proposal.

Division 2—Notification and time limits

Compulsory notification of trigger proposal

38. If:

(a) a person carries out a trigger proposal; and

(b) the person did not, before the acquisition or before entering into the arrangement, as the case may be, give to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and

(c) either:

(i) the person knew that the proposal concerned was a trigger proposal; or

(ii) the person had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether it was a trigger proposal;

the person is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

30-day time limit for Minister to make a decision

39. If:

- 5 (a) before the acquisition, or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and
- 10 (b) 30 days pass after the day on which the Minister receives the notice and by the end of that period:
- 15 (i) the Minister has not:
- (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person before the end of 10 days after the day on which the decision is made; or
- 20 (B) made a temporary restraining order or a permanent restraining order in relation to the acquisition or arrangement specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- (ii) the person has not carried out the proposal;
- the Minister is not empowered:
- 25 (c) to make a temporary restraining order, a permanent restraining order or a divestment order in relation to the acquisition or arrangement, as the case requires; or
- (d) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

Trigger proposal must not be carried out before a go-ahead decision is given or time limit runs out

30 **40. If:**

- (a) a person carries out a trigger proposal; and
- 35 (b) before the acquisition or before entering into the arrangement, the person gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case may be; and
- (c) the person acquired the assets, interests, rights or benefits, or entered into the arrangement, before:
- 40 (i) the end of 40 days after the date on which the Minister received the notice; or
- (ii) the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice; whichever first occurs;

the person is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

Division 3—Go-ahead decisions

Unconditional or conditional go-ahead decision 5

41. (1) The Minister may make a decision (in this Part called a “go-ahead decision”) that the Commonwealth Government has no objection to a trigger proposal, either:

- (a) unconditionally; or
- (b) so long as the person concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest. 10

(2) If the Minister makes a go-ahead decision, the person must be given written advice of the decision, and of the conditions (if any) applicable to the decision, before the end of 10 days after the day on which the decision is made. 15

(3) If:

- (a) the person is given written advice of the go-ahead decision within the period of 10 days; and 20
- (b) the person carries out the proposal; and
- (c) the decision is subject to conditions; and
- (d) the person does not comply with the conditions;

the person is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both. 25

(4) If the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister is not empowered to make a temporary restraining order or a permanent restraining order in relation to the trigger proposal.

Division 4—Temporary restraining orders, permanent restraining orders and divestment orders 30

Temporary restraining order

42. (1) The Minister may make an order (in this Part called a “temporary restraining order”) prohibiting the proposed acquisition or prohibiting the entering into of the proposed arrangement, as the case may be, to which the trigger proposal relates. 35

(2) The Minister’s powers under subsection (1) are to be exercised for the purpose of enabling due consideration to be given to the question whether a go-ahead decision or permanent restraining order should be made. 40

(3) A temporary restraining order has effect for such period, not exceeding 60 days after the order comes into operation, as is specified in the order.

(4) If:

- 5 (a) before the acquisition, or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and
- 10 (b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or arrangement specified in the notice; and
- 15 (c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- (d) 60 days pass after the day on which the temporary restraining order is published and by the end of that period:
- 20 (i) the Minister has not:
- (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person before the end of 10 days after the day on which the decision is made; or
- 25 (B) made a further temporary restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; or
- 30 (C) made a permanent restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- (ii) the person has not carried out the proposal;
- 35 the Minister is not empowered:
- (e) to make a temporary restraining order, permanent restraining order or divestment order in relation to the acquisition or arrangement; or
- 40 (f) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

(5) If:

- (a) before the acquisition, or before entering into the arrangement, as the case may be, the person concerned gave to the Minister a notice in the prescribed form stating the person's intention to

acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and

- (b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the acquisition or arrangement specified in the notice; and 5
 - (c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and
 - (d) before the end of 60 days after the day on which the temporary restraining order is published, the Minister makes a further temporary restraining order in relation to the acquisition or arrangement specified in the notice; and 10
 - (e) the further temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made and before the first-mentioned temporary restraining order ceases to have effect; and 15
 - (f) 60 days pass after the day on which the further temporary restraining order is published and by the end of that period:
 - (i) the Minister has not: 20
 - (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person before the end of 10 days after the day on which the decision is made; or 25
 - (B) made a permanent restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
 - (ii) the person has not carried out the proposal; 30
- the Minister is not empowered:
- (g) to make a temporary restraining order, permanent restraining order or divestment order in relation to the acquisition or arrangement; or
 - (h) to make a conditional go-ahead decision in relation to the proposal specified in the notice. 35

Permanent restraining order

43. If the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest, the Minister may make an order (in this Part called a “**permanent restraining order**”) prohibiting the proposed acquisition or prohibiting the entering into of the proposed arrangement, as the case may be, to which the trigger proposal relates. 40

Divestment order

44. (1) If:

- (a) a person carries out a trigger proposal; and
- (b) the Minister is satisfied that the acquisition or arrangement is
5 contrary to the public interest;

the Minister may, for remedial purposes, make an order (in this Part called a “**divestment order**”):

- (c) in a case involving the acquisition of assets, interests, rights or
10 benefits—directing a person acquiring the assets, interests, rights or benefits to dispose of those assets, interests, rights or benefits within a specified time to a person, or to any of the persons, approved in writing by the Minister; or
- (d) in any case—directing specified persons to do within a specified
15 time, or refrain from doing, specified acts or acts of a specified kind.

(2) Before the end of the time specified in a divestment order applicable to a person (including that time as extended under this subsection), the Minister may, by notice in writing served on the person, vary the order by extending or further extending that time.

20 (3) The Minister must not refuse to approve a person for the purposes of subsection (1) unless the Minister is satisfied that it would be contrary to the public interest for that person to acquire the assets, interests, rights or benefits concerned.

(4) If:

- (a) a person is given written advice of a go-ahead decision before
25 the end of 10 days after the day on which the decision is made; and

(b) the person carries out the proposal concerned;
the Minister must not make a divestment order in relation to the
30 proposal unless:

- (c) the person is convicted of a breach of condition offence in
relation to the acquisition or arrangement; or
- (d) an order is made under section 19B of the *Crimes Act 1914* in
35 relation to the person in respect of a breach of condition offence in relation to the acquisition or arrangement.

**Offence of contravening temporary restraining order, permanent
restraining order or divestment order**

40 45. A person who contravenes a temporary restraining order, permanent restraining order or divestment order is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

Publication of orders

46. A temporary restraining order, permanent restraining order or divestment order under this Part is to be in writing signed by the Minister and has no effect unless it is published in the *Gazette* within 10 days after the day on which it is made.

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When orders come into operation

47. (1) A temporary restraining order or a permanent restraining order comes into operation on the day on which it is published in the *Gazette*.

(2) A divestment order comes into operation on such date as is specified in the order, being a date not earlier than 30 days after the date of publication of the order in the *Gazette*.

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Revocation of orders

48. (1) The Minister may, at any time, by notice published in the *Gazette*, revoke a temporary restraining order, a permanent restraining order or a divestment order.

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(2) The Minister must not revoke a permanent restraining order or divestment order if the Minister is satisfied that it would be contrary to the public interest to do so.

**PART 4—CONTROL OF AGREEMENTS RELATING TO THE
DIRECTORATE OF AUSTRALIAN-REGISTERED INSURANCE
COMPANIES**

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Division 1—Interpretation

Interpretation

49. In this Part:

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“breach of condition offence” means an offence against subsection 55 (3);
“conditional go-ahead decision” means a go-ahead decision that is subject to conditions;

“divestment order” means an order under section 58;

“go-ahead decision” means a decision under subsection 55 (1);

30

“permanent restraining order” means an order under section 57;

“temporary restraining order” means an order under section 56;

“trigger proposal” has the meaning given by section 50.

Meaning of “trigger proposal”—agreements relating to the directorate of Australian-registered insurance companies

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50. If:

(a) either of the following subparagraphs applies:

(i) one or more persons propose to enter into an agreement in relation to an Australian-registered insurance company;

- (ii) it is proposed to alter a constituent document of an Australian-registered insurance company; and
 - (b) under the proposed agreement or in consequence of the proposed alteration:
 - 5 (i) one or more directors of the Australian-registered insurance company will be accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of:
 - 10 (A) a person whose associate-inclusive control interest in the company is 15% or more, being a person acting alone or together with one or more associates; or
 - (B) an associate of such a person; or
 - (ii) either:
 - 15 (A) a person whose associate-inclusive control interest in the company is 15% or more, being a person acting alone or together with one or more associates; or
 - (B) an associate of such a person;
- 20 will have the power to appoint or remove one or more directors of the Australian-registered insurance company; the proposal is a trigger proposal for the purposes of this Part.

When trigger proposal carried out

- 25 **51.** For the purposes of this Part, if:
- (a) either of the following subparagraphs applies:
 - (i) one or more persons enter into an agreement in relation to an Australian-registered insurance company;
 - (ii) a constituent document of an Australian-registered insurance company is altered; and
 - 30 (b) the agreement or alteration has an effect mentioned in paragraph 50 (b);
- the following provisions have effect:
- (c) if subparagraph (a) (i) applies—each of the persons is taken to have carried out a trigger proposal;
 - 35 (d) if subparagraph (a) (ii) applies—the company is taken to have carried out a trigger proposal.

Division 2—Notification and time limits

Compulsory notification of trigger proposal

- 40 **52.** If:
- (a) a person or company carries out a trigger proposal; and
 - (b) if subparagraph 51 (a) (i) applies—the person did not, before entering into the agreement, give to the Minister a notice in

the prescribed form stating the person's intention to enter into the agreement; and

- (c) if subparagraph 51 (a) (ii) applies—the company did not, before the alteration, give to the Minister a notice in the prescribed form stating the proposal to make the alteration; and 5
- (d) either:
 - (i) the person or company knew that the proposal concerned was a trigger proposal; or
 - (ii) the person or company had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether it was a trigger proposal; 10

the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both. 15

30-day time limit for Minister to make a decision

53. If:

- (a) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case requires; and 20
- (b) 30 days pass after the day on which the Minister receives the notice and by the end of that period:
 - (i) the Minister has not: 25
 - (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person or company before the end of 10 days after the day on which the decision is made; or 30
 - (B) made a temporary restraining order or a permanent restraining order in relation to the agreement or alteration specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and 35
 - (ii) the person or company has not carried out the proposal;

the Minister is not empowered:

- (c) to make a temporary restraining order, a permanent restraining order or a divestment order in relation to the agreement or alteration, as the case requires; or 40
- (d) to make a conditional go-ahead decision in relation to the proposal specified in the notice.

Trigger proposal must not be carried out before a go-ahead decision is given or time limit runs out

54. If:

- (a) a person or company carries out a trigger proposal; and
- 5 (b) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case requires; and
- 10 (c) the person entered into the agreement, or the company altered its constituent document, before:
 - (i) the end of 40 days after the date on which the Minister received the notice; or
 - 15 (ii) the date on which written advice of a go-ahead decision is given in relation to the proposal specified in the notice;whichever first occurs;

the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

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Division 3—Go-ahead decisions

Unconditional or conditional go-ahead decision

55. (1) The Minister may make a decision (in this Part called a "go-ahead decision") that the Commonwealth Government has no objection to a trigger proposal, either:

- 25 (a) unconditionally; or
- (b) so long as the person or company concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.

30 (2) If the Minister makes a go-ahead decision, the person or company must be given written advice of the decision, and of the conditions (if any) applicable to the decision, before the end of 10 days after the day on which the decision is made.

(3) If:

- 35 (a) the person or company is given written advice of the go-ahead decision within the period of 10 days; and
- (b) the person or company carries out the proposal; and
- (c) the decision is subject to conditions; and
- (d) the person or company does not comply with the conditions;

40 the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both.

(4) If the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister is not empowered to make a temporary restraining order or a permanent restraining order in relation to the trigger proposal.

Division 4—Temporary restraining orders, permanent restraining orders and divestment orders 5

Temporary restraining order

56. (1) The Minister may make an order (in this Part called a “temporary restraining order”) prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be, to which the trigger proposal relates. 10

(2) The Minister’s powers under subsection (1) are to be exercised for the purpose of enabling due consideration to be given to the question whether a go-ahead decision or permanent restraining order should be made.

(3) A temporary restraining order has effect for such period, not exceeding 60 days after the order comes into operation, as is specified in the order. 15

(4) If:

(a) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person’s intention to enter into the agreement, or the proposal to alter the company’s constituent document, as the case requires; and 20

(b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the agreement or alteration specified in the notice; and 25

(c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and 30

(d) 60 days pass after the day on which the temporary restraining order is published and by the end of that period:

(i) the Minister has not:

(A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person before the end of 10 days after the day on which the decision is made; or 35

(B) made a further temporary restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; or 40

- (C) made a permanent restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- 5 (ii) the person or company has not carried out the proposal; the Minister is not empowered:
- (e) to make a temporary restraining order, permanent restraining order or divestment order in relation to the agreement or alteration; or
- 10 (f) to make a conditional go-ahead decision in relation to the proposal specified in the notice.
- (5) If:
- (a) before entering into the agreement, or before the alteration, as the case may be, the person or company concerned gave to the Minister a notice in the prescribed form stating the person's intention to enter into the agreement, or the proposal to alter the company's constituent document, as the case requires; and
- 15 (b) before the end of 30 days after the day on which the Minister receives the notice, the Minister makes a temporary restraining order in relation to the agreement or alteration specified in the notice; and
- 20 (c) the temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- 25 (d) before the end of 60 days after the day on which the temporary restraining order is published, the Minister makes a further temporary restraining order in relation to the agreement or alteration specified in the notice; and
- 30 (e) the further temporary restraining order is published in the *Gazette* before the end of 10 days after the day on which the order is made and before the first-mentioned temporary restraining order ceases to have effect; and
- (f) 60 days pass after the day on which the further temporary restraining order is published and by the end of that period:
- 35 (i) the Minister has not:
- (A) made a go-ahead decision in relation to the proposal specified in the notice, being a decision of which written advice is given to the person before the end of 10 days after the day on which the decision is made; or
- 40 (B) made a permanent restraining order in relation to the proposal specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- 45 (ii) the person or company has not carried out the proposal;

the Minister is not empowered:

- (g) to make a temporary restraining order, permanent restraining order or divestment order in relation to the agreement or alteration; or
- (h) to make a conditional go-ahead decision in relation to the proposal specified in the notice. 5

Permanent restraining order

57. If the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest, the Minister may make an order (in this Part called a “**permanent restraining order**”) prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be, to which the trigger proposal relates. 10

Divestment order

58. (1) If:

- (a) a person or company carries out a trigger proposal; and 15
- (b) the Minister is satisfied that the agreement or alteration is contrary to the public interest;

the Minister may, for remedial purposes, make an order (in this Part called a “**divestment order**”) directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind. 20

(2) Before the end of the time specified in a divestment order applicable to a person (including that time as extended under this subsection), the Minister may, by notice in writing served on the person, vary the order by extending or further extending that time. 25

(3) If:

- (a) a person or company is given written advice of a go-ahead decision before the end of 10 days after the day on which the decision is made; and
 - (b) the person or company carries out the proposal concerned; 30
- the Minister must not make a divestment order in relation to the proposal unless:

- (c) the person or company is convicted of a breach of condition offence in relation to the agreement or alteration; or
- (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or company in respect of a breach of condition offence in relation to the agreement or alteration. 35

Offence of contravening temporary restraining order, permanent restraining order or divestment order

59. A person who contravenes a temporary restraining order, permanent restraining order or divestment order is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years or a fine not exceeding \$50,000, or both. 40

Publication of orders

5 **60.** A temporary restraining order, permanent restraining order or divestment order under this Part is to be in writing signed by the Minister and has no effect unless it is published in the *Gazette* within 10 days after the day on which it is made.

When orders come into operation

61. (1) A temporary restraining order or a permanent restraining order comes into operation on the day on which it is published in the *Gazette*.
10 (2) A divestment order comes into operation on such date as is specified in the order, being a date not earlier than 30 days after the date of publication of the order in the *Gazette*.

Revocation of orders

15 **62.** (1) The Minister may, at any time, by notice published in the *Gazette*, revoke a temporary restraining order, a permanent restraining order or a divestment order.

 (2) The Minister must not revoke a permanent restraining order or divestment order if the Minister is satisfied that it would be contrary to the public interest to do so.

20 **PART 5—JUDICIAL ENFORCEMENT OF MINISTERIAL ORDERS**

Federal Court may enforce Ministerial orders

25 **63.** (1) If a person (in this section called the “offender”) has contravened an order made under Part 2, 3 or 4, the Federal Court may make such order or orders as it thinks fit to achieve the purpose for which the order was made by the Minister.

 (2) The Federal Court’s order:
 (a) may only be made on the application of the Minister; and
30 (b) may be made whether or not the contravention by the offender continues; and
 (c) may be made even if other proceedings in respect of that contravention have been or are to be instituted.
 (3) The Federal Court’s orders include, but are not limited to:
35 (a) an order restraining the exercise of any rights attached to shares or assets held by the offender; or
 (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of shares or assets held by the offender; or
40 (c) an order directing the disposal of shares or assets held by the offender; or

- (d) an order that any exercise of rights attached to shares or assets held by the offender be disregarded; or
 - (e) an order prohibiting a person from acting as a director of an Australian-registered insurance company or from being involved in the management of an Australian-registered insurance company; or 5
 - (f) an order directing an Australian-registered insurance company to make such alterations of any of its constituent documents as are specified in the order.
- (4) In addition to the powers conferred on the Federal Court by the preceding provisions of this section, the Court: 10
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just. 15
- (5) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order. 20
- (7) A reference in this section to an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is or was the insurer. 25

PART 6—ANTI-AVOIDANCE

Anti-avoidance

- 64. (1) If:**
- (a) one or more persons enter into, commence to carry out, or carry out a scheme; and 30
 - (b) it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to any person or persons (whether or not a person or persons who entered into, commenced to carry out, or carried out the scheme or any part of the scheme); and 35
 - (c) the scheme or part of the scheme has achieved, or apart from this section, would achieve, that purpose; 40

the Minister may make any order under a provision of Part 2, 3 or 4 that the Minister would have been able to make if the scheme or the part of the scheme had not achieved that purpose.

(2) This section applies to a scheme entered into after 6 June 1991.

5 (3) This section does not authorise the making of an order prohibiting a person from doing anything that has already been done by the person before the order is made.

(4) In this section:

“scheme” means:

10 (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

15 (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

PART 7—DECISION-MAKING PRINCIPLES

Decision-making principles

20 65. (1) The Minister 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 Part 2, 3 or 4 (other than section 28, 42 or 56).

(2) In making a decision under Part 2, 3 or 4 (other than section 28, 42 or 56), the Minister must comply with any relevant decision-making principles.

25 (3) Decision-making principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 8—REVIEW OF DECISIONS

Reconsideration of reviewable decision

30 66. (1) A person who is affected by a reviewable decision may, if dissatisfied with the decision, by notice given to the Minister within:

(a) the period of 21 days after the day on which the decision first comes to the notice of the person; or

(b) such further period as the Minister allows;
request the Minister to reconsider the decision.

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

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

(4) If the Minister does not confirm, revoke or vary a decision before the end of the period of 21 days after the day on which the Minister received the request under subsection (1) to reconsider the decision, the Minister is taken, at the end of that period, to have confirmed the decision under subsection (3). 5

(5) If the Minister confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the Minister must, by notice served on the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be. 10

Review of decisions by Administrative Appeals Tribunal

67. (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister that have been confirmed or varied under subsection 66 (3). 15

(2) If, because of the operation of subsection 66 (4), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is taken to have been confirmed and ending on the 28th day after that day. 20

(3) If a request is made under subsection 66 (1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision. 25

(4) In giving any direction as to the persons who are to constitute the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, or for the purposes of a request under subsection 41 (2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision, the President must ensure that each non-presidential member of the Administrative Appeals Tribunal as so constituted is a person who, in the opinion of the President, has special knowledge or skill in relation to life insurance business or insurance business. 30 35

(5) A non-presidential member of the Administrative Appeals Tribunal must not sit as a member of the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, or for the purposes of a request under subsection 41 (2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision, if he or she is a director or employee of a company or body carrying on (whether in Australia or elsewhere) life insurance business or insurance business. 40

(6) An order must not be made under subsection 41 (2) of the *Administrative Appeals Tribunal Act 1975* in respect of a reviewable decision except by the Administrative Appeals Tribunal.

5 (7) The hearing of a proceeding relating to a reviewable decision must take place in private and the Administrative Appeals Tribunal may, by order:

- (a) give directions as to the persons who may be present; and
- (b) give directions of a kind referred to in paragraph 35 (2) (b) or (c) of the *Administrative Appeals Tribunal Act 1975*.

10 **Statements to accompany notification of decisions**

68. (1) If written notice is given to a person affected by a reviewable decision that the reviewable decision has been made, that notice must include a statement to the effect that:

15 (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with subsection 66 (1); and

20 (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Minister 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.

25 (2) If the Minister confirms or varies a reviewable decision under subsection 66 (3) and gives to the person written notice of the confirmation or variation of the decision, that notice must include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

30 (3) A failure to comply with this section does not affect the validity of a decision.

PART 9—MISCELLANEOUS

Delegation

35 69. The Minister may, by signed instrument, delegate any or all of the Minister's powers under this Act (other than Part 7) to:

- (a) the Commissioner; or
- (b) a member of the staff assisting the Commissioner.

Concurrent operation of State/Territory laws

40 70. It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

Validity of acts done in contravention of this Act

71. An act is not invalidated by the fact that it constitutes an offence against this Act.

Minister's consent for criminal proceedings

72. Proceedings for an offence against, or arising out of, this Act must not be instituted without the written consent of the Minister. 5

Minister may obtain information and documents

73. (1) If the Minister has reason to believe that a person is capable of giving information or producing documents about matters that are relevant to the exercise by the Minister of his or her powers under this Act, the Minister may, by notice in writing served on that person, require that person: 10

- (a) to give any such information to the Minister within the time and in the manner specified in the notice; or
- (b) to produce any such documents to the Minister within the time and in the manner specified in the notice; or 15
- (c) to make copies of any such documents and to produce those copies to the Minister within the time and in the manner specified in the notice.

(2) A notice under subsection (1) must set out the effects of subsections (5), (6), (7), (8) and (9). 20

(3) The regulations may prescribe scales of expenses to be allowed to persons required to give information or produce documents under this section.

(4) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (1) (c). 25

(5) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1).
Penalty: Imprisonment for 6 months. 30

(6) A person must not, in purported compliance with a notice under subsection (1), knowingly give information that is false or misleading.
Penalty: Imprisonment for 12 months.

(7) A person must not, in compliance with a notice under subsection (1), produce a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular.
Penalty: Imprisonment for 12 months. 35

(8) Subsection (7) does not apply to a person who produces a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular if the document 40

or copy is accompanied by a written statement signed by the person or, in the case of a company, by a competent officer of the company:

- 5 (a) stating that the document or copy is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the first-mentioned person, false or misleading.

10 (9) A person is not excused from giving information or producing a document or a copy of a document under this section on the ground that the information or the production of the document or copy might tend to incriminate the person, but:

- (a) giving the information or producing the document or copy; or
- 15 (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the person in any criminal proceedings other than proceedings under, or arising out of, this section.

20 (10) The Minister may inspect a document or copy produced under this section and may make and retain copies of, or take and retain extracts from, such a document or copy.

(11) The Minister may retain a copy of a document produced in accordance with a requirement covered by paragraph (1) (c).

25 (12) The Minister may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, a document produced under this section.

(13) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister to be a true copy.

30 (14) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

35 (15) Until a certified copy is supplied, the Minister must, at such times and places as the Minister thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

False or misleading statements etc.

74. (1) A person must not knowingly or recklessly, in connection with the operation of this Act (other than section 73):

- 40 (a) make a statement, either orally or in writing, to the Minister or to an officer that is false or misleading in a material particular; or

(b) omit from a statement made, either orally or in writing, to the Minister or to an officer any matter or thing without which the statement is misleading in a material particular; or

(c) give a document to the Minister or to an officer that contains information that is false or misleading in a material particular. 5

Penalty: Imprisonment for 12 months.

(2) In this section:

“officer” means:

(a) the Commissioner; or

(b) a member of the staff assisting the Commissioner. 10

Secrecy

75. (1) The object of this section is to create duties of non-disclosure for the purposes of section 70 of the *Crimes Act 1914*.

(2) Subject to subsections (3) and (4), a person who is or has been:

(a) the Commissioner; or 15

(b) a member of the staff assisting the Commissioner;

must not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, the *Insurance Act 1973* or the *Life Insurance Act 1945*, divulge or communicate to any person any information concerning the affairs of any other person acquired by him or her, because of his or her office or employment, under or for the purposes of this Act. 20

(3) Subsection (2) does not prevent the communication of information or the production of a document by the Commissioner, or by a member of the staff assisting the Commissioner authorised by the Commissioner: 25

(a) to the Minister; or

(b) to a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced. 30

(4) Subsection (2) of this section and section 126 of the *Insurance Act 1973* do not prevent the communication of information or the production of a document by the Commissioner, or by a member of the staff assisting the Commissioner authorised by the Commissioner:

(a) to the Secretary to a Department of the Commonwealth; or 35

(b) to an officer of a Department of the Commonwealth approved, in writing, by the Secretary to that Department;

for the purpose of advising the Minister administering that Department in connection with a submission:

(c) made, or to be made, by the Minister administering that Department to the Minister administering this Act; and 40

(d) relating to the administration of this Act.

5 (5) If information is communicated under subsection (4) to the Secretary to a Department of the Commonwealth or to an officer of a Department of the Commonwealth, the Secretary or the officer must not, either directly or indirectly, except for the purpose mentioned in subsection (4), divulge or communicate that information to any person.

10 (6) For the purposes of this section, if a person appointed under an Act (in this section called the “first Act”) has all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to a particular branch of the Australian Public Service:

- (a) the person is taken to be a Secretary to a Department of the Commonwealth; and
- (b) an officer in that branch is taken to be an officer of that Department; and
- 15 (c) the Minister administering the first Act is taken to be the Minister administering that Department.

Conduct by directors, servants and agents

20 76. (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a company in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the company within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

25 (2) Any conduct engaged in on behalf of a company by a director, servant or agent of the company within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the company unless the company establishes that the company took reasonable precautions and exercised due diligence to avoid the conduct.

30

(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a company in relation to particular conduct, it is sufficient to show that:

- 35 (a) the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) the servant or agent had the state of mind.

40 (4) Any conduct engaged in on behalf of a person other than a company (in this subsection called the “employer”) by a servant or agent of the employer within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the employer unless the employer establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

- (5) If:
(a) a person other than a company is convicted of an offence; and
(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
the person is not liable to be punished by imprisonment for that offence. 5
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
(a) the knowledge, intention, opinion, belief or purpose of the person; and 10
(b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a company includes a reference to a constituent member of a company incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory. 15
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to an offence arising out of this Act.
- Company's statutory accounts to be *prima facie* evidence of value of its assets** 20
77. (1) This section applies if:
(a) both of the following conditions are satisfied:
(i) a company authorised under the *Insurance Act 1973* to carry on insurance business has lodged accounts for a particular accounting period with the Commissioner under section 44 of that Act; 25
(ii) an amount is shown in those accounts as the value of an asset of the company as at the end of that accounting period; or 30
(b) both of the following conditions are satisfied:
(i) a company registered under the *Life Insurance Act 1945* has lodged accounts for a particular accounting period with the Commissioner under section 52 of that Act;
(ii) an amount is shown in those accounts as the value of an asset of the company as at the end of that accounting period. 35
- (2) For the purposes of this Act, the accounts are *prima facie* evidence of the value of the asset as at the end of the accounting period concerned. 40
- (3) The Commissioner may certify that a document is a copy of the accounts.

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

Company's statutory accounts to be *prima facie* evidence of total net liabilities in respect of its contracts of life insurance

5 78. (1) This section applies if:

(a) a company registered under the *Life Insurance Act 1945* has lodged accounts for a particular accounting period with the Commissioner under section 52 of that Act; and

10 (b) an amount is shown in those accounts as the total net liabilities in respect of all of the company's contracts of life insurance as at the end of that accounting period.

(2) For the purposes of this Act, the accounts are *prima facie* evidence of the total net liabilities in respect of all of the company's contracts of life insurance as at the end of that accounting period.

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

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

20 **Company's statutory accounts to be *prima facie* evidence of its unearned premiums provision and its outstanding claims provision**

79. (1) This section applies if:

25 (a) a company authorised under the *Insurance Act 1973* to carry on insurance business has lodged accounts for a particular accounting period with the Commissioner under section 44 of that Act; and

(b) either:

(i) an amount is shown in those accounts as the company's unearned premiums provision as at the end of that accounting period; or

30 (ii) an amount is shown in those accounts as the company's outstanding claims provision as at the end of that accounting period.

(2) For the purposes of this Act, the accounts are *prima facie* evidence of:

35 (a) if subparagraph (1) (b) (i) applies—the company's unearned premiums provision as at the end of that accounting period; or

(b) if subparagraph (1) (b) (ii) applies—the company's outstanding claims provision as at the end of that accounting period.

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

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

Foreign Acquisitions and Takeovers Act 1975 and this Act to operate independently of each other

80. (1) This Act and the *Foreign Acquisitions and Takeovers Act 1975* operate independently of each other. 5

(2) In particular, a decision under either Act that the Commonwealth Government has no objection to a proposal has effect only for the purposes of the Act concerned.

Transitional—pre-commencement acquisitions etc. 10

81. (1) This section has effect subject to Part 6 (which deals with anti-avoidance).

(2) Part 2 does not apply in relation to an acquisition of shares, or an issue of shares, that occurred before the commencement of this Act.

(3) Part 3 does not apply in relation to: 15

(a) an acquisition of assets that occurred before the commencement of this Act; or

(b) an acquisition of interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is the insurer, being an acquisition that occurred before the commencement of this Act; or 20

(c) an arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of an Australian-registered insurance company that was entered into before the commencement of this Act. 25

(4) Part 4 does not apply in relation to:

(a) an agreement in relation to an Australian-registered insurance company that was entered into before the commencement of this Act; or

(b) an alteration of a constituent document of an Australian-registered insurance company that occurred before the commencement of this Act. 30

Regulations

82. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters: 35

(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.

(2) Without limiting the generality of subsection (1), the regulations may exempt specified proposals, acquisitions, arrangements or 40

transactions from the operation of any or all of the provisions of Parts 2, 3 and 4.

PART 10—CONSEQUENTIAL AMENDMENTS

Consequential amendments

- 5 **83.** The Act specified in the Schedule is amended as set out in the Schedule.

SCHEDULE

Section 83

CONSEQUENTIAL AMENDMENTS

Insurance Act 1973

Subsection 126 (2):

Insert “or the *Insurance Acquisitions and Takeovers Act 1991*” after “this Act” (first occurring).

*[Minister's second reading speech made in—
House of Representatives on 6 June 1991
Senate on 3 September 1991]*