



# **Life Insurance Act 1995**

**No. 4 of 1995**

## **TABLE OF PROVISIONS**

### **PART 1—PRELIMINARY**

**Section**

- 1. Short title**
- 2. Commencement**
- 3. Object of Act**
- 4. Additional operation of Act**
- 5. Exclusion of certain State insurance**
- 6. Extension of Act to Norfolk Island**
- 7. General administration**
- 8. Dictionary**

### **PART 2—EXPLANATION OF KEY CONCEPTS**

- 9. Life policy**
- 10. Issue and ownership of policies**
- 11. Life insurance business**
- 12. Classes of life insurance business**

## TABLE OF PROVISIONS—*continued*

### Section

- 13. Business of a statutory fund
- 14. Investment account benefits, investment-linked benefits
- 15. Participating, non-participating benefits
- 16. Related companies

### PART 3—REGISTRATION OF LIFE COMPANIES

- 17. Prohibition of persons other than registered companies carrying on life business
- 18. Certain activities not regarded as carrying on life business
- 19. Certain persons taken to carry on life business etc.
- 20. Application for registration
- 21. Decision on application for registration
- 22. Conditions of registration
- 23. Continuing capital requirements
- 24. Modification of application of section 23 to particular companies
- 25. Notification of changes in information supplied to Commissioner
- 26. Cancellation of registration: defunct company
- 27. Voluntary deregistration
- 28. Return of certificate of registration

### PART 4—STATUTORY FUNDS OF LIFE COMPANIES

#### *Division 1—General requirements*

- 29. What is a statutory fund?
- 30. Outline of requirements regarding statutory funds
- 31. Requirement that company have statutory funds
- 32. Duty of company in relation to statutory funds
- 33. Notice to Commissioner when fund established
- 34. Assets of statutory fund
- 35. Identification of policies referable to statutory fund
- 36. Payments to statutory fund
- 37. Capital payments to statutory funds
- 38. Expenditure and application of statutory fund
- 39. Prohibition of reinsurance between funds
- 40. Mortgages etc. of assets
- 41. Effect of non-compliance with section 38
- 42. Investment performance guarantee—limit of certain liabilities
- 43. Investment of statutory funds
- 44. Reporting of restricted investments
- 45. Transfer of assets between funds
- 46. Division, amalgamation etc. of statutory funds
- 47. Ascertainment of income and outgoings of a statutory fund

#### *Division 2—Duties and liabilities of directors etc.*

- 48. Duty of directors in relation to statutory funds
- 49. Commissioner may give notice
- 50. Liability of directors
- 51. Commissioner's power to sue in the name of a company

TABLE OF PROVISIONS—*continued*

Section

*Division 3—Division and amalgamation of statutory funds*

- 52. Division of statutory fund
- 53. Amalgamation of statutory funds
- 54. Notice to policy owners of establishment or amalgamation of statutory funds

*Division 4—Transfer of policies between statutory funds*

- 55. Consequences of transfer of policy from one statutory fund to another

*Division 5—Allocation of profits and losses and capital payments*

- 56. Interpretation
- 57. Obligation to allocate operating profit or loss
- 58. Operating profit etc.
- 59. Allocation of operating profit etc.
- 60. Basis of allocation of operating profit etc.

*Division 6 — Distribution of retained profits and shareholders' capital*

- 61. Interpretation
- 62. Distribution of retained profits
- 63. Distribution of shareholders' capital

**PART 5—SOLVENCY AND CAPITAL ADEQUACY STANDARDS**

*Division 1—Solvency standard applicable to statutory funds*

- 64. Purpose of Division
- 65. Solvency standard
- 66. Purpose of solvency standard
- 67. Obligation to comply with standard
- 68. Commissioner's power to give solvency directions to particular life companies

*Division 2—Capital adequacy standard applicable to statutory funds*

- 69. Purpose of Division
- 70. Capital adequacy standard
- 71. Purpose of capital adequacy standard
- 72. Obligation to comply with standard
- 73. Commissioner's power to give capital directions to particular life companies

**PART 6—FINANCIAL MANAGEMENT OF LIFE COMPANIES**

*Division 1—Preliminary*

- 74. Interpretation

*Division 2—Financial records and statements*

- 75. Financial records—Australian and Australian/overseas funds
- 76. Financial records—overseas funds
- 77. Financial year of a life company
- 78. Treatment of income and outgoings relating to mixed business
- 79. Treatment of income and outgoings relating to 2 or more categories of business etc.
- 80. Basis of apportionment
- 81. Treatment of appreciation and depreciation of assets
- 82. Financial statements
- 83. Audit

## TABLE OF PROVISIONS—*continued*

### Section

- 84. Appointment of auditor
- 85. Approval of auditors
- 86. Revocation of approval of auditor
- 87. Notification of appointment etc. of auditor
- 88. Auditor's obligation to report to company and Commissioner
- 89. Qualified privilege of auditors
- 90. Obligation on life company to have audit committee
- 91. Membership and meetings of audit committee
- 92. Functions and powers of audit committee

### *Division 3—Appointed actuaries*

- 93. Appointment
- 94. Cessation of appointment
- 95. Notification of appointment etc.
- 96. Compliance with actuarial standards
- 97. Powers of appointed actuary
- 98. Actuary's obligation to report to Commissioner
- 99. Qualified privilege of appointed actuary

### *Division 4—Life Insurance Actuarial Standards Board*

- 100. Establishment
- 101. Actuarial standards
- 102. Powers of the Board
- 103. Membership
- 104. Acting Chairperson
- 105. Leave of absence of members
- 106. Resignation
- 107. Ending of appointments for misbehaviour etc.
- 108. Remuneration and allowances
- 109. Meetings
- 110. Conduct of meetings
- 111. Resolutions without formal meetings
- 112. Annual report

### *Division 5—Actuarial investigations and advice*

- 113. Annual actuarial investigations
- 114. Method of valuing policy liabilities
- 115. Additional actuarial investigations
- 116. Actuarial advice regarding policies

### *Division 6—Annual returns etc.*

- 117. Annual statistical returns
- 118. Lodgment of financial statements and annual statistical returns
- 119. Lodgment of financial condition report
- 120. Statement of actuary's pecuniary interests
- 121. Rejection of financial statement
- 122. Financial statements to be accompanied by reports to shareholders and policy owners
- 123. Reporting of reinsurance arrangements
- 124. Policy owner's right to copy of financial statements and annual return

### *Division 7—Miscellaneous*

- 125. Approval of certain reinsurance arrangements

TABLE OF PROVISIONS—*continued*

Section

PART 7—MONITORING AND INVESTIGATION OF LIFE COMPANIES

*Division 1—Preliminary*

- 126. Interpretation
- 127. Appointment of authorised persons
- 128. Associated company
- 129. Related companies

*Division 2—Monitoring life companies*

- 130. Purpose of Division
- 131. Requirement to give information to Commissioner
- 132. Requirement to produce records
- 133. Access to premises

*Division 3—Investigation by Commissioner*

- 134. Directions regarding company assets
- 135. Giving of show cause notice
- 136. Grounds for giving of show cause notice
- 137. Decision to investigate
- 138. Investigation of associated company
- 139. Investigation procedure
- 140. Access to premises for purposes of investigation
- 141. Requirement to produce records
- 142. Commissioner's power to require assistance
- 143. Application for warrant to seize records not produced
- 144. Grant of warrant
- 145. Powers if records produced or seized
- 146. Powers if records not produced
- 147. Offences related to investigations
- 148. Self-incrimination
- 149. Commissioner must give company written summary of conclusions
- 150. Commissioner may give directions during or after investigation
- 151. Identity cards

*Division 4—Special provisions relating to the execution of warrants*

- 152. Interpretation
- 153. Use of equipment to examine or process things
- 154. Use of electronic equipment at premises
- 155. Compensation for damage to electronic equipment
- 156. Copies of seized things to be provided

PART 8—JUDICIAL MANAGEMENT AND WINDING-UP

*Division 1—Judicial management*

- 157. Application for order for judicial management
- 158. Order for judicial management after investigation
- 159. Order for judicial management on other grounds
- 160. Commencement of judicial management
- 161. Stay of proceedings during judicial management
- 162. No judicial management except in accordance with this Act
- 163. Appointment of judicial manager
- 164. Remuneration of judicial manager
- 165. Management vests in judicial manager
- 166. Continued application of other Parts of Act

TABLE OF PROVISIONS—*continued*

Section	
167.	Court's control of judicial manager
168.	Powers of judicial manager
169.	Application by Commissioner for instructions to judicial manager
170.	Request by Commissioner for information
171.	Duration of judicial management
172.	Cancellation of judicial management
173.	Judicial manager must conduct management efficiently and economically
174.	Disclaimer of onerous property
175.	Report by judicial manager
176.	Order of Court on report of judicial manager
177.	Transfer of business to another company
178.	Resignation
179.	Indemnity
<i>Division 2—Winding-up</i>	
180.	Winding-up of life companies
181.	Order on application by Commissioner
182.	Operation of Corporations Law
183.	Notification to Commissioner regarding applications by liquidator
184.	Application by Commissioner for directions
185.	Commissioner's power to ask for information
186.	Determination of amounts to be treated as liabilities of life company
187.	Application of statutory fund assets
188.	Liability of directors for loss to statutory fund
<b>PART 9—TRANSFERS AND AMALGAMATIONS OF LIFE INSURANCE BUSINESS</b>	
189.	Interpretation
190.	Transfer or amalgamation of life insurance business
191.	Steps to be taken before application for confirmation
192.	Actuarial report on scheme
193.	Application to Court
194.	Confirmation of scheme
195.	Effect of confirmation etc.
196.	Costs of actuary's report
197.	Documents to be lodged in case of transfer or amalgamation
<b>PART 10—PROVISIONS RELATING TO POLICIES</b>	
<i>Division 1—Issue of policies</i>	
198.	Alteration of proposal and policy forms
199.	Capacity of young persons to insure etc.
<i>Division 2—Assignments and mortgages</i>	
200.	Assignment of life policy
201.	Mortgages and trusts
202.	Effect of notice of trust etc.
203.	Transfer of policy after change of trustee
<i>Division 3—Protection of policies</i>	
204.	Protection of interest of insured
205.	Protection of policy money on person's death
<i>Division 4—Surrender values, paid-up policies and non-forfeiture of policies</i>	
206.	Application of Division

## TABLE OF PROVISIONS—*continued*

Section	
207.	Surrender of policies
208.	Relaxation of company's obligations to surrender
209.	Paid-up policies
210.	Non-forfeiture of policies in certain cases of non-payment of premiums
<i>Division 5—Payment of policy money</i>	
211.	Probate or administration not necessary in certain cases—a single policy
212.	Probate or administration not necessary in certain cases—2 or more policies
213.	Death of policy owner who is not the life insured
214.	Company not bound to see to the application of money paid by it
215.	Power to pay money into Court
216.	Unclaimed money
217.	No deduction in respect of other policies
<i>Division 6—Children's advancement policies</i>	
218.	Interpretation
219.	Property in child's advancement policy
220.	Death or bankruptcy of policy owner
<i>Division 7—Lost or destroyed policy documents</i>	
221.	Lost or destroyed policy—issue of replacement policy document
222.	Form of replacement policy document
223.	Notice before issuing replacement policy document
224.	Claim under policy where policy document lost or destroyed
225.	Application of sections 221, 222, 223 and 224 to replacement policy document
<i>Division 8—General</i>	
226.	Registers
227.	Registration of life policies
228.	Effect of suicide on policy
229.	Condition as to war risk void
230.	Policies not invalidated by contraventions of the Act
<b>PART 11—MISCELLANEOUS</b>	
231.	Annual report
232.	Delegation
233.	Operation of State and Territory laws
234.	Prohibition of mixed insurance business
235.	Injunctions
236.	Review of certain decisions
237.	Constitution and procedure of Tribunal
238.	Prospectus to be given to Commissioner
239.	Documents relating to takeover schemes
240.	Register of Life Companies
241.	Inspection of Register etc.
242.	Non-shareholder members of life company—voting by post
243.	Inspection of documents
244.	Commissioner's power to obtain statistics etc.
245.	Bankrupts and persons convicted of certain offences not to be directors, principal executive officers etc. of life companies
246.	Principal executive officer
247.	Protection of person who discloses information etc. under compulsion
248.	Offences
249.	False or misleading documents

TABLE OF PROVISIONS—*continued*

Section

- 250. Conduct by directors, servants and agents
- 251. Secrecy
- 252. Commissioner's rules
- 253. Regulations

PART 12—HOW THIS ACT AFFECTS EXISTING LIFE COMPANIES ETC.

- 254. Companies registered under *Life Insurance Act 1945*
- 255. Continuing capital requirements
- 256. Approved auditor
- 257. Approved actuary
- 258. Documents required to be lodged
- 259. Reinsurance between statutory funds
- 260. Scheme for transfer or amalgamation
- 261. Modification of operation of Divisions 5 and 6 of Part 4
- 262. Existing benefit society business
- 263. Judicial management and winding-up
- 264. Saving provision: sections 83, 84 and 94 of the *Life Insurance Act 1945*

SCHEDULE

DICTIONARY





# Life Insurance Act 1995

No. 4 of 1995

---

---

**An Act relating to life insurance, and for related purposes**

*[Assented to 23 February 1995]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Life Insurance Act 1995*.

### **Commencement**

2.(1) Subject to subsection (2), 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 this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **Object of Act**

3.(1) The object of this Act is to protect the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry.

(2) The principal means adopted for the achievement of this object are the following:

- (a) restricting the conduct of life insurance business to companies that are able to meet certain requirements as to suitability;
- (b) imposing on life companies requirements designed to promote prudent management of the life insurance business of such companies, including requirements designed to ensure the solvency and capital adequacy of statutory funds;
- (c) providing for the supervision of life companies by the Insurance and Superannuation Commissioner;
- (d) providing for judicial management of life companies whose continuance may be threatened by unsatisfactory management or an unsatisfactory financial position;
- (e) making provision to ensure that, in the winding-up of a life company, the interests of policy owners are adequately protected;
- (f) providing for the supervision of transfers and amalgamations of life insurance business by the Court.

### **Additional operation of Act**

4. Without prejudice to its effect apart from this section, this Act also has the effect it would have if each reference to a company were, by express provision, confined to a company that is a corporation to which paragraph 51(xx) of the Constitution applies.

### **Exclusion of certain State insurance**

5. This Act does not apply with respect to State insurance that does not extend beyond the limits of the State concerned.

### **Extension of Act to Norfolk Island**

6. This Act extends to the Territory of Norfolk Island.

### **General administration**

7. The Insurance and Superannuation Commissioner has the general administration of this Act.

## **Dictionary**

**8.(1)** A dictionary of expressions used in the Act is contained in the Schedule.

**(2)** Unless the contrary intention appears, an expression defined in the dictionary has the meaning there set out.

## **PART 2—EXPLANATION OF KEY CONCEPTS**

### **Life policy**

**9.(1)** Subject to subsection (2), each of the following constitutes a life policy for the purposes of this Act:

- (a)** a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;
- (b)** a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life;
- (c)** a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life;
- (d)** a contract that provides for the payment of an annuity for a term not dependent on the continuance of human life but exceeding the term prescribed by the regulations for the purposes of this paragraph;
- (e)** a continuous disability policy;
- (f)** a contract (whether or not it is a contract of insurance) that constitutes an investment account contract;
- (g)** a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract.

**(2)** A contract that provides for the payment of money on the death of a person is not a life policy if:

- (a)** by the terms of the contract, the duration of the contract is to be not more than one year; and
- (b)** payment is only to be made in the event of:
  - (i)** death by accident; or
  - (ii)** death resulting from a specified sickness.

### **Issue and ownership of policies**

**10.(1)** For the purposes of this Act:

- (a)** a life company issues a policy when the company enters into the contract that constitutes the policy; and
- (b)** a policy is issued to the person with whom the life company enters into the contract.

**(2)** For the purposes of this Act, the owner of a policy is:

- (a) the person to whom the policy is issued; or
- (b) if the rights of that person under the policy have been assigned under this Act or transferred by the operation of the policy, the person who has those rights.

**Life insurance business**

**11.(1)** A reference in this Act to life insurance business is a reference to:

- (a) business that consists of any or all of the following:
  - (i) the issuing of life policies;
  - (ii) the issuing of sinking fund policies;
  - (iii) the undertaking of liability under life policies;
  - (iv) the undertaking of liability under sinking fund policies; and
- (b) any business that relates to business referred to in paragraph (a).

(2) In order to avoid doubt and without limiting paragraph (1)(b), it is declared that the reference in that paragraph to business that relates to business referred to in paragraph (1)(a) includes business relating to the investment, administration and management of the assets of a statutory fund.

(3) For the purposes of this Act, the following do not constitute life insurance business:

- (a) business in relation to benefits provided by a friendly society or trade union for its members or their dependants;
- (b) business in relation to the benefits provided for its members or their dependants by an association of employees that is an organisation within the meaning of the *Industrial Relations Act 1988*;
- (c) business in relation to any scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or by employees, or by both, wholly through an organisation established by the employer or employees or by both;
- (d) in the case of a person who issues policies to his or her employees, and not to any other persons, in Australia, the business that consists of the issue of those policies or the undertaking of liability under those policies;
- (e) business in relation to a scheme or arrangement for the provision, by a person other than a life company, of benefits consisting of:
  - (i) the provision of funeral, burial or cremation services, with or without the supply of goods connected with such services; or
  - (ii) the payment of money, on the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of the person;

and no other benefits, except benefits incidental to the scheme or arrangement.

### **Classes of life insurance business**

**12.(1)** For the purposes of this Act, the following are the classes of life insurance business:

- (a) ordinary business;
- (b) superannuation business.

The expressions “ordinary business” and “superannuation business” are defined in the Dictionary.

**(2)** The Commissioner, at the request of a life company, may declare, in writing, that:

- (a) life insurance business carried on by the life company and included in one class of life insurance business is to be treated, for the purposes of this Act, as if it were included in the other class of life insurance business; or
- (b) any other insurance business (other than business of insurance against loss of, or damage to, property) or business relating to the payment of annuities:
  - (i) that is carried on by the life company; or
  - (ii) that the life company proposes to carry on;is to be treated, for the purposes of this Act, as if it were included in a specified class of life insurance business.

**(3)** If the Commissioner makes a declaration:

- (a) this Act has effect accordingly; and
- (b) the Commissioner must give a copy of the declaration to the life company at whose request the declaration was made.

### **Business of a statutory fund**

**13.(1)** A reference in this Act to the business of a statutory fund of a life company is a reference to the life insurance business to which the fund relates.

**(2)** For the purposes of this Act:

- (a) a liability (including a policy liability) is taken to be referable to the business of a statutory fund if the liability is of a kind that, under Part 4, may be discharged out of the assets of the fund; and
- (b) an expense is taken to be referable to the business of a statutory fund if the expense is of a kind that, under Part 4, may be met out of the assets of the fund.

### **Investment account benefits, investment-linked benefits**

**14.(1)** In this Act:

- (a) the expression “investment account benefits” refers to benefits payable under an investment account contract; and
- (b) the expression “investment-linked benefits” refers to benefits payable under an investment-linked contract.

**(2)** An investment account contract is a contract that:

- (a) provides for benefits to be paid:
  - (i) on death; or
  - (ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be; and
- (b) provides for the benefits to be calculated by reference to:
  - (i) a running account under the contract; or
  - (ii) units the value of which are guaranteed by the contract not to be reduced; and
- (c) provides for the account to be increased (for example, by the amounts of premiums paid or interest payable).

**(3)** In spite of subsection (2), a contract is not an investment account contract if it provides for the account to be reduced otherwise than by the amounts of withdrawals by the person responsible for the payment of premiums or by the amounts of charges payable under the contract.

**(4)** An investment-linked contract is a contract:

- (a) the principal object of which is the provision of benefits calculated by reference to units the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided; and
- (b) that provides for benefits to be paid:
  - (i) on death; or
  - (ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be.

**(5)** The Commissioner, at the request of a life company, may make a written declaration:

- (a) that contracts of a kind specified in the declaration and entered into by the company are, or would be, investment account contracts; or
- (b) that contracts of a kind specified in the declaration and entered into by the company are, or would be, investment-linked contracts.

**(6)** If the Commissioner makes a declaration:

- (a) this Act has effect accordingly; and
- (b) the Commissioner must give a copy of the declaration to the life company at whose request the declaration was made.

**Participating, non-participating benefits**

**15.(1)** Subject to this section, a participating benefit is any benefit other than a non-participating benefit.

**(2)** Subject to this section, a non-participating benefit is a benefit that has the following features:

- (a) the benefit does not include any entitlement to share in any distribution by the life company of profits or surplus;
- (b) the amount of the benefit is specified in the policy document or is to be calculated according to a formula that:
  - (i) is set out in the policy document; and
  - (ii) does not include any element that is in any way dependent on, or to be ascertained according to, a decision of the life company concerned.

**(3)** A benefit is a non-participating benefit if it is declared by Commissioner's rules to be a non-participating benefit.

**(4)** The Commissioner, at the request of a life company, may make a written declaration:

- (a) that benefits of a specified kind, when provided for by policies issued by the company, are, or would be, participating benefits; or
- (b) that benefits of a specified kind, when provided for by policies issued by the company, are, or would be, non-participating benefits.

**(5)** If the Commissioner makes a declaration:

- (a) this Act has effect accordingly; and
- (b) the Commissioner must give a copy of the declaration to the life company at whose request the declaration was made.

**Related companies**

**16.** Except for the purposes of Part 7, the question whether:

- (a) one company is a subsidiary of another; or
- (b) one company is related to another;

is to be determined, in the same way as it would be determined under the Corporations Law.

**PART 3—REGISTRATION OF LIFE COMPANIES**

**Prohibition of persons other than registered companies carrying on life business**

**17.(1)** A person other than a company registered under this Act must not intentionally:

- (a) issue a life policy; or
- (b) undertake liability under a life policy.

- (2) Subsection (1) does not prohibit a person from:
  - (a) acting as agent of a company registered under this Act; or
  - (b) entering into, or undertaking liability under, a contract referred to in subsection (3) if the particular contract is not a contract of insurance.
- (3) Paragraph (2)(b) applies to the following contracts:
  - (a) an investment account contract;
  - (b) an investment-linked contract.

**Certain activities not regarded as carrying on life business**

**18.** A person is not taken to be carrying on life business merely because the person:

- (a) collects premiums under a policy issued outside Australia to a person who was resident outside Australia at the time of issue of the policy; or
- (b) makes payments due under such a policy.

**Certain persons taken to carry on life business etc.**

**19.(1)** For the purposes of this Part, a person who publishes or distributes, or procures the publication or distribution of, a statement relating to the willingness of the person to do something that constitutes the carrying on of life business is taken to carry on that business.

(2) For the purposes of this Part, a person is taken to carry on life business in Australia if:

- (a) business that, under this Act, would constitute life business is carried on by another person outside Australia; and
- (b) the first-mentioned person acts, in Australia, as the agent of that other person in relation to the business carried on outside Australia.

**Application for registration**

**20.(1)** Any company may apply to the Commissioner for registration under this Act.

- (2) An application must be made in accordance with the regulations.
- (3) The provision that may be made by the regulations includes, but is not limited to:
  - (a) provision requiring an applicant to lodge specified documents with an application; and
  - (b) provision authorising the Commissioner to require an applicant:
    - (i) to produce to the Commissioner documents relating to matters relevant to a decision on the application; or
    - (ii) to give the Commissioner information relating to matters relevant to a decision on the application.



- (4) An application for registration must be accompanied by written notice by the applicant company nominating:
- (a) the period that is to be the financial year of the company for the purposes of this Act; and
  - (b) the person who is to be the principal executive officer of the company for the purposes of this Act.

**Decision on application for registration**

**21.(1)** Subject to subsection (2), if:

- (a) an application for registration has been made in accordance with section 20; and
- (b) the applicant has complied with any requirements made by the Commissioner under regulations made for the purposes of subsection 20(3);

the company is entitled to be registered by the Commissioner.

(2) The Commissioner may refuse to register a company only if:

- (a) the Commissioner is satisfied that a ground for refusal specified in subsection (3) exists; and
- (b) the Treasurer approves of the refusal.

(3) The following are the grounds on which the Commissioner may refuse to register a company:

- (a) in the case of a company limited only by shares, that the total of the company's paid-up share capital and the amount standing to the credit of its share premium account is less than \$10,000,000 or, if a higher amount is fixed by the regulations for the purposes of subsection 23(1), that amount;
- (b) in the case of a company limited both by shares and by guarantee or a company not having any share capital, that the value of the company's eligible assets (other than assets that are assets of a statutory fund) is less than \$10,000,000 or, if a higher amount is fixed by the regulations for the purposes of subsection 23(3), that amount;
- (c) in the case of a company that is limited only by shares, that the value of the company's eligible assets (other than assets that are assets of a statutory fund) does not exceed the total amount of its liabilities by at least \$5,000,000 or, if a higher amount is fixed by the regulations for the purposes of subsection 23(4), that amount;
- (d) that the company is not able, or is unlikely to be able, to meet its obligations, including obligations in respect of business other than life insurance business;
- (e) that it is unlikely that the company will be able to comply with the provisions of this Act that would be applicable to it;

- (f) that the name of the company so closely resembles the name of a company already registered under this Act as to be likely to deceive;
- (g) in the case of a company that carries on, or proposes to carry on, some other form of business in addition to life insurance business, that the carrying on of that other form of business in addition to insurance business would be contrary to the public interest.

- (4) The reference in paragraph (3)(c) to liabilities does not include:
  - (a) liabilities in respect of share capital; or
  - (b) liabilities that may be met by applying assets of a statutory fund.

(5) When a company is registered under this Act, the Commissioner must issue to the company a certificate stating that the company is registered and specifying the date on which it was registered.

(6) A certificate under subsection (5) is evidence of the matters set out in the certificate.

(7) A document purporting to be a certificate under subsection (5) is to be taken, in the absence of evidence to the contrary, to be such a certificate.

### **Conditions of registration**

**22.(1)** The Commissioner may, at any time, impose conditions on the registration of a company.

(2) The Commissioner imposes conditions by giving the company concerned written notice of the imposition of the conditions and of their terms.

(3) If the Commissioner thinks that a particular condition is no longer required or should be varied, the Commissioner must, by written notice given to the company, revoke or vary the condition.

(4) If a company asks the Commissioner, in writing, to revoke or vary a condition, the Commissioner must act as follows:

- (a) if the Commissioner thinks the condition is no longer necessary or should be varied, the Commissioner must revoke or vary the condition accordingly;
- (b) in any other case, the Commissioner must refuse to revoke or vary the condition.

(5) The Commissioner must give a company written notice of a decision under subsection (4).

### **Continuing capital requirements**

**23.(1)** A life company limited only by shares must at all times have an adjusted paid-up share capital of at least \$10,000,000 or, if a higher amount is fixed by the regulations for the purposes of this subsection, that amount.

(2) The reference in subsection (1) to the adjusted paid-up share capital of a life company is a reference to the sum of:

- (a) the amount of the company's paid-up share capital represented by ordinary shares and irredeemable preference shares; and
- (b) the amount standing to the credit of the company's share premium account.

(3) A life company that is limited both by shares and by guarantee or that does not have any share capital must at all times have eligible assets (other than assets that are assets of a statutory fund) of at least \$10,000,000 in value or, if a higher amount is fixed by the regulations for the purposes of this subsection, that amount.

(4) A life company limited only by shares must at all times have eligible assets (other than assets that are assets of a statutory fund) the value of which exceeds the total amount of its liabilities by at least \$5,000,000 or, if a higher amount is fixed by the regulations for the purposes of this subsection, that amount.

(5) The reference in subsection (4) to liabilities does not include:

- (a) liabilities in respect of share capital; or
- (b) liabilities that may be met by applying assets of a statutory fund.

(6) This section is subject to section 255.

### **Modification of application of section 23 to particular companies**

**24.(1)** In this section, “**relevant provision**” means subsection 23(1), (3) or (4).

(2) The Treasurer may make a written declaration that a relevant provision is to have effect, in relation to a particular life company, as if for the amount of money specified in the provision or fixed by regulations for the purposes of the provision, as the case may be, there were substituted the lesser amount specified in the declaration.

(3) While a declaration under subsection (2) is in force, the relevant provision has effect, in relation to the life company specified in the declaration, as if for the amount of money specified in the provision or fixed by the regulations, as the case may be, there were substituted the lesser amount specified in the declaration.

(4) The Treasurer may only make a declaration under subsection (2) if he or she is satisfied that:

- (a) in the particular circumstances of the company, compliance with a relevant provision by the company is unnecessary or is likely to affect adversely the company's ability to carry on its business in accordance with the best interests of owners of policies issued by the company or of shareholders of the company; and

(b) the making of the declaration is not likely to have an adverse effect on the interests of owners of policies issued by the company.

(5) This section applies to an existing life company as if a reference to the amount specified in a relevant provision or fixed by regulations included a reference to such an amount as modified by regulations made under subsection 255(2).

(6) Commissioner's rules may modify the operation of subsection 23(2) in relation to a specified existing life company.

(7) If Commissioner's rules are in force for the purposes of subsection (6), the operation of subsection 23(2) in relation to the existing life company concerned is modified accordingly.

### **Notification of changes in information supplied to Commissioner**

**25.(1)** If, after the registration of a company under this Act, a change of circumstances has the result that:

- (a) any information included in the application for registration; or
- (b) any information given to the Commissioner, or contained in a document given to the Commissioner, in connection with the application for registration;

ceases to be accurate in relation to the company, the company must give the Commissioner written notice of the matters in relation to which the information is inaccurate and of the true position.

(2) A notice under subsection (1) must be given within the time prescribed by the regulations.

### **Cancellation of registration: defunct company**

**26.(1)** If:

- (a) a company has been registered under this Act for at least 12 months; and
- (b) there are reasonable grounds for believing that the company is not carrying on life insurance business in Australia;

the Commissioner may give the company a written notice requiring the company, within one month after the notice is given, to satisfy the Commissioner that the company is carrying on life insurance business in Australia.

(2) If:

- (a) the Commissioner has given a notice to a company under subsection (1); and
- (b) a period of one month has elapsed since the notice was given; and
- (c) the Commissioner is not satisfied that the company is carrying on life insurance business in Australia;

the Commissioner may cancel the registration of the company under this Act by giving the company written notice of cancellation.

(3) Cancellation under this section of the registration of a company takes effect at the end of 7 days after the Commissioner gives the company written notice of cancellation.

### **Voluntary deregistration**

**27.(1)** If:

- (a) a company gives the Commissioner a written request that its registration under this Act be cancelled; and
- (b) the Commissioner is satisfied that:
  - (i) no policies issued by the company remain in force; and
  - (ii) the company is not subject to any outstanding policy liabilities;

the Commissioner may cancel the registration of the company under this Act by giving the company written notice of cancellation.

(2) Cancellation under this section of the registration of a company takes effect when the Commissioner gives the company written notice of cancellation.

### **Return of certificate of registration**

**28.** Within 7 days after cancellation of the registration of a company takes effect, the company must return to the Commissioner the certificate of registration issued to the company under subsection 21(5).

Penalty: 10 penalty units.

## **PART 4—STATUTORY FUNDS OF LIFE COMPANIES**

### *Division 1—General requirements*

#### **What is a statutory fund?**

**29.** A statutory fund is a fund that:

- (a) is established in the records of a life company; and
- (b) relates solely to the life insurance business of the company or a particular part of that business.

#### **Outline of requirements regarding statutory funds**

**30.** The principal requirements of this Part in relation to statutory funds may be summarised as follows:

- (a) all amounts received by a life company in respect of the business of a fund must be credited to the fund;

- (b) all assets and investments related to the business of a fund must be included in the fund;
- (c) all liabilities (including policy liabilities) of the company arising out of the conduct of the business of a fund must be treated as liabilities of the fund;
- (d) the assets of a fund are only available for expenditure related to the conduct of the business of the fund;
- (e) statutory funds may not be divided or amalgamated without the approval of the Commissioner;
- (f) profits and losses of a statutory fund may only be dealt with in accordance with Divisions 5 and 6 (the object of those Divisions being to ensure that such profits and losses are dealt with in a manner that protects the interests of policy owners and is consistent with prudent management of the fund).

### **Requirement that company have statutory funds**

**31.** A life company must comply with the following requirements:

- (a) a life company must at all times have at least one statutory fund in respect of its life insurance business but may have more statutory funds if it chooses to do so;
- (b) a life company that carries on life insurance business consisting of the provision of investment-linked benefits must maintain a statutory fund or statutory funds exclusively for that business so far as it is carried on in Australia;
- (c) except so far as paragraph (d) applies or the Commissioner approves otherwise, a life company that carries on life insurance business outside Australia must have a statutory fund or statutory funds exclusively in respect of that business;
- (d) a life company may only maintain a statutory fund in respect of both life insurance business carried on outside Australia and life insurance business carried on in Australia if:
  - (i) the statutory fund was established before the commencement of this Act; and
  - (ii) so far as it relates to business carried on outside Australia, the fund relates only to business carried on in a country or countries in which the company was carrying on life insurance business immediately before the commencement of this Act.

### **Duty of company in relation to statutory funds**

**32.(1)** In the investment, administration and management of the assets of a statutory fund, a life company:

- (a) must comply with this Part; and

(b) must give priority to the interests of owners and prospective owners of policies referable to the fund.

(2) An act or decision of a life company in relation to a statutory fund does not contravene paragraph (1)(b) if, having regard to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of owners and prospective owners of policies referable to the fund.

(3) An investment by a life company is not ineffective merely because it is made in contravention of paragraph (1)(b).

(4) A reference in subsection (1) or (2) to the interests of owners of policies referable to a statutory fund is a reference to the interests of such persons viewed as a group.

(5) Nothing in subsection (1) prevents a life company doing anything that the company is permitted by this Part to do.

#### **Notice to Commissioner when fund established**

**33.(1)** Whenever a life company establishes a statutory fund otherwise than under an approval given under section 52, the company must give the Commissioner written notice of:

- (a) the establishment of the fund; and
- (b) the date on which the fund was established; and
- (c) the nature of the life insurance business of the company to which the fund relates; and
- (d) such other matters as are prescribed by the regulations.

(2) The notice must be given in accordance with the regulations.

#### **Assets of statutory fund**

**34.(1)** For the purposes of this Act, the assets of a statutory fund at a particular time are the following:

- (a) the balance of money represented by amounts credited to the fund in accordance with section 36;
- (b) assets of the company obtained as a result of the expenditure or application of money credited to the fund;
- (c) investments held by the company as a result of the expenditure or application of money credited to the fund;
- (d) other money, assets or investments of the company transferred to the fund, whether under this Act or otherwise.

(2) Assets or investments obtained by the application of assets (other than money) of a statutory fund are themselves assets of the fund.

(3) Subject to subsection (4), a life company must keep assets of a statutory fund distinct and separate from assets of other statutory funds and from all other money, assets or investments of the company.

(4) A life company may maintain a single bank account for money that constitutes assets of 2 or more statutory funds if the account is maintained in accordance with Commissioner's rules.

(5) In order to avoid doubt, it is declared that nothing in this Act is intended to constitute a life company or the directors of a life company a trustee or trustees of the assets of the statutory funds of the company.

### **Identification of policies referable to statutory fund**

**35.(1)** A policy document must specify the statutory fund or statutory funds to which the policy is referable.

(2) A policy document must not make provision inconsistent with section 31.

(3) A provision in a policy document that a policy is referable to 2 or more statutory funds is not effective unless it specifies:

- (a) the benefits under the policy that are to be provided out of each fund; and
- (b) either:
  - (i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund; or
  - (ii) the way in which that proportion is to be calculated.

(4) Subsection (1) does not prevent a policy document being endorsed so as to change the statutory fund or funds to which the policy is referable.

(5) If:

- (a) a policy was issued before the commencement of this Act; and
- (b) since that commencement, the company that issued the policy has given the policy owner written notice of the statutory fund or funds to which the policy is referable;

this Act has effect as if the notice were part of the policy document relating to the policy.

(6) During the period of 15 months beginning at the commencement of this Act, subsection (1) does not apply to the policy document relating to a policy issued before the commencement of this Act.

### **Payments to statutory fund**

**36.** The following amounts must be credited by a life company to a statutory fund:

- (a) premiums payable under policies referable solely to the fund;
- (b) in the case of a policy that is referable to the fund and one or more other statutory funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the fund;



- (c) amounts paid to the company in relation to a liability under section 48 or 50 in relation to the fund;
- (d) income from the investment of assets of the fund;
- (e) money paid to or by the company under a judgment of a court relating to any matter concerning the business of the fund or any failure to comply with this Part in relation to the fund;
- (f) any other money received by the life company in connection with its conduct of the business of the fund.

### **Capital payments to statutory funds**

**37.(1)** Nothing in this Act prevents a life company from making a capital payment to a statutory fund.

**(2)** For the purposes of this Part, a life company makes a capital payment to a statutory fund if it credits to the fund an amount that:

- (a) is not required to be credited to the fund; and
- (b) does not represent any part of the assets of another statutory fund.

### **Expenditure and application of statutory fund**

**38.(1)** A life company must not apply, or deal with, assets of a statutory fund, whether directly or indirectly, except in accordance with this section.

**(2)** The assets of a statutory fund may only be applied:

- (a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund; or
- (b) for the making of investments in accordance with section 43; or
- (c) for the purposes of a distribution under Division 6.

**(3)** A life company must not mortgage or charge any of the assets of a statutory fund except:

- (a) to secure a bank overdraft; or
- (b) in accordance with section 40.

**(4)** A life company must not borrow money, for the purposes of the business of a statutory fund, by means of an unsecured borrowing if the result would be that the total amount of principal outstanding under unsecured borrowings for the purposes of the business of the fund would exceed an amount ascertained in accordance with the regulations.

**(5)** A reference in subsection (4) to an unsecured borrowing does not include a reference to a borrowing of money by means of a bank overdraft.

**(6)** The assets of a statutory fund are not available to meet a liability of a life company under a contract of guarantee unless:

- (a) the contract of guarantee was entered into by the company in connection with an investment by the company of assets of the fund; and

(b) the investment was made in accordance with this Part.

(7) Nothing in this section applies to the transfer of assets from one statutory fund to another in accordance with Division 3, 4 or 6.

### **Prohibition of reinsurance between funds**

**39.(1)** In order to avoid doubt, it is declared that a life company contravenes this Part if it engages in the practice of reinsurance between statutory funds of the company.

(2) For the purposes of subsection (1) and section 259, the practice of reinsurance between statutory funds consists of the following elements:

- (a) part of the premium payable under a policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable (“**the reinsuring fund**”);
- (b) a corresponding proportion of the liability under the policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

### **Mortgages etc. of assets**

**40.(1)** A life company may mortgage or charge an asset of a statutory fund otherwise than for the purpose of securing a bank overdraft if the giving of the mortgage or charge has been approved by the Commissioner.

(2) An approval under subsection (1) must:

- (a) be in writing; and
- (b) include a statement that the Commissioner is satisfied that the mortgage or charge is to be given in connection with the undertaking of a major development project; and
- (c) specify any conditions to which the approval is subject.

(3) The Commissioner may only give an approval with the consent of the Treasurer.

(4) An approval may be given subject to such conditions (if any) as the Commissioner thinks appropriate. The conditions that may be imposed include conditions relating to the terms and conditions of the mortgage or charge or of any other agreement or arrangement to be entered into by the life company in relation to the project.

### **Effect of non-compliance with section 38**

**41.(1)** Subject to subsection (2) and subsection 32(3), a transaction entered into in contravention of section 38 is of no effect.

(2) The Court, on application by a party to the transaction, may make an order declaring that the transaction is effective, and is to be taken always to have been effective, for all purposes.

(3) If the Court is satisfied that the applicant entered into the transaction in good faith and without knowledge of the contravention of section 38, as the case may be, the Court may have regard to any hardship that would be caused to the applicant if an order were not made under subsection (2).

(4) Subsection (3) is not intended to limit the matters to which the Court may have regard on an application under subsection (2).

### **Investment performance guarantee—limit of certain liabilities**

**42.(1)** This section applies to a statutory fund if:

- (a) the business of the fund consists of the provision of investment-linked benefits; and
- (b) any of the policies referable to the fund includes an investment performance guarantee.

(2) A life company must at all times ensure that the investment performance guarantee factor of a statutory fund to which this section applies does not exceed 5%.

(3) The investment performance guarantee factor of a statutory fund at a particular time is the proportion of the amount of the current policy liabilities of the fund at that time that represents the total cost, as at that time, of providing the investment performance guarantees included in policies referable to the fund.

(4) For the purposes of this section:

- (a) the amount of the current policy liabilities of a statutory fund at a particular time is the amount that, in accordance with actuarial standards, is to be taken to be the total value, at that time, of all policy liabilities of the company in relation to policies referable to the fund; and
- (b) the total cost, as at a particular time, of providing the investment performance guarantees included in policies referable to a statutory fund is the amount calculated, as at that time, in accordance with actuarial standards.

(5) In this section:

**“investment performance guarantee”**, in relation to a policy, means a provision that the amount payable under the policy at a particular time by way of investment-linked benefits is not less than an amount specified in, or calculated in accordance with, the policy.

### **Investment of statutory funds**

**43.(1)** In this section, **“listed corporation”** has the same meaning as in the Corporations Law.

(2) The general rule regarding investment of assets of a statutory fund is that a life company may invest such assets in any way that is likely to further the business of the fund.

(3) The general rule stated in subsection (2) is subject to the following qualifications:

- (a) nothing in this Act authorises a life company to make an investment the company would otherwise be prohibited from making;
- (b) nothing in this Act authorises a life company to make an investment the company would not otherwise have power to make;
- (c) except with the approval of the Commissioner, a life company must not invest assets of a statutory fund in a related company that is not a subsidiary of the life company;
- (d) a life company must not invest assets of a statutory fund, or keep such assets invested, in a subsidiary of the life company if the investment, or the retention of the investment, as the case requires, is prohibited by the regulations.

(4) Nothing in paragraph (3)(c) or (d) prevents a life company investing assets of a statutory fund, or keeping such assets invested, in ordinary voting shares of listed corporations related to the life company (whether or not they are subsidiaries) if the total value of the assets of the fund so invested does not exceed 2.5% of the total value of all assets of the fund.

(5) A transaction is not ineffective merely because it involves a contravention of paragraph (3)(c) or (d).

(6) Nothing in this section:

- (a) prevents a life company from investing money of a statutory fund by way of deposit with a bank; or
- (b) requires the approval of the Commissioner for such an investment.

(7) For the purposes of this Part, an investment by way of a loan is to be taken to be made when the loan agreement is entered into.

### **Reporting of restricted investments**

**44.(1)** This section is concerned with the reporting of restricted investments.

(2) Subject to subsection (3), any investment of assets of a statutory fund of a life company in a related company (including a subsidiary) is a restricted investment.

(3) An investment of assets of a statutory fund by way of deposit with a bank is not a restricted investment, even though the bank is related to the life company concerned.

(4) Every life company must give the Commissioner a restricted investments return in relation to each half-year.

- (5) A half-year, in relation to a life company, is:
  - (a) a period of 6 months that commences on the first day of a financial year of the company; or
  - (b) a period of 6 months that immediately follows a period referred to in paragraph (a).
- (6) A restricted investments return is a return setting out the particulars required by Commissioner's rules of each restricted investment:
  - (a) current at the end of the half-year to which the return relates; or
  - (b) made by the company during that half-year but not current at the end of the half-year.
- (7) The return must:
  - (a) be in accordance with the form prescribed by Commissioner's rules; and
  - (b) be given to the Commissioner within such time as is fixed by Commissioner's rules.

#### **Transfer of assets between funds**

**45.(1)** A life company must not transfer an asset from one statutory fund to another statutory fund except in accordance with subsection (2) or Division 3, 4 or 6.

**(2)** A life company may transfer an asset from one statutory fund ("**the losing fund**") to another statutory fund ("**the gaining fund**") if:

- (a) the company transfers from the gaining fund to the losing fund an amount equal to the fair value of the asset; and
- (b) in relation to the owners of policies referable to the losing fund and the gaining fund, the transfer is fair and reasonable in all the circumstances.

**(3)** For the purposes of subsection (2), the fair value of an asset is the price a person could reasonably be expected to pay for the asset on a sale in which the seller and buyer were dealing with each other at arm's length.

**(4)** Subsection (1) does not prevent a liquidator doing anything authorised or required by or under this Act or any other law of the Commonwealth or of a State or Territory.

#### **Division, amalgamation etc. of statutory funds**

**46.** A life company must not:

- (a) establish a statutory fund in respect of part of the business of an existing statutory fund; or
- (b) amalgamate statutory funds;

except with the written approval of the Commissioner under Division 3.

**Ascertainment of income and outgoings of a statutory fund**

**47.(1)** The regulations may declare:

- (a) what constitutes income of a statutory fund; and
- (b) what constitutes outgoings of a statutory fund.

(2) If regulations are made under subsection (1), then, for the purposes of this Act:

- (a) what constitutes income of a statutory fund must be determined in accordance with the regulations; and
- (b) what constitutes outgoings of a statutory fund must be determined in accordance with the regulations.

*Division 2—Duties and liabilities of directors etc.*

**Duty of directors in relation to statutory funds**

**48.(1)** A director of a life company has a duty to the owners of policies referable to a statutory fund of the company.

(2) The director's duty is a duty to take reasonable care, and use due diligence, to see that, in the investment, administration and management of the assets of the fund, the life company:

- (a) complies with this Part; and
- (b) gives priority to the interests of owners and prospective owners of policies referable to the fund.

(3) In order to avoid doubt, it is declared that, in the event of conflict between the interests of owners and prospective owners of policies referable to a statutory fund and the interests of shareholders of a life company, a director's duty is to take reasonable care, and use due diligence, to see that the company gives priority to the interests of owners and prospective owners of those policies over the interests of shareholders.

(4) A reference in subsection (2) or (3) to the interests of owners of policies referable to a statutory fund is a reference to the interests of such persons viewed as a group.

(5) A director of a life company does not commit a breach of duty because of the doing of an act by the company if the company is permitted by this Part to do the act.

(6) If:

- (a) in respect of any act or omission of a life company, a director of the company is guilty of a breach of the duty imposed by subsection (1); and
- (b) the act or omission of the company results in a loss to a statutory fund of the company;

the director is liable to pay the company an amount equal to the amount of the loss.

(7) If 2 or more persons are liable under subsection (6) in relation to the same act or omission, the liability of those persons is joint and several.

(8) An action under subsection (6) may be brought:

(a) by the company; or

(b) with the written approval of the Commissioner, by the owner of a policy referable to the statutory fund involved.

(9) An approval under subsection (8) may be given subject to conditions relating to the persons, or the number of persons, who may join in the action as plaintiffs.

(10) A person cannot be made liable both under this section and under section 50 in respect of the same act or omission of a life company.

### **Commissioner may give notice**

49.(1) If a life company has contravened this Part, the Commissioner may give the company a written notice requiring the company, within a specified period, to take such action as is specified in the notice to remedy the contravention.

(2) The period specified in a notice must be a period ending not earlier than one month after the giving of the notice.

(3) The action to be specified in a notice is such action as the Commissioner thinks appropriate and reasonable to overcome the effects of the contravention.

(4) At any time before the end of the period specified in a notice, the Commissioner may extend the period by such further period as he or she thinks fit.

(5) A life company must comply with a notice under subsection (1).

### **Liability of directors**

50.(1) If:

(a) the Commissioner has given a notice to a life company under section 49 in respect of a contravention of this Part; and

(b) the contravention has resulted in a loss to a statutory fund; and

(c) the company has failed to comply with the notice within the period specified in it or within that period as extended under subsection 49(4);

the persons who were the directors of the company when the contravention occurred are jointly and severally liable to pay the company an amount equal to the amount of the loss.

(2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to ensure that the company complied with the notice.

### **Commissioner's power to sue in the name of a company**

**51.** If the Commissioner thinks that it is in the interests of the owners of policies referable to a statutory fund to do so, the Commissioner may bring an action against a person in the name, and for the benefit, of a life company for the recovery of an amount that the company is entitled to recover under section 50.

### ***Division 3—Division and amalgamation of statutory funds***

#### **Division of statutory fund**

**52.(1)** If a life company wishes to establish a statutory fund (“**the new fund**”) in respect of part of the life insurance business referable to an existing statutory fund (“**the old fund**”), the company may apply to the Commissioner for approval of the establishment of the new fund.

(2) The application must be made in accordance with Commissioner's rules.

(3) The provisions that may be made by Commissioner's rules for the purposes of subsection (2) include provision requiring an applicant:

- (a) to lodge specified documents with the application; and
- (b) on request by the Commissioner, to produce to the Commissioner documents of a specified kind.

(4) The Commissioner may only approve the establishment of the new fund if, having regard to the sources and amount of the money to be credited to the fund and the assets to be transferred to the fund, the Commissioner is satisfied that the new fund, on its establishment, will satisfy the solvency standard and the capital adequacy standard applicable to the new fund.

(5) On the establishment of the new fund, the life company must:

- (a) transfer assets from the old fund to the new fund in accordance with Commissioner's rules; and
- (b) make a written determination identifying the policies formerly referable to the old fund that are to be referable to the new fund or to the new fund and one or more other funds (which may include the old fund).

(6) The nature and value of the assets to be transferred are to be ascertained in accordance with Commissioner's rules.

(7) On the making of a determination under paragraph (5)(b), a policy specified in the determination becomes referable to the new fund or to the new fund and the other fund or funds specified in the determination.



(8) If a determination under paragraph (5)(b) identifies a policy as one that is to be referable to the new fund and one or more other funds, the determination must specify:

- (a) the benefits under the policy that are to be provided out of each fund; and
- (b) the proportion of the premium that is related to the benefits be provided out of each fund and is to be credited to the fund.

(9) Within 6 weeks after the establishment of the new fund, the life company must give the Commissioner written notice:

- (a) setting out such matters relating to the fund as the regulations require; and
- (b) accompanied by such documents as the regulations require.

### **Amalgamation of statutory funds**

**53.(1)** If a life company wishes to amalgamate 2 or more statutory funds so as to form one fund (“**the amalgamated fund**”), it may apply to the Commissioner for approval of the amalgamation.

(2) The application must be made in accordance with Commissioner’s rules.

(3) The provisions that may be made by Commissioner’s rules for the purposes of subsection (2) include:

- (a) provision requiring an applicant to lodge specified documents with an application; and
- (b) provision authorising the Commissioner to require an applicant to produce to the Commissioner documents of a specified kind.

(4) The Commissioner may only approve the amalgamation of 2 or more statutory funds if he or she is satisfied:

- (a) that the amalgamation will not result in unfairness to the owners of policies referable to any of the funds to be amalgamated; and
- (b) that, immediately after the amalgamation, the amalgamated fund will satisfy the solvency standard and the capital adequacy standard.

(5) When statutory funds are amalgamated in accordance with an approval under this section:

- (a) policies that, immediately before the amalgamation, were referable to any of the funds to be amalgamated become referable to the amalgamated fund; and
- (b) policy and other liabilities that, immediately before the amalgamation, were referable to any of the funds to be amalgamated become referable to the amalgamated fund; and
- (c) assets that, immediately before the amalgamation, were assets of any of the funds to be amalgamated become assets of the amalgamated fund.

**Notice to policy owners of establishment or amalgamation of statutory funds**

**54.(1)** A life company that establishes a statutory fund under section 52 must give written notice of the establishment of the fund to the owner of every policy referable to the fund.

**(2)** A life company that amalgamates statutory funds under section 53 must give written notice of the amalgamation of the funds to the owner of every policy referable to any of the funds amalgamated.

**(3)** A notice under subsection (1) or (2) must:

- (a)** set out such matters as Commissioner's rules require; and
- (b)** be accompanied by such documents as Commissioner's rules require.

***Division 4—Transfer of policies between statutory funds***

**Consequences of transfer of policy from one statutory fund to another**

**55.(1)** In this section, “**liabilities**”, in relation to a life company, means:

- (a)** policy liabilities; and
- (b)** reserves; and
- (c)** any other liabilities of the company.

**(2)** If:

- (a)** a life company has more than one statutory fund in respect of its life insurance business; and
- (b)** either:
  - (i)** a policy has ceased to be referable to one of those funds and become referable to another fund; or
  - (ii)** a policy referable to one or more of those funds has become referable to a further fund or funds;

the company must transfer to each fund to which the policy has become referable assets of a value equivalent to such part of the liabilities (including policy liabilities) of the company as is ascertained in accordance with Commissioner's rules.

**(3)** If:

- (a)** a policy that is referable to a statutory fund becomes referable to another statutory fund; or
- (b)** a policy that is referable to one statutory fund becomes referable to 2 or more statutory funds;

the life company concerned must give notice to the owner of the policy in accordance with Commissioner's rules.

***Division 5—Allocation of profits and losses and capital payments***

**Interpretation**

**56.(1)** In this Division:

**“Australian fund”** has the same meaning as in Part 6;

**“Australian/overseas fund”** has the same meaning as in Part 6;

**“Australian participating business”** means participating business carried on in Australia;

**“overseas fund”** has the same meaning as in Part 6;

**“overseas participating business”** means participating business carried on outside Australia.

(2) The categories of business of a statutory fund for the purposes of this Division are the categories of business into which the classes of life insurance business to which the fund relates are divided by section 75 or 76.

(3) In its application to a company other than a company limited only by shares, a provision of this Division that includes the expression “shareholders’” is to be read as if “members’” were substituted for “shareholders’”.

**Obligation to allocate operating profit or loss**

**57.** If financial statements given to the Commissioner under section 82 disclose that a category of business of a statutory fund has an operating profit for the period to which the statements relate or has incurred an operating loss for the period, the life company must allocate the profit or loss, as the case may be.

**Operating profit etc.**

**58.(1)** A category of business of a statutory fund has an operating profit for a period if the income of the category for the period exceeds outgoings of the category for the period. The amount of the operating profit is the amount by which income exceeds outgoings.

(2) A category of business of a statutory fund incurs an operating loss for a period if the outgoings of the category for the period exceed the income of the category for the period. The amount of the operating loss is the amount by which outgoings exceed income.

**Allocation of operating profit etc.**

**59.(1)** A life company must allocate all of the operating profit or loss of a category of business of a statutory fund for a period.

(2) A life company allocates an operating profit for a period by identifying in its financial statements prepared as at the end of the period:

- (a) the amount of the profit; and
- (b) the amount of the profit that should be treated as, or added to, Australian policy owners' retained profits; and
- (c) the amount of the profit that should be treated as, or added to, overseas policy owners' retained profits; and
- (d) the amount of the profit that should be treated as, or added to, shareholders' retained profits (Australian participating); and
- (e) the amount of the profit that should be treated as, or added to, shareholders' retained profits (overseas and non-participating).

(3) A life company allocates an operating loss for a period by identifying in its financial statements prepared as at the end of the period:

- (a) the amount of the loss; and
- (b) the amount representing the portion of the loss to be taken into account in reduction of Australian policy owners' retained profits; and
- (c) the amount representing the portion of the loss to be taken into account in reduction of overseas policy owners' retained profits; and
- (d) the amount representing the portion of the loss to be taken into account in reduction of shareholders' retained profits (Australian participating); and
- (e) the amount representing the portion of the loss to be taken into account in reduction of shareholders' retained profits (overseas and non-participating).

(4) A life company must allocate to shareholders' capital of a statutory fund all capital payments made to the fund under section 37.

(5) A company allocates a capital payment by:

- (a) identifying in its financial statements prepared as at the end of the period in which the payment was made the amount of the payment; and
- (b) identifying that amount as an amount that should be added to shareholders' capital.

**Basis of allocation of operating profit etc.**

**60.(1)** The allocation of an operating profit of a category of business of a statutory fund must be made in accordance with the following rules:

- (a) in the case of a profit of a category representing Australian participating business, at least 80%, or such higher percentage as is specified in the articles of association of the company, of the profit must be treated as, or added to, Australian policy owners' retained profits of the statutory fund;

- (b) any part of a profit of a category representing Australian participating business and not allocated under paragraph (a) must be treated as, or added to, shareholders' retained profits (Australian participating) of the statutory fund;
  - (c) subject to paragraph (d), any part of a profit of a category representing overseas participating business, to the extent that such an allocation would not be inconsistent with the articles of association of the company, may be treated as, or added to, overseas policy owners' retained profits of the statutory fund;
  - (d) if the articles of association of the company require any part of a profit representing overseas participating business to be treated as overseas policy owners' retained profits, at least that part of the profit must be treated as, or added to, overseas policy owners' retained profits of the statutory fund under paragraph (c);
  - (e) any part of a profit of a category representing overseas participating business and not allocated under paragraph (c) must be treated as, or added to, shareholders' retained profits (overseas and non-participating) of the statutory fund;
  - (f) a profit of a category representing non-participating business must be treated as, or added to, shareholders' retained profits (overseas and non-participating) of the statutory fund.
- (2) The allocation of an operating loss of a category of business of a statutory fund must be made in accordance with the following rules:
- (a) in the case of a loss of a category representing Australian participating business, no more than 80%, or such higher percentage as is specified in the articles of association of the company, may be taken into account in reduction of Australian policy owners' retained profits of the statutory fund;
  - (b) any part of a loss of a category representing Australian participating business and not allocated under paragraph (a) must be allocated in reduction of shareholders' retained profits (Australian participating) of the statutory fund;
  - (c) subject to paragraph (d), any part of a loss of a category representing overseas participating business, to the extent that such an allocation would not be inconsistent with the articles of association of the company, may be allocated in reduction of overseas policy owners' retained profits of the statutory fund;
  - (d) if the articles of association of the company require any part of a loss of a category representing overseas participating business to be allocated in reduction of overseas policy owners' retained profits, no

more than that part of the loss may be allocated in reduction of overseas policy owners' retained profits of the statutory fund under paragraph (c);

- (e) any part of a loss of a category representing overseas participating business and not allocated under paragraph (c) must be allocated in reduction of shareholders' retained profits (overseas and non-participating) of the statutory fund;
- (f) a loss of a category representing non-participating business must be allocated in reduction of shareholders' retained profits (overseas and non-participating) of the statutory fund.

***Division 6—Distribution of retained profits and shareholders' capital***

**Interpretation**

**61.(1)** In this Part:

**“Australian policy owners' retained profits”**, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(a);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(a);

**“overseas policy owners' retained profits”**, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(c);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(c);

**“shareholders' capital”**, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total amount of capital payments allocated, before that time, under subsection 59(5);

less the total of the amounts referred to in paragraphs (a) and (b) distributed before that time;

**“shareholders’ retained profits (Australian participating)”**, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraph 60(1)(b);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraph 60(2)(b);

**“shareholders’ retained profits (overseas and non-participating)”**, in relation to a statutory fund at a particular time, means the total of:

- (a) the starting amount; and
- (b) the total of the amounts allocated, before that time, under paragraphs 60(1)(e) and (f);

less:

- (c) the total of the amounts referred to in paragraphs (a) and (b) distributed before that time; and
- (d) the total of the amounts allocated, before that time, under paragraphs 60(2)(e) and (f);

**“starting amount”**, for the purposes of a definition in this section, means the amount ascertained in accordance with Commissioner’s rules made for the purposes of the definition.

(2) In its application to a company other than a company limited only by shares, a provision of this Division that includes the expression “shareholders’” is to be read as follows:

- (a) the provision is to be read as if “members’” were substituted for “shareholders’”;
- (b) in the case of subsection 62(1), the resulting reference to “members’ funds” is to be read as a reference to an account of the company representing funds that are not assets of a statutory fund.

### **Distribution of retained profits**

**62.(1)** The distribution of retained profits of a statutory fund must be in accordance with the following rules:

- (a) Australian policy owners’ retained profits may only be distributed to owners of Australian policies that provide for participating benefits;
- (b) subject to paragraph (c), overseas policy owners’ retained profits may only be distributed to owners of overseas policies that provide for participating benefits;

- (c) overseas policy owners' retained profits may be distributed to owners of Australian policies that provide for participating benefits or transferred to shareholders' funds if the distribution or transfer has been approved by the Commissioner;
- (d) shareholders' retained profits (Australian participating) and shareholders' retained profits (overseas and non-participating) may be:
  - (i) transferred to shareholders' funds; or
  - (ii) transferred to another statutory fund of the company; or
  - (iii) distributed to owners of policies that provide for participating benefits.

(2) A distribution of retained profits of a statutory fund may only be made after the directors of the company have received the appointed actuary's written advice as to the likely consequences of the proposed distribution.

(3) A distribution of retained profits of a statutory fund must not be made if:

- (a) the distribution would have the result that the solvency standard would not be satisfied in relation to the fund; or
- (b) the distribution would involve a contravention of a direction given by the Commissioner under section 68; or
- (c) in the case of a distribution of shareholders' retained profits (Australian participating), the distribution would involve a contravention of Commissioner's rules made for the purposes of subsection (5).

(4) Except with the approval of the Commissioner, a distribution of shareholders' retained profits (Australian participating) or shareholders' retained profits (overseas and non-participating) must not be made if:

- (a) the distribution would have the result that the capital adequacy standard would not be satisfied in relation to the fund; or
- (b) the distribution would involve a contravention of a direction given by the Commissioner under section 73.

(5) Commissioner's rules may prohibit the distribution of shareholders' retained profits (Australian participating) unless the distribution is in accordance with specified requirements relating to the distribution of Australian policy owners' retained profits.

### **Distribution of shareholders' capital**

**63.(1)** A distribution of shareholders' capital in relation to a statutory fund:



- (a) may only be made after the directors of the life company concerned have received the appointed actuary's written advice as to the likely consequences of the proposed distribution; and
  - (b) must not be made if:
    - (i) the distribution would have the result that the solvency standard would not be satisfied in relation to the fund; or
    - (ii) the distribution would involve a contravention of a direction given by the Commissioner under section 68.
- (2) Except with the approval of the Commissioner, a distribution of shareholders' capital in relation to a statutory fund must not be made if:
- (a) the distribution would have the result that the capital adequacy standard would not be satisfied in relation to the fund; or
  - (b) the distribution would involve a contravention of a direction given by the Commissioner under section 73.
- (3) Shareholders' capital may only be distributed in the following ways:
- (a) by transfer to shareholders' funds;
  - (b) by transfer to another statutory fund of the company;
  - (c) by distribution to owners of policies that provide for participating benefits.

## **PART 5—SOLVENCY AND CAPITAL ADEQUACY STANDARDS**

### ***Division 1—Solvency standard applicable to statutory funds***

#### **Purpose of Division**

**64.** The purpose of this Division is to make provision for the setting of standards of solvency with which life companies must comply in order to ensure that their statutory funds remain solvent.

#### **Solvency standard**

**65.(1)** The solvency standard consists of provision made by an actuarial standard for the purposes of this Division.

(2) The solvency standard may be so expressed as to set different standards of solvency:

- (a) for statutory funds of different companies; or
- (b) for different classes of statutory funds; or
- (c) to have effect in relation to a statutory fund in circumstances specified in the solvency standard.

(3) The Board may only make an actuarial standard referred to in subsection (1) with the agreement of the Commissioner.

**Purpose of solvency standard**

**66.** The purpose of the solvency standard is to ensure, as far as practicable, that, at any time, the financial position of each statutory fund of a life company is such that the company will be able, out of the assets of the fund, to meet all policy and other liabilities referable to the fund at that time as they become due.

**Obligation to comply with standard**

**67.** Every life company must comply with the solvency standard.

**Commissioner's power to give solvency directions to particular life companies**

**68.(1)** If, having regard to:

- (a) the nature or value of the assets in a statutory fund of a life company;  
or
- (b) the nature of the policy and other liabilities referable to that fund; or
- (c) any other matter that the Commissioner considers relevant;

the Commissioner is satisfied that there are reasonable grounds for believing that the company may not be able to meet, out of the assets of the fund, all policy and other liabilities referable to the business of the fund as they become due, the Commissioner may give the company such written directions as are reasonably necessary to ensure, as far as practicable, that the company will be able to meet those liabilities out of the assets of the fund as they become due.

(2) The Commissioner may give a direction to a company in relation to a statutory fund even if, when the direction is given, the company meets the requirements of the solvency standard in relation to the fund and there are reasonable grounds for believing that the company will meet those requirements at all times while the direction is in force.

(3) A life company must comply with a direction given to it under subsection (1).

(4) Subject to subsections (5), (6) and (8), a direction remains in force for 12 months commencing on the day on which the direction is given. However, nothing prevents the Commissioner from giving a further direction to the company to take effect immediately after the expiry of a previous direction.

(5) If the Commissioner thinks that a particular direction is no longer required or that it should be varied, the Commissioner must, by written notice given to the company, revoke or vary the direction.

(6) If a company to which a direction has been given asks the Commissioner, in writing, to revoke or vary the direction, the Commissioner must:

- (a) if the Commissioner thinks that the direction is no longer necessary or should be varied—revoke or vary the direction; or
- (b) in any other case—refuse to revoke or vary the direction.

(7) The Commissioner must give to the company written notice of a decision made under subsection (6).

(8) A direction to a company ceases to have effect if an order is made for the winding-up of the company.

(9) In this section:  
“**direction**” includes a direction as varied.

### *Division 2—Capital adequacy standard applicable to statutory funds*

#### **Purpose of Division**

**69.** The purpose of this Division is to make provision for the setting of a standard with which life companies must comply in order to maintain the capital adequacy of their statutory funds.

#### **Capital adequacy standard**

**70.(1)** The capital adequacy standard consists of provision made by an actuarial standard for the purposes of this Division.

(2) The Board may only make an actuarial standard referred to in subsection (1) with the agreement of the Commissioner.

#### **Purpose of capital adequacy standard**

**71.** The purpose of the capital adequacy standard is to ensure, as far as practicable, that there are sufficient assets in each statutory fund of a life company to provide adequate capital for the conduct of the business of the fund in accordance with this Act and in the interests of the owners of policies referable to the fund.

#### **Obligation to comply with standard**

**72.** Every life company must comply with the capital adequacy standard.

#### **Commissioner’s power to give capital directions to particular life companies**

**73.(1)** If, having regard to:

- (a) the nature of the business of a statutory fund of a life company; or
- (b) the nature or value of the assets of the fund; or
- (c) any other matter that the Commissioner considers relevant;

the Commissioner is satisfied that there are reasonable grounds for believing that the assets of the fund will not provide adequate capital for the conduct

of the business of the fund in accordance with this Act and in the interests of the owners of policies referable to the fund, the Commissioner may give the life company written directions under this section.

(2) The directions that may be given by the Commissioner are such directions as are reasonably necessary to ensure, as far as practicable, that the assets of the statutory fund are adequate for the purpose described in subsection (1).

(3) A life company must comply with a direction given to it under subsection (1).

(4) Subject to subsections (5), (6) and (8), a direction remains in force for 12 months commencing on the day on which the direction is given. However, nothing prevents the Commissioner from giving a further direction to the company to take effect immediately after the expiry of a previous direction.

(5) If the Commissioner thinks that a particular direction is no longer required or that it should be varied, the Commissioner must, by written notice given to the company, revoke or vary the direction.

(6) If a company to which a direction has been given asks the Commissioner, in writing, to revoke or vary the direction, the Commissioner must:

- (a) if the Commissioner thinks that the direction is no longer necessary or should be varied—revoke or vary the direction; or
- (b) in any other case—refuse to revoke or vary the direction.

(7) The Commissioner must give to the company written notice of a decision made under subsection (6).

(8) A direction to a company ceases to have effect if an order is made for the winding-up of the company.

(9) In this section:  
“direction” includes a direction as varied.

## **PART 6—FINANCIAL MANAGEMENT OF LIFE COMPANIES**

### *Division 1—Preliminary*

#### **Interpretation**

74. In this Part, unless the contrary intention appears:

“**Australian fund**” means a statutory fund that relates only to life insurance business carried on in Australia;

“**Australian/overseas fund**” means a statutory fund that relates to life insurance business carried on in Australia and life insurance business carried on outside Australia;

**“overseas fund”** means a statutory fund that relates only to life insurance business carried on outside Australia.

*Division 2—Financial records and statements*

**Financial records—Australian and Australian/overseas funds**

**75.(1)** A life company must keep such records of the income and outgoings of each statutory fund (other than an overseas fund) of the company as will record properly the affairs and transactions of the company in respect of:

- (a) each class of life insurance business to which the fund relates; and
- (b) each category of business within such a class; and
- (c) each subcategory of business within such a category.

**(2)** In the case of an Australian fund, a class of life insurance business to which the fund relates is divided into the following categories:

- (a) Australian participating business;
- (b) non-participating business.

**(3)** In the case of an Australian/overseas fund, a class of life insurance business to which the fund relates is divided into the following categories:

- (a) Australian participating business;
- (b) overseas participating business;
- (c) non-participating business.

**(4)** If a life company administers part of the life insurance business included in a category of business to which a statutory fund relates separately from all other business included in that category, that part of the life insurance business constitutes a subcategory within that category of business.

**Financial records—overseas funds**

**76.(1)** A life company must keep such records of the income and outgoings of an overseas fund of the company as will record properly the affairs and transactions of the company in respect of:

- (a) each class of life insurance business to which the fund relates; and
- (b) each category of business within such a class.

**(2)** A class of life insurance business to which an overseas fund relates is divided into the following categories:

- (a) overseas participating business;
- (b) non-participating business.

### **Financial year of a life company**

**77.(1)** Subject to subsection (6), the financial year of an existing life company is the period that, immediately before the commencement of this Act, was the financial year of the company under the *Life Insurance Act 1945*.

(2) Subject to subsection (6), the financial year of any other life company is the period nominated by the company under subsection 20(4).

(3) A life company may give the Commissioner written notice that it wishes to change its financial year.

(4) A notice must specify:

(a) the period that is to be treated as the first financial year of the company commencing after the giving of the notice; and

(b) the period that is to constitute the second and subsequent financial years of the company after the giving of the notice.

(5) The period specified for the purpose of paragraph (4)(a) may exceed 12 months but must not exceed 15 months.

(6) If the Commissioner approves the change proposed in a notice, the periods specified in the notice become financial years of the company.

(7) If a period specified in a notice for the purpose of paragraph (4)(a) commences after the first day of a period (“**the existing financial year**”) that would, if the notice had not been given, have constituted a financial year of the company, the portion of the existing financial year before that commencement constitutes a financial year of the company.

### **Treatment of income and outgoings relating to mixed business**

**78.(1)** If:

(a) a life company carries on other business as well as its life insurance business; and

(b) an amount of income or outgoings relates both to the business of a statutory fund and to the other business;

the company must apportion the amount so as to determine what part of the amount relates to the business of the statutory fund.

(2) Only the part of the amount so determined is to be treated as related to the business of the statutory fund.

(3) If a life company incurs a liability in respect of a matter that is related in part to the business of a statutory fund of the company and in part to the business of another company:

(a) the life company must apportion the liability; and

(b) only the portion of the liability referable to the business of the statutory fund may be treated as outgoings of the fund.

**Treatment of income or outgoings relating to 2 or more categories of business etc.**

**79.(1)** If an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78) relates to the business of 2 or more statutory funds, the company must:

- (a) apportion the amount so as to determine what part of the amount relates to the business of each fund; and
- (b) include in its records relating to each fund the part of the amount that relates to the business of that fund.

**(2)** If an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or subsection (1) of this section) relates to 2 classes of life insurance to which a statutory fund relates, the company must:

- (a) apportion the amount so as to determine what part of the amount relates to each class; and
- (b) include in its records relating to each class the part of the amount that relates to that class.

**(3)** For the purposes of section 75, if an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or this section) relates to 2 or more categories of business, the company must:

- (a) apportion the amount so as to determine what part of the amount relates to each of the categories of business; and
- (b) include in its records relating to each category the part of the amount that relates to that category.

**(4)** For the purposes of section 75, if an amount of income or outgoings of a life company (including an amount ascertained by apportionment under section 78 or this section) relates to 2 or more subcategories, the company must:

- (a) apportion the amount so as to determine what part of the amount relates to each subcategory; and
- (b) include in its records relating to each subcategory the part of the amount that relates to that subcategory.

**Basis of apportionment**

**80.(1)** An apportionment for the purposes of section 78 or 79 must be made:

- (a) on an equitable basis; and
- (b) according to generally accepted accounting principles.

**(2)** Before an apportionment is made, the directors of the company concerned must obtain the appointed actuary's written advice whether the basis of the proposed apportionment is appropriate.

(3) An apportionment is not effective unless a report given, for the purposes of subsection 83(3), by the approved auditor for the company states that the apportionment has been made equitably and in accordance with generally accepted accounting principles.

### **Treatment of appreciation and depreciation of assets**

**81.** If a life company treats an asset as having appreciated or depreciated, the company must, for the purposes of this Part, treat the amount of the appreciation or depreciation as an amount of income or outgoing, as the case may be.

### **Financial statements**

**82.(1)** Every life company must give the Commissioner financial statements as at the end of each financial year of the company.

(2) In addition, a life company may give the Commissioner financial statements as at a time other than the end of a financial year of the company.

(3) Financial statements prepared for the purpose of subsection (1) must be consistent with the report given to the company under subsection 113(1) in relation to the actuarial investigation conducted as at the end of the financial year of the company.

(4) Financial statements given to the Commissioner under subsection (2) must:

- (a) be prepared as at a date as at which an actuarial investigation has been conducted under section 115; and
- (b) be consistent with any report of the investigation given to the company under section 115.

(5) Financial statements must:

- (a) be in the form required by Commissioner's rules; and
- (b) be signed in accordance with Commissioner's rules; and
- (c) be given to the Commissioner within 3 months after the time as at which they are prepared.

### **Audit**

**83.(1)** The directors of a life company must ensure that the records of the company in respect of a financial year of the company are audited by the auditor of the company.

(2) The audit must be carried out before financial statements under subsection 82(1) as at the end of that financial year are given to the Commissioner.



(3) Financial statements prepared under subsection 82(1) are not effective for the purposes of this Act unless they are accompanied by a report signed by the auditor of the company and stating:

- (a) that the statements have been prepared in accordance with this Act; and
- (b) that the records of the company on which the statements are based record properly the affairs and transactions of the company; and
- (c) that the statements truly represent the financial position of the company.

(4) The auditor of a life company may accept, for the purposes of an audit under this section, a valuation by the appointed actuary for the company of:

- (a) the policy liabilities of the company as at the end of a financial year of the company; or
- (b) a change, during a financial year of the company, in the policy liabilities of the company in relation to a statutory fund.

#### **Appointment of auditor**

**84.(1)** Only an individual who is an approved auditor may hold an appointment as the auditor of a life company.

(2) If:

- (a) a life company, in writing, requests a firm to nominate a member or employee of the firm for appointment as auditor of the life company; and
- (b) a written nomination is given to the company in accordance with the request; and
- (c) the person nominated is an individual in respect of whom an approval under section 85 is in force; and
- (d) the request by the life company has not been withdrawn when the nomination is made;

the person nominated is taken to have been appointed by the life company to be its auditor.

(3) An appointment by virtue of subsection (2) is taken to have been made when the written nomination was given to the life company.

(4) If:

- (a) the approval of a person under subsection 85(1) is revoked; and
- (b) when the approval is revoked, the person holds an appointment as the auditor of a life company; and
- (c) the power to appoint the auditor of the company is not vested in the directors of the company or in the directors alone;

the directors may appoint an approved auditor to be the auditor of the company until an appointment is made under the articles of association or other rules of the company.

### **Approval of auditors**

**85.(1)** The Commissioner may, in writing, approve a person for the purposes of this Part.

(2) The Commissioner may only approve a person if:

- (a) the person is a registered company auditor within the meaning of the Corporations Law of a State or internal Territory; and
- (b) the Commissioner is satisfied that the person has such experience as to render him or her suitable for appointment as the auditor of a life company.

(3) Only individuals may be approved under subsection (1).

(4) The Commissioner must give a copy of the document of approval to the person.

### **Revocation of approval of auditor**

**86.(1)** The Commissioner may, in writing, revoke the approval of a person under subsection 85(1) if:

- (a) the person has ceased to be a registered company auditor within the meaning of the Corporations Law of a State or internal Territory; or
- (b) the person has failed to perform adequately and properly the functions and duties of an auditor under this Act.

(2) A revocation takes effect on the day specified in the document of revocation. The specified day must be not later than 28 days after the date of the revocation.

(3) The Commissioner must give a copy of the document of revocation to the person.

### **Notification of appointment etc. of auditor**

**87.(1)** When a life company appoints a person as its auditor, the company must give the Commissioner written notice of:

- (a) the name of the person; and
- (b) the date of the appointment; and
- (c) any other matter prescribed by the regulations.

(2) Notice under subsection (1) must be given within 14 days after the day of the appointment.

(3) If a person ceases to be the auditor of a life company, the company must give the Commissioner written notice that the person has so ceased and of the day on which he or she so ceased.

(4) Notice under subsection (3) must be given within 14 days after the day on which the person ceased to be the auditor of the company.

**Auditor's obligation to report to company and Commissioner**

**88.(1)** The auditor of a life company must draw to the attention of the company, or of the directors or an officer of the company, any matter that comes to the attention of the auditor and that the auditor thinks requires action to be taken by the company or its directors:

- (a) to avoid a contravention of this Act; or
- (b) to avoid prejudice to the interests of the owners of policies issued by the company.

(2) If the auditor of a life company thinks:

- (a) that there are reasonable grounds for believing that the company or a director of the company may have contravened this Act or any other law; and
- (b) that the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company;

the auditor must inform the Commissioner in writing of:

- (c) his or her opinion; and
- (d) the information on which it is based.

(3) If:

- (a) the auditor of a life company has drawn to the attention of the company, or of the directors or an officer of the company, a matter that the auditor thinks requires action to be taken by the company or its directors:

- (i) to avoid a contravention of this Act; or
  - (ii) to avoid prejudice to the interests of the owners of policies issued by the company; and

- (b) the auditor is satisfied that there has been reasonable time for the taking of the action but the action has not been taken;

the auditor must inform the Commissioner in writing of the matter referred to in paragraph (a).

(4) If:

- (a) a person becomes subject to an obligation under subsection (2) or (3) to inform the Commissioner of anything; and
- (b) before the person informs the Commissioner, the person ceases to be the auditor of the life company concerned;

the person remains subject to the obligation as if he or she were still the auditor of the company.

### **Qualified privilege of auditors**

**89.(1)** This section applies to a person who is, or has been, the auditor of a life company.

**(2)** A person to whom this section applies has qualified privilege in respect of:

- (a)** any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Act; and
- (b)** the answer to any question he or she is required by the audit committee of the life company to answer.

**(3)** The privilege conferred by this section is in addition to any privilege conferred on a person by the Corporations Law of a State or internal Territory.

### **Obligation on life company to have audit committee**

**90.** A life company must at all times have an audit committee.

### **Membership and meetings of audit committee**

**91.(1)** A member of an audit committee must either be:

- (a)** a director of the life company concerned; or
- (b)** a person whose appointment is approved by the Commissioner.

**(2)** The Commissioner may approve of a person who is not a director of a life company being appointed a member of the company's audit committee if:

- (a)** the person is a director of another life company that is related to the first-mentioned life company; and
- (b)** the Commissioner thinks that the appointment of the person is likely to promote the efficiency or effectiveness of the audit committee's operations.

**(3)** A majority of the members must be persons who are not executive officers of the company.

**(4)** An audit committee must be established on such a basis that a meeting cannot be held unless there are present at least 2 members who are not executive officers of the company.

**(5)** The chairperson of an audit committee must be a member who is not the chairperson of the board of directors of the life company.

### **Functions and powers of audit committee**

**92.(1)** An audit committee must be given the following functions:

- (a)** to assist the directors of the life company to ensure that financial statements prepared by the company for the purposes of section 82 are effective for the purposes of that section;

(b) to assist the directors of the life company to ensure that the company at all times has a proper system of management and financial controls.

(2) An audit committee may be given functions additional to, but not inconsistent with, those described in subsection (1).

(3) A life company must make such arrangements, and give its audit committee such powers, as will enable the committee to obtain all information in the possession, or under the control, of the company, its auditor or its appointed actuary that the committee needs for the performance of the functions described in subsection (1).

(4) The directors of a life company must ensure that the auditor and appointed actuary of the company have such opportunities:

(a) to attend meetings of the audit committee; and

(b) to bring matters to the attention of the committee, either orally or in writing;

as are reasonable and necessary to enable the auditor and actuary to perform their functions in accordance with this Act.

### *Division 3—Appointed actuaries*

#### **Appointment**

**93.(1)** Subject to subsection (2), a life company must have an actuary appointed by the company.

(2) Within 6 weeks after a person ceases to be the appointed actuary of a life company, the company must appoint another person to be the actuary of the company.

(3) A person may only hold an appointment as actuary of a life company if the person is eligible for such an appointment.

(4) Subject to subsection 94(2), a person is eligible for appointment as a life company's actuary if:

(a) the person:

(i) is ordinarily resident in Australia; and

(ii) is a Fellow of the Institute of Actuaries of Australia; and

(iii) has been such a Fellow for at least 5 years; or

(b) an approval of the appointment of the person under subsection (6) is in force.

(5) A life company may, in writing, ask the Commissioner to approve the appointment of a specified person as the company's actuary.

(6) The Commissioner may, in writing, approve the appointment of a person as actuary of a life company if the Commissioner is satisfied that the person has actuarial qualifications and experience that fit him or her to perform the functions of the appointed actuary of the company.

(7) An appointment of a person as actuary of a life company cannot take effect while there is in force an appointment of another person as the company's actuary.

### **Cessation of appointment**

**94.(1)** A person ceases to hold an appointment as the actuary of a life company if:

- (a) the person ceases to be eligible for such an appointment; or
- (b) the person gives the company a written notice of resignation of the appointment; or
- (c) the company gives the person written notice that the appointment is terminated.

(2) A person who, apart from this subsection, would be eligible for appointment as a life company's actuary is not so eligible if there is in force a declaration by the Commissioner under subsection (3).

(3) The Commissioner may, in writing, declare that a person is not eligible for appointment as a life company's actuary if the person has failed to perform adequately and properly the functions and duties of an appointed actuary under this Act.

(4) A declaration takes effect on the day specified in the declaration. The specified day must be not later than 28 days after the date of the declaration.

(5) The Commissioner must give a copy of a declaration to the person to whom it relates.

### **Notification of appointment etc.**

**95.(1)** A life company that appoints a person under section 93 must give the Commissioner written notice of:

- (a) the name of the person; and
- (b) details of the actuarial qualifications and experience of the applicant; and
- (c) the date of the appointment; and
- (d) any other matter prescribed by the regulations.

(2) Notice under subsection (1) must be given within 14 days after the day of the appointment.

(3) If a person ceases to be the appointed actuary of a life company, the company must give the Commissioner written notice that the person has so ceased and of the date on which he or she so ceased.

(4) Notice under subsection (3) must be given within 14 days after the day on which the person ceased to be the appointed actuary of the company.

### **Compliance with actuarial standards**

**96.** The appointed actuary of a life company, in the performance of his or her duties and the exercise of his or her powers, must comply with the actuarial standards.

### **Powers of appointed actuary**

**97.(1)** The appointed actuary of a life company is entitled to have access to any information or document in the possession, or under the control, of the company if such access is reasonably necessary for the proper performance of the functions and duties of the appointed actuary.

(2) The appointed actuary of a life company may require any officer or employee of the company to answer questions or produce documents for the purpose of enabling the appointed actuary to have the access to information and documents provided for by subsection (1).

(3) An officer or employee of a life company must not refuse or fail, without reasonable excuse, to comply with a requirement under subsection (2).

(4) The appointed actuary of a life company is entitled to attend a meeting of the directors of the company and to speak on any matter being considered at the meeting:

(a) that relates to, or may affect:

(i) the solvency of the company; or

(ii) the adequacy of the capital of the company; or

(b) that relates to advice given by the appointed actuary to the directors; or

(c) that concerns a matter in relation to which the appointed actuary will be required to give advice.

(5) The appointed actuary of a life company is entitled to attend:

(a) any annual general meeting of members of the company; and

(b) any other meeting of members of the company at which the company's annual accounts or financial statements are to be considered or at which any matter in connection with which the appointed actuary is or has been subject to a duty under this Act is to be considered.

### **Actuary's obligation to report to Commissioner**

**98.(1)** The appointed actuary of a life company must draw to the attention of the company, or of the directors or an officer of the company, any matter that comes to the attention of the actuary and that the actuary thinks requires action to be taken by the company or its directors:

(a) to avoid a contravention of this Act; or

- (b) to avoid prejudice to the interests of the owners of policies issued by the company.
- (2) If the appointed actuary of a life company thinks:
  - (a) that there are reasonable grounds for believing that the company or a director of the company may have contravened this Act or any other law; and
  - (b) that the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company;

the appointed actuary must inform the Commissioner in writing of:

- (c) his or her opinion; and
- (d) the information on which it is based.

(3) If:

- (a) the appointed actuary of a life company has drawn to the attention of the company, or of the directors or an officer of the company, a matter that the actuary thinks requires action to be taken by the company or its directors:
  - (i) to avoid a contravention of this Act; or
  - (ii) to avoid prejudice to the interests of owners of policies issued by the company; and
- (b) the appointed actuary is satisfied that there has been reasonable time for the taking of the action but the action has not been taken;

the appointed actuary must inform the Commissioner in writing of the matter referred to in paragraph (a).

(4) If the appointed actuary of a life company thinks that:

- (a) the directors of the company have failed to take such action as is reasonably necessary to enable the actuary to exercise his or her right under subsection 97(4) or (5); or
- (b) an officer or employee of the company has engaged in conduct calculated to prevent the appointed actuary exercising his or her right under subsection 97(4) or (5);

the appointed actuary may inform the Commissioner of:

- (c) his or her opinion; and
- (d) the information on which it is based.

(5) If:

- (a) a person becomes subject to an obligation under subsection (2) or (3) to inform the Commissioner of anything; and
- (b) before the person informs the Commissioner, the person ceases to be the appointed actuary of the life company concerned;

the person remains subject to the obligation as if he or she were still the appointed actuary of the company.



### **Qualified privilege of appointed actuary**

**99.(1)** A person who is, or has been, the appointed actuary of a life company has qualified privilege in respect of any statement, whether written or oral, made by him or her for the purpose of the performance of his or her functions as appointed actuary of the company.

**(2)** In particular (and without limiting subsection (1)), a person who is or has been the appointed actuary of a life company has qualified privilege in respect of:

- (a)** any statement, written or oral, made by him or her under, or for the purposes of, a provision of this Act; and
- (b)** the answer to any question he or she is required by the audit committee of the life company to answer.

**(3)** The privilege conferred by this section is in addition to any privilege conferred on a person by any other law.

### ***Division 4—Life Insurance Actuarial Standards Board***

#### **Establishment**

**100.** A body to be known as the Life Insurance Actuarial Standards Board is established.

#### **Actuarial standards**

**101.(1)** The function of the Board is to make actuarial standards for the purposes of this Act.

**(2)** An actuarial standard may make provision in relation to any matter for which this Act requires or permits provision to be made by actuarial standards.

**(3)** An actuarial standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**(4)** In order to avoid doubt, it is declared that section 49A of the *Acts Interpretation Act 1901*, as applied to actuarial standards by section 46A of that Act, authorises an actuarial standard to make provision for or in relation to any matter by applying, adopting or incorporating, with or without modification, any matter contained in a document published by the Institute of Actuaries of Australia as in force or existing when the actuarial standard takes effect.

#### **Powers of the Board**

**102.(1)** The Board has the power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its function of making actuarial standards.

(2) In particular, without limiting subsection (1), the Board has power to engage in such consultation as it thinks appropriate in connection with the performance of its function.

### **Membership**

**103.(1)** The Board consists of the following members:

- (a) the Chairperson;
- (b) the government member;
- (c) not more than 5 other members.

(2) The members are to be appointed by the Treasurer in writing to hold office on a part-time basis.

(3) The Treasurer is to exercise the power to appoint members so that all but one of the members at any time are persons who are members of the Institute of Actuaries of Australia.

(4) A person who is a member of the Institute of Actuaries of Australia may only be appointed to the Board if he or she has qualifications relevant to, or experience in dealing with, actuarial matters related to life insurance.

(5) A member, other than the government member, holds office for such period (not exceeding 3 years) as is specified in the document of appointment but is eligible for re-appointment.

(6) The government member holds office during the Treasurer's pleasure.

(7) The members, other than the government member, hold office on such terms and conditions (if any) relating to matters not provided for by this Act as are determined in writing by the Treasurer.

(8) The exercise of a power of the Board is not affected by a vacancy or vacancies in the membership of the Board.

### **Acting Chairperson**

**104.(1)** The Treasurer may appoint a person to act as Chairperson of the Board:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from Australia or is, for any other reason, unable to perform the functions of the office of Chairperson.

(2) Anything done by, or in relation to, a person purporting to act under subsection (1) is not ineffective on the ground that:

- (a) the occasion for the person's appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the person's appointment; or

- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Leave of absence of members**

**105.(1)** The Treasurer may grant leave of absence to the Chairperson on such terms and conditions as the Treasurer determines.

(2) The Chairperson may grant leave of absence to any other member of the Board on such terms and conditions as the Chairperson determines.

### **Resignation**

**106.** A member of the Board may resign his or her appointment by giving the Treasurer a signed notice of resignation.

### **Ending of appointments for misbehaviour etc.**

**107.(1)** The Treasurer may end the appointment of a member of the Board for misbehaviour or for physical or mental incapacity.

(2) If a member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) is absent, except on leave of absence granted under section 105, from 3 consecutive meetings of the Board;

the Treasurer must end the member's appointment.

### **Remuneration and allowances**

**108.(1)** A member of the Board, other than the government member, is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination by the Tribunal is in operation, the person is to be paid such remuneration as is prescribed.

(2) A member of the Board, other than the government member, is to be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **Meetings**

**109.(1)** Subject to this section, meetings of the Board are to be held at such times and places as the Board determines.

(2) The Chairperson may, and at the written request of 3 or more members must, convene a meeting of the Board.

(3) The Board must meet at least twice in every calendar year.

(4) At a meeting of the Board, 4 members constitute a quorum.

(5) The Chairperson is to preside at all meetings of the Board at which he or she is present.

(6) If the Chairperson is absent from a meeting of the Board, the members present must appoint one of their number to preside at the meeting.

(7) A question arising at a meeting of the Board is to be determined by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(9) The Board must keep a record of its proceedings.

### **Conduct of meetings**

110. The Board may regulate its proceedings as it thinks appropriate.

### **Resolutions without formal meetings**

111.(1) If:

(a) copies of a document setting out a proposed resolution of the Board are received by at least 4 members of the Board, of whom one is the Chairperson; and

(b) each of those members signs a copy of the document;

the Board is to be taken to have passed a resolution in the terms set out in the document at a meeting of the Board.

(2) The resolution is to be taken to have been passed:

(a) on the day on which copies of the document were signed by members; or

(b) if the copies were signed on different days, on the latest of those days.

(3) Nothing in this section is intended to express a contrary intention for the purposes of section 33B of the *Acts Interpretation Act 1901*.

### **Annual report**

112.(1) The Board must give the Commissioner a written report of its operations during each financial year.

(2) A report must be given to the Commissioner:

(a) as soon as practicable after the end of the financial year to which it relates; and

(b) in any event, no later than 3 months after the end of the financial year.

### ***Division 5—Actuarial investigations and advice***

#### **Annual actuarial investigations**

113.(1) Every life company must arrange for its appointed actuary to:

- (a) investigate the financial condition of the company as at the end of every financial year of the company; and
  - (b) give the company a written report of the results of the investigation.
- (2) The investigation must include:
- (a) the making of a valuation of the company's policy liabilities; and
  - (b) an assessment, in relation to each statutory fund of the company, of the extent to which the company has complied, during the financial year concerned, with the solvency standard and the capital adequacy standard and with any directions given to the company under subsection 68(1) or 73(1).

### **Method of valuing policy liabilities**

**114.(1)** This section applies to a valuation of policy liabilities made for the purposes of any provision of this Act, other than a provision of Division 2 of Part 8.

(2) A valuation of the policy liabilities referable to a statutory fund must be made in accordance with actuarial standards.

### **Additional actuarial investigations**

**115.(1)** Nothing in this Division prevents a life insurance company from having its appointed actuary investigate the financial condition of the company as at a time other than the end of a financial year.

(2) A company must not make public the results of an investigation referred to in subsection (1) unless:

- (a) the investigation has been conducted in the manner in which an annual actuarial investigation is required to be conducted; and
- (b) the appointed actuary has given the company a written report of the results of the investigation.

(3) If the Commissioner, by written notice given to a life company, requires that an investigation referred to in subsection (1) be conducted by the company:

- (a) the investigation must be conducted in the manner in which an annual actuarial investigation is required to be conducted; and
- (b) the life company must arrange for the appointed actuary to give the company a written report of the results of the investigation.

### **Actuarial advice regarding policies**

**116.(1)** A life company must not issue policies of a particular kind unless the appointed actuary has given the company written advice about:

- (a) the proposed terms and conditions on which policies of that kind are to be issued; and

- (b) the proposed basis on which the surrender value of policies of that kind is to be determined; and
- (c) if the policies provide for benefits to be calculated by reference to units—the proposed means by which the unit values are to be determined.

(2) A life company must not enter into a reinsurance arrangement unless the appointed actuary has given the company written advice as to the likely consequences of the proposed arrangement.

### *Division 6—Annual returns etc.*

#### **Annual statistical returns**

117.(1) After the end of every financial year of a life company, a life company must prepare a statistical return in respect of each statutory fund of the company as at the end of that year.

- (2) A statistical return relates to:
  - (a) policies referable to the statutory fund at the end of the financial year; and
  - (b) policies that ceased to be referable to the fund during the financial year; and
  - (c) policy liabilities referable to the fund as at the end of the financial year; and
  - (d) such other matters as are prescribed by Commissioner's rules.

(3) A statistical return must be prepared in accordance with Commissioner's rules.

#### **Lodgment of financial statements and annual statistical returns**

118.(1) This section applies to the following documents:

- (a) financial statements referred to in subsection 82(1);
- (b) a return prepared under section 117.

(2) A life company must give the Commissioner:

- (a) each document to which this section applies; and
- (b) 3 printed copies of the document.

(3) Financial statements referred to in subsection 82(1) must be given to the Commissioner within 3 months after the end of the financial year to which it relates.

(4) A return prepared under section 117 must be given to the Commissioner within 3 months after the end of the financial year to which it relates.

(5) The Commissioner may extend a period of time fixed by subsection (3) or (4) by not more than 3 months.

(6) An extension of time may be granted before or after the end of the period to be extended.

### **Lodgment of financial condition report**

**119.(1)** A life company must give to the Commissioner a copy of a financial condition report prepared under section 113 or 115 within 3 months after the end of the period as at which the report is made.

(2) The Commissioner may extend the period fixed by subsection (1) by not more than 3 months.

(3) An extension of time may be granted before or after the end of the period to be extended.

### **Statement of actuary's pecuniary interests**

**120.(1)** When a life company gives a financial condition report to the Commissioner, the company must also give the Commissioner a written statement of the pecuniary interests of the appointed actuary who prepared the report.

(2) The appointed actuary of a life company, or a person who has been the appointed actuary of a life company, must, whenever reasonably requested by the life company to do so, give the company, in writing, such information as is necessary to enable the company to prepare a statement under subsection (1).

(3) A statement under subsection (1) must be prepared in accordance with the regulations.

(4) The provision that may be made by the regulations includes provision specifying the kinds of pecuniary interests to which a statement under subsection (1) must relate.

(5) If:

(a) a life company gives the Commissioner a statement under subsection (1); and

(b) the company has reasonable grounds for believing that the statement is an accurate statement in accordance with subsection (1);

the company is to be taken to have complied with subsection (1) even if the statement is not accurate.

### **Rejection of financial statement**

**121.(1)** If the Commissioner thinks a document given to him or her for the purposes of section 118:

(a) is incorrect, incomplete or misleading; or

(b) does not comply with this Act;

the Commissioner may give the life company concerned written notice requiring the company to give the Commissioner such written explanations as are specified in the notice.

(2) The notice must specify the time within which the explanations are to be given. The time to be specified must be not less than 14 days commencing on the day on which the notice is given.

(3) If:

(a) the company fails to give any explanation in accordance with the notice; or

(b) after considering the explanations given by the company, the Commissioner still thinks that the document is incorrect, incomplete or misleading or does not comply with this Act;

the Commissioner may give the company such written directions as the Commissioner thinks necessary for the variation of the document.

(4) Directions under subsection (3) must specify a period within which they are to be complied with. The period specified must not be less than 14 days commencing on the day on which the directions are given.

(5) A life company must comply with directions given under subsection (3) or with such directions as varied under subsection (6) or (7).

(6) If, at any time, the Commissioner is satisfied that a direction is no longer necessary or should be varied, the Commissioner must give the company written notice revoking or varying the direction, as the case may be.

(7) If:

(a) a life company applies to the Commissioner to revoke or vary a direction; and

(b) the Commissioner thinks that the direction should be revoked or varied;

the Commissioner must give the company written notice revoking or varying the direction as the case may be.

### **Financial statements to be accompanied by reports to shareholders and policy owners**

**122.** When a life company gives the Commissioner financial statements referred to in subsection 82(1), the company must also give the Commissioner a copy of any report given by the company to its shareholders or policy owners and relating to the business of the company during the period to which the first-mentioned statements relate.

### **Reporting of reinsurance arrangements**

**123.(1)** Every life company must give the Commissioner a reinsurance report relating to every financial year of the company.



(2) A reinsurance report is a document that sets out such particulars as are required by Commissioner's rules of the reinsurance arrangements to which the life company was a party during a financial year.

(3) A reinsurance report must be given to the Commissioner within the time prescribed by Commissioner's rules.

### **Policy owner's right to copy of financial statements and annual return**

124.(1) The owner of a policy issued by a life company is entitled, on his or her request, to be provided by the company with one copy of the latest financial statements and annual return given by the company to the Commissioner under section 118.

(2) Copies provided under subsection (1) are to be provided free of charge.

### ***Division 7—Miscellaneous***

#### **Approval of certain reinsurance arrangements**

125.(1) Commissioner's rules may declare a specified class of contracts to be reinsurance contracts to which this section applies.

(2) A life company must not enter into a contract to which this section applies, except with the approval of the Commissioner.

(3) An application for approval must be made in accordance with Commissioner's rules.

(4) An approval must be in writing and be given to the company.

(5) If a life company enters into a contract in accordance with an approval, the company must give the Commissioner a copy of the document or documents containing the terms of the contract within 14 days after entering into the contract.

## **PART 7—MONITORING AND INVESTIGATION OF LIFE COMPANIES**

### ***Division 1—Preliminary***

#### **Interpretation**

126. In this Part:

“authorised person” means a person appointed under section 127;

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

- (a) a person who is, or has been, an officer of the company, and includes a person who is, or has been:

- (i) a director, secretary or employee of the company; or
  - (ii) the appointed actuary of the company; or
  - (iii) the auditor of the company; or
  - (iv) a shareholder of the company; or
- (b) a person who, in the capacity of an insurance intermediary (other than an insurance broker) within the meaning of the *Insurance (Agents and Brokers) Act 1984*, is, or has been, an agent of the company;

**“relevant business”**, in relation to a company, means the business of the company to which a show cause notice relates;

**“relevant person”**, in relation to a company, means:

- (a) a director, secretary or employee of the company; or
- (b) the appointed actuary of the company; or
- (c) the auditor of the company;

**“show cause notice”** means a notice given under subsection 135(1).

### **Appointment of authorised persons**

**127.(1)** The Commissioner may appoint:

- (a) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
  - (b) a person engaged as a consultant under subsection 13(3) of that Act;
- as an authorised person for the purposes of a specified provision of this Act.

(2) An appointment must be in writing.

(3) A person who is authorised under subsection (1) for the purposes of a provision of this Act may:

- (a) exercise any power of the Commissioner under that provision; and
- (b) perform any functions of the Commissioner under that provision.

### **Associated company**

**128.** For the purposes of this Part, a company (**“first company”**) is associated with another company if the 2 companies are related to each other and:

- (a) the first company carries on life insurance business; or
- (b) either of those companies is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other company or its directors.

### **Related companies**

**129.** The question whether companies are related to each other for the purposes of this Part is to be determined in the same way as the question whether bodies corporate are related to each other would be determined under the Corporations Law of a State or internal Territory if, in section 46 of that Law:

- (a) the reference to a body corporate that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another body corporate were a reference to a body corporate that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and
- (b) the reference to a body corporate holding more than one-half of the issued share capital of another body corporate were a reference to a body corporate holding more than one-quarter of the issued share capital of another body corporate.

### ***Division 2—Monitoring life companies***

#### **Purpose of Division**

**130.** It is the purpose of this Division to provide the means whereby the Commissioner may monitor the extent of compliance by a life company with:

- (a) this Act; and
- (b) directions given under this Act; and
- (c) conditions on the registration of the company.

#### **Requirement to give information to Commissioner**

**131.(1)** For the purposes of this Act, the Commissioner may give a life company a written notice requiring the company to give the Commissioner, in writing:

- (a) information about any matter relating to the company's business; or
- (b) information about any matter relating to the business of a subsidiary of the company; or
- (c) a copy of any document relating to such a matter held by the company.

**(2)** The notice must specify a period within which the information or copy is to be given to the Commissioner. The period specified must be a period ending not earlier than 7 days, and not later than one month, after the day on which the notice is given to the company.

- (3)** A life company must comply with a notice under this section.

(4) A company is entitled to be paid reasonable compensation for making copies for the purpose of complying with a notice requiring that a copy of a document be given to the Commissioner.

#### **Requirement to produce records**

**132.(1)** For the purposes of this Act, the Commissioner may give a life company a written notice requiring the company to produce to the Commissioner or a specified authorised person, at a reasonable time and place specified in the notice, any records relating to the affairs of the company.

(2) The Commissioner or the authorised person may inspect, take extracts from and make copies of any record produced under this section.

(3) A life company must comply with a notice under this section.

(4) If:

(a) a requirement is made under subsection (1); and

(b) the information that constitutes the records to which the requirement relates is stored, in whole or in part, by electronic means;

the company to which the requirement is directed does not comply with the requirement unless it produces all of the records in documentary form.

#### **Access to premises**

**133.(1)** For the purposes of this Act, the Commissioner may enter, at any reasonable time, any premises at which the Commissioner has reasonable cause to believe records relating to the affairs of a life company are kept.

(2) The Commissioner may:

(a) inspect any records found on the premises that the Commissioner believes on reasonable grounds to relate to the affairs of the life company; and

(b) take extracts from, or make copies of, such records.

(3) The Commissioner may not enter premises under subsection (1) except with the consent of the occupier of the premises.

### ***Division 3—Investigation by Commissioner***

#### **Directions regarding company assets**

**134.(1)** If it appears to the Commissioner that a life company is, or is likely to become, unable to meet its policy or other liabilities as they become due, the Commissioner may give the company a written direction:

(a) not to dispose of, or otherwise deal with, an asset of the company during a specified period; and

(b) if the asset is in Australia, not to remove the asset from Australia during that period.

(2) The period to be specified in a direction is a period not exceeding 6 months commencing when the notice is given.

(3) If a direction is still in force immediately before the Commissioner gives a summary of his or her conclusions under section 149, the direction ceases to have effect when the summary is given.

(4) A direction ceases to have effect if an order is made for the winding-up of the company.

(5) A contravention of a direction under this section does not affect the validity of a transaction.

### **Giving of show cause notice**

**135.(1)** The Commissioner may give a life company a written notice inviting the company to give the Commissioner:

- (a) a written statement of reasons why the Commissioner should not investigate the life insurance business, or a specified part of the life insurance business, of the company; and
- (b) any other written material the company wishes to put forward in support of its statement.

(2) A show cause notice must:

- (a) specify the ground or grounds on which it is given; and
- (b) specify the period within which the statement and written material referred to in subsection (1) must be given to the Commissioner.

(3) The period specified under paragraph (2)(b) must be a period of at least 14 days commencing on the day on which the show cause notice is given.

### **Grounds for giving of show cause notice**

**136.** The following are the grounds on which a show cause notice may be given to a life company:

- (a) that the life company is, or is likely to become, unable to meet its policy or other liabilities as they become due;
- (b) that the life company may have contravened:
  - (i) this Act or the *Life Insurance Act 1945*; or
  - (ii) a direction given to the company under this Act; or
  - (iii) a condition imposed, under section 22, on the registration of the company;
- (c) that the life company has not complied with a requirement of a notice given to the company under section 131 or 132;
- (d) that the ratio, for the most recent financial year of the company, of the expenses of conducting any life insurance business of the life company to the income derived from premiums is unduly high;

- (e) that the method used by the life company to apportion income or expenditure between classes of life insurance business or between life insurance business and other business is inequitable;
- (f) that the ratio, for the most recent financial year of the company, of the total amount of premiums falling due but not paid to the total premium income is unduly high;
- (g) that information in the possession of the Commissioner calls for the investigation of the whole or any part of the life insurance business of the life company.

### **Decision to investigate**

**137.(1)** The Commissioner may investigate life insurance business of a life company if:

- (a) the Commissioner has given the company a show cause notice in respect of the business; and
- (b) the company has consented to an investigation under this Division of that business.

**(2)** The Commissioner may investigate life insurance business of a life company if:

- (a) the Commissioner has given the company a show cause notice in respect of the business; and
- (b) the period specified in the notice for the purpose of paragraph 135(2)(b) has expired; and
- (c) either:
  - (i) the company has not given the Commissioner a statement in accordance with the notice; or
  - (ii) after having considered the statement given to the Commissioner by the company, the Commissioner is satisfied of the existence of the ground, or a ground, set out in the show cause notice; and
- (d) the Commissioner is satisfied that it is in the best interests of owners of policies issued by the company that the business be investigated under this Division.

### **Investigation of associated company**

**138.** If:

- (a) the Commissioner has decided under section 137 to investigate business of a life company (the “**first company**”); and
- (b) another company (the “**associated company**”) is, or at some relevant time has been, associated with the first company; and
- (c) the Commissioner believes on reasonable grounds that it is necessary for the purposes of the investigation to investigate all or any part of the business of the associated company;

the Commissioner may investigate all or any part of that business.

### **Investigation procedure**

**139.(1)** Before starting to investigate the relevant business of a company under section 137 or 138, the Commissioner must give the company a written notice stating that the Commissioner proposes to investigate that business.

**(2)** Before starting to investigate the relevant business of a company, an authorised person must give to the company a copy of the person's identity card.

### **Access to premises for purposes of investigation**

**140.** If the Commissioner has reasonable grounds for believing that it is necessary to enter premises for the purposes of an investigation of business of a company, the Commissioner, with such assistance as is necessary and reasonable, may, at any reasonable time, enter the premises and:

- (a)** inspect any record found on the premises that the Commissioner believes on reasonable grounds to relate to the affairs of the company; and
- (b)** take extracts from, or make copies of, any such record.

### **Requirement to produce records**

**141.(1)** For the purposes of an investigation of business of a company, the Commissioner may give a person who is a relevant person in relation to the company written notice requiring the person to produce to the Commissioner or a specified authorised person, at a reasonable time and place specified in the notice, any records relating to that business.

**(2)** If:

- (a)** a requirement is made under subsection (1); and
- (b)** the information that constitutes the records to which the requirement relates is stored, in whole or in part, by electronic means;

the person to whom the requirement is directed does not comply with the requirement unless he or she produces all of the records in documentary form.

### **Commissioner's power to require assistance**

**142.** When the Commissioner is investigating, or has decided to investigate, business of a company, he or she may give a person who is a relevant person in relation to the company written notice requiring the person to do either or both of the following:

- (a)** to give the Commissioner all reasonable assistance in connection with the investigation;

- (b) to attend before the Commissioner and answer questions concerning matters relevant to the investigation.

**Application for warrant to seize records not produced**

**143.(1) If:**

- (a) the Commissioner is investigating, or has decided to investigate, business of a company; and
- (b) he or she has reasonable grounds for suspecting that there are, or may be within the next 3 days, on particular premises records:
  - (i) whose production has been required under this Division; and
  - (ii) that have not been produced in compliance with that requirement;

the Commissioner may:

- (c) lay before a magistrate an information or complaint on oath setting out those grounds; and
- (d) apply for the issue of a warrant to search the premises for those records.

(2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

**Grant of warrant**

**144.(1)** This section applies if, on an application under section 143, the magistrate is satisfied that there are reasonable grounds for suspecting that there are, or may be within the next 3 days, on particular premises, particular records:

- (a) whose production has been required under this Division; and
- (b) that have not been produced in compliance with that requirement.

(2) The magistrate may issue a warrant authorising:

- (a) a member of the Australian Federal Police named in the warrant; or
- (b) that member together with the Commissioner or an authorised person;

with such assistance, and by such force, as is necessary and reasonable, to do the acts set out in subsection (3).

(3) The acts are:

- (a) entering on or into the premises; and
- (b) searching the premises; and
- (c) breaking open and searching anything, whether a fixture or not, in or on the premises; and
- (d) taking possession of, or securing against interference, records that appear to be any or all of those records.



**(4)** If the magistrate issues such a warrant, he or she must set out on the information or complaint laid before him or her under subsection 143(1) for the purposes of the application:

- (a) which of the grounds set out in the information; and
- (b) particulars of any other grounds;

he or she has relied on to justify the issue of the warrant.

**(5)** A warrant under this section must:

- (a) specify the premises and records referred to in subsection (1); and
- (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
- (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

### **Powers if records produced or seized**

**145.(1)** This section applies if:

- (a) records are produced to a person under a requirement made under this Division; or
- (b) under a warrant issued under section 144, a person:
  - (i) takes possession of records; or
  - (ii) secures records against interference.

**(2)** If paragraph (1)(a) applies, the person may take possession of any of the records.

**(3)** The person may inspect, and may make copies of, or take extracts from, any of the records.

**(4)** The person may use, or permit the use of, any of the records for the purposes of a proceeding.

**(5)** The person may retain possession of any of the records for so long as is necessary:

- (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
- (b) for the purposes of the investigation; or
- (c) for a decision to be made about whether or not a proceeding to which the records concerned would be relevant should be begun; or
- (d) for such a proceeding to be begun and carried on.

**(6)** No-one is entitled, as against the person, to claim a lien on any of the records, but such a lien is not otherwise prejudiced.

**(7)** While the records are in the person's possession, the person must permit another person to inspect at all reasonable times such (if any) of the records as the other person would be entitled to inspect if they were not in the first-mentioned person's possession.

### **Powers if records not produced**

**146.** If a person (the “**record holder**”) fails to produce particular records in accordance with a requirement made under this Division, the person who made the requirement may require the record holder to state, to the best of his or her knowledge and belief:

- (a) where the records may be found; and
- (b) who last had possession, custody or control of the records and where that person may be found.

### **Offences related to investigations**

**147.(1)** A person must not, without reasonable excuse, intentionally or recklessly refuse or fail to comply with a requirement of the Commissioner or an authorised person under this Division.

Penalty: 30 penalty units.

(2) A person who knows that the Commissioner or an authorised person is investigating, or is about to investigate, business of a company under this Division must not, with intent to delay or obstruct the investigation or proposed investigation:

- (a) conceal, destroy, mutilate or alter a record relating to the business of the company; or
- (b) if a record relating to that business is in a particular State or Territory—take or send the record out of that State or Territory or out of Australia.

Penalty: Imprisonment for 6 months.

### **Self-incrimination**

**148.(1)** For the purposes of section 147, it is not a reasonable excuse for a person to refuse or fail to:

- (a) produce a record; or
- (b) answer a question; or
- (c) make a statement;

in accordance with a requirement of the Commissioner or an authorised person that producing the record, answering the question or making the statement, as the case may be, might tend to incriminate the person or make the person liable to a penalty.

(2) However, none of the following is admissible against the person in a criminal proceeding or a proceeding for the imposition of a liability (other than a proceeding for an offence against, or arising out of, section 147):

- (a) evidence of the production of the record, the answer to the question or the making of the statement;
- (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the production of the record, the answer to the question or the making of the statement.

**Commissioner must give company written summary of conclusions**

**149.** After an investigation under this Division in respect of a company has finished, the Commissioner must give the company a written summary of the conclusions the Commissioner has reached as a result of the investigation.

**Commissioner may give directions during or after investigation**

**150.(1)** If an investigation of a life company under this Division is in progress or has finished and the Commissioner thinks that the company:

- (a) is, or is about to become, unable to meet its policy or other liabilities as they become due; or
- (b) has contravened this Act; or
- (c) has contravened a condition or direction applicable to it under this Act;

the Commissioner may give the company written directions about its life insurance business.

(2) The directions may include a direction that the company is not to issue any further policies.

(3) The giving of a direction under subsection (2) does not prevent the variation of a policy under section 96 of the *Life Insurance Act 1945*.

(4) A direction must not remain in force for more than 12 months. However, the Commissioner may issue further directions to the company.

(5) If the Commissioner thinks that a particular direction is no longer required or should be varied, the Commissioner must, by written notice given to the company, revoke or vary the direction.

(6) If a company to which a direction has been given asks the Commissioner, in writing, to revoke or vary the direction, the Commissioner must:

- (a) if the Commissioner thinks that the direction is no longer necessary or should be varied—revoke or vary the direction; or
- (b) in any other case—refuse to revoke or vary the direction.

(7) The Commissioner must give to the company written notice of a decision made under subsection (6).

(8) A failure to comply with a direction does not affect the validity of a transaction.

(9) A direction to a company ceases to have effect if an order is made for the winding-up of the company.

(10) A company must not intentionally or recklessly fail to comply with a direction given to it.

Penalty: 300 penalty units

(11) In this section:

“**direction**” includes a direction as varied.

### **Identity cards**

151.(1) The Commissioner may cause an identity card to be issued to an authorised person.

(2) An identity card must:

- (a) contain a recent photograph of the authorised person to whom it is issued; and
- (b) be in a form approved by the Commissioner.

(3) If an authorised person proposes to enter premises otherwise than in accordance with a warrant, the authorised person must produce his or her identity card to the occupier of the premises for the occupier’s inspection. If the authorised person fails to do so, the authorised person is not entitled to enter the premises under subsection 133(1).

(4) If a person to whom an identity card has been issued ceases to be an authorised person, the person must immediately return the identity card to the Commissioner.

(5) A person must not contravene subsection (4) without reasonable excuse.

Penalty: 1 penalty unit.

### *Division 4—Special provisions relating to the execution of warrants*

### **Interpretation**

152. In this Division:

“**company concerned**” means:

- (a) in relation to records—the company by which, or for which, the records are kept; and
- (b) in relation to the execution of a warrant—the company to whose records the warrant relates;

“**executing officer**”, in relation to a warrant, means:

- (a) a person named in the warrant as a person authorised to do the acts set out in subsection 144(3); or
- (b) a person assisting a person referred to in paragraph (a);

“**warrant**” means a warrant under section 144.

**Use of equipment to examine or process things**

**153.(1)** The executing officer may bring to the premises to which a warrant relates any equipment reasonably necessary for the examination or processing of things found at the premises to determine whether they constitute records that may be seized under the warrant.

**(2)** If:

**(a)** it is not practicable to examine or process the things at the premises; or

**(b)** the company concerned consents in writing;

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they constitute records that may be seized under the warrant.

**(3)** If things containing electronically stored information are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

**(a)** inform the company concerned of the address of the place and the time at which the examination or processing will be carried out; and

**(b)** allow a person nominated by the company to be present during the examination or processing.

**(4)** The executing officer may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it constitutes a record or records that may be seized under the warrant if the executing officer has reasonable grounds for believing that:

**(a)** the equipment is suitable for the examination or processing; and

**(b)** the examination or processing can be carried out without damage to the equipment or thing.

**Use of electronic equipment at premises**

**154.(1)** If there are reasonable grounds for believing that information constituting the whole or part of a record or records that may be seized under a warrant is stored at the premises by electronic means, the executing officer may operate electronic equipment at the premises to see whether the information is accessible by doing so.

**(2)** The executing officer may only operate the electronic equipment if he or she has reasonable grounds for believing that the operation of the equipment can be carried out without damage to the equipment.

**(3)** If the executing officer, after operating the equipment, finds that the information is accessible by doing so, he or she may:

**(a)** seize the equipment and any disk, tape or other associated device; or

- (b) if the information can, by using facilities at the premises, be put in documentary form—operate the facilities to put the information in that form and seize the documents so produced; or
- (c) if the information can be transferred to a disk, tape or other storage device that:
  - (i) is brought to the premises; or
  - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the company concerned;operate the equipment or other facilities to copy the information to the storage device and take the storage device from the premises.

(4) An executing officer may seize equipment under paragraph (3)(a) only if it is not practicable to put the information in documentary form as mentioned in paragraph (3)(b) or to copy the information as mentioned in paragraph (3)(c).

- (5) If the executing officer has reasonable grounds for believing that:
- (a) information may be accessible by operating electronic equipment at the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(6) The executing officer must give notice to the company concerned of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

- (7) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.

(8) If the executing officer has reasonable grounds for believing that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.

(9) The executing officer must give notice to the company concerned of his or her intention to apply for an extension, and the company is entitled to be heard in relation to the application.

(10) The provisions of this Division relating to the grant of warrants apply, with such modifications as are necessary, to the grant of an extension.

### **Compensation for damage to electronic equipment**

**155.(1) If:**

- (a) damage is caused to equipment as a result of it being operated as mentioned in section 153 or 154; and
- (b) the damage was caused as a result of:
  - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

(3) In determining the amount of compensation payable, regard is to be had to whether the company concerned and its employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

### **Copies of seized things to be provided**

**156.(1)** Subject to subsection (2), if an executing officer seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied; the executing officer must, if requested to do so by an officer of the company concerned who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if the thing that has been seized was seized under paragraph 154(3)(b) or (c).

## **PART 8—JUDICIAL MANAGEMENT AND WINDING-UP**

### *Division 1—Judicial management*

#### **Application for order for judicial management**

**157.(1)** The Commissioner may apply to the Court for an order that a life company, or part of the business of a life company, be placed under judicial management.

(2) Subject to subsection (3), a life company may apply to the Court for an order that the company, or part of the business of the company, be placed under judicial management.

(3) A life company may only apply if it has given the Commissioner at least one month's notice in writing of its intention to apply.

(4) On an application by the Commissioner, the life company is entitled to be heard.

(5) On an application by the life company, the Commissioner is entitled to be heard.

### **Order for judicial management after investigation**

**158.** On an application under section 157, the Court may make an order that a life company, or part of the business of a life company, be placed under judicial management if the Court is satisfied:

- (a) that the life insurance business of the company has been investigated under Division 3 of Part 7; and
- (b) that, having regard to the results of the investigation, it is in the interests of owners of policies issued by the company that the order be made.

### **Order for judicial management on other grounds**

**159.** On an application under section 157, the Court may make an order that a life company, or part of the business of a life company, be placed under judicial management if the Court is satisfied:

- (a) that:
  - (i) the company is, or is likely to become, unable to meet its policy or other liabilities as they become due; or
  - (ii) the company has failed to comply with the solvency standard; or
  - (iii) the company has failed to comply with a direction under section 68; or
  - (iv) there are reasonable grounds for believing that the financial position or management of the company may be unsatisfactory; and
- (b) that the time needed to make or complete an investigation of the life insurance business of the company under Division 3 of Part 7 would be likely to be such as to prejudice the interests of owners of policies issued by the company.

### **Commencement of judicial management**

**160.** The judicial management of a life company, or part of the business of a life company, commences:

- (a) on the day specified in the order for judicial management as the day on which the judicial management is to commence; or
- (b) if no day is so specified, when the order is made.



### **Stay of proceedings during judicial management**

**161.(1)** While a life company, or part of the business of a life company, is under judicial management, a proceeding in a court against the company or in relation to any of its property cannot be commenced or proceeded with, except:

- (a) with the judicial manager's written consent; or
- (b) with the leave of the Court and in accordance with such terms (if any) as the Court imposes.

**(2)** Subsection (1) does not apply to a proceeding in respect of an offence.

**(3)** A judicial manager is not subject to any liability in respect of a refusal to give a consent for the purpose of subsection (1).

### **No judicial management except in accordance with this Act**

**162.** A company is not to be judicially managed except in accordance with this Act.

### **Appointment of judicial manager**

**163.(1)** If the Court orders the judicial management of a company, or of part of the business of a company, the Court must, by its order, appoint a judicial manager of the company, or of that part of the company's business, as the case requires.

**(2)** The Court may at any time cancel the appointment of a judicial manager and appoint another person as judicial manager.

**(3)** Only a person who is an official liquidator may be appointed under this section.

### **Remuneration of judicial manager**

**164.(1)** The Court may give directions about:

- (a) the remuneration and allowances that a judicial manager is to receive; and
- (b) who is to pay the remuneration and allowances.

**(2)** The Court may charge the judicial manager's remuneration and allowances on the property of the company under judicial management in such order of priority in relation to any existing charges on that property as the Court thinks fit.

### **Management vests in judicial manager**

**165.(1)** Subject to subsection (2), if the Court has made an order:

- (a) placing a company under judicial management; or
- (b) placing part of the business of a company under judicial management;

then, when the judicial management commences:

- (c) any person vested with the management of the company, or of that business, immediately before that date is divested of that management; and
- (d) the management of the company, or of that business, vests in the judicial manager appointed by the Court.

(2) A life company may not issue policies without the leave of the Court if the company, or any part of the business of the company, is under judicial management.

(3) Subsection (2) does not prevent the variation of a policy under section 209.

### **Continued application of other Parts of Act**

**166.** The appointment of a judicial manager under this Part does not affect the continued operation of other Parts of this Act in relation to a life company or the obligation of a life company to comply with provisions of other Parts of this Act.

### **Court's control of judicial manager**

**167.(1)** A judicial manager is subject to the control of the Court.

(2) In addition to duties imposed by this Division, a judicial manager has such duties as the Court directs.

(3) A judicial manager may apply to the Court at any time for instructions:

- (a) as to the way in which the judicial management should be conducted; or
- (b) in relation to any matter arising during the judicial management.

(4) Before applying to the Court for instructions, the judicial manager must:

- (a) inform the Commissioner that he or she intends to make the application; and
- (b) give the Commissioner written details of the application.

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

### **Powers of judicial manager**

**168.(1)** The judicial manager of a life company, or of part of the business of a life company, has the following powers:

- (a) to bring or defend any legal proceedings in the name and on behalf of the company;
- (b) to appoint a legal practitioner to help him or her in the performance of his or her duties;

- (c) to appoint an actuary (other than the appointed actuary) to help him or her in the performance of his or her duties;
- (d) to sell or otherwise dispose of all or any of the property of the company;
- (e) to do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents;
- (f) for the purpose of paragraph (d), to use the company's common or official seal;
- (g) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any debtor of the company or under any deed executed under that Act;
- (h) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
- (i) to obtain credit, whether on the security of the company or otherwise;
- (j) to take out letters of administration of the estate of a deceased debtor, and to do anything necessary for obtaining payment of any money due from a debtor, or his or her estate, that cannot conveniently be done in the name of the company;
- (k) to appoint an agent to do anything that it is not practicable for the judicial manager to do personally or that it is unreasonable to expect him or her to do personally;
- (l) such other powers as the Court directs.

(2) The powers conferred by this section are in addition to powers conferred on a judicial manager by any other provision of this Division.

#### **Application by Commissioner for instructions to judicial manager**

**169.(1)** The Commissioner may apply to the Court for an order that the Court give instructions to the judicial manager relating to the conduct of the judicial management of a life company, or of part of the business of a life company.

(2) The judicial manager is entitled to be heard on the application.

#### **Request by Commissioner for information**

**170.(1)** The Commissioner may ask a judicial manager for information about the conduct of the judicial management.

(2) The judicial manager must comply with the Commissioner's request.

#### **Duration of judicial management**

**171.** If the Court orders that a life company, or part of the business of a life company, be placed under judicial management, the company, or that part of its business, as the case requires, remains under judicial management until:

- (a) the judicial management is cancelled; or
- (b) the Court orders that the company be wound up.

### **Cancellation of judicial management**

**172.(1)** A judicial manager appointed to manage a life company or part of the business of a life company may apply to the Court for an order cancelling the judicial management.

**(2)** Any other interested person may apply to the Court for an order cancelling the judicial management of a life company or of part of the business of a life company.

**(3)** On an application under subsection (1) or (2), the Court may cancel the order for the judicial management of the company, or of that business, if it appears to the Court:

- (a) that the purpose of the order has been fulfilled; or
- (b) that for any reason it is undesirable that the order remain in force.

**(4)** Before applying to the Court under subsection (1) or (2), the judicial manager or interested person must:

- (a) inform the Commissioner that he or she intends to make the application; and
- (b) give the Commissioner written details of the application.

**(5)** At the time when an order cancelling the judicial management of the company or of the business comes into force:

- (a) the judicial manager is divested of the management of the company or of the business; and
- (b) the management of the company or of the business vests in the board of directors or other governing body of the company.

**(6)** The Commissioner is entitled to be heard on any application made under subsection (1) or (2).

### **Judicial manager must conduct management efficiently and economically**

**173.** The judicial manager of a company must conduct the judicial management as efficiently and economically as possible.

### **Disclaimer of onerous property**

**174.(1)** A judicial manager has the same power to disclaim property of a life company as a liquidator of the company would have under the Corporations Law.

**(2)** For the purpose of subsection (1), Division 7A of Part 5.6 of the Corporations Law is to be read as if:

- (a) any reference to a liquidator were a reference to a judicial manager; and
- (b) subsection 568(10) of that Law were omitted; and
- (c) a reference in subsection 568B(3) or 568E(5) to the company's creditors were a reference to the owners of policies issued by the company.

(3) A disclaimer by a judicial manager has the same effect, and the judicial manager is under the same obligations, as if the disclaimer had been made under Division 7A of Part 5.6 of the Corporations Law.

### **Report by judicial manager**

**175.(1)** As soon as possible after starting to manage a company or part of the business of a company, a judicial manager must file with the Court a report that:

- (a) recommends the course of action listed in subsection (2) that is, in his or her opinion, most advantageous to the general interest of the policy owners of the company; and
- (b) sets out the reasons for that recommendation.

(2) The following are the possible courses of action:

- (a) to transfer the business, or part of the business, of the company to another company under Part 9 (whether the policies issued by the company continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
- (b) to allow the company to carry on its business after a period of judicial management (whether the policies issued by the company continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
- (c) to wind up the company;
- (d) to take such other course of action as the judicial manager considers desirable.

(3) A report may recommend different courses of action in respect of different parts of a life company's business.

(4) If the Court makes an order under section 176 giving effect to a course or courses referred to in paragraph (2)(a), (b) or (d), the judicial manager may file with the Court a further report or further reports dealing with matters to which a report under subsection (1) may relate.

(5) A report under subsection (4) must set out the reasons for any recommendation made in the report.

(6) As soon as possible after filing a report under this section, the judicial manager must:

- (a) give a copy of it to the Commissioner; and
- (b) apply to the Court for an order to give effect to the course or courses of action stated in the report.

(7) A report, or a copy of a report, under this section must be available for inspection by any person:

- (a) at the Registry of the Court in which the report is filed during the business hours of that Registry; and
- (b) at such other place (if any) as the Commissioner determines.

### **Order of Court on report of judicial manager**

**176.(1)** On an application for an order to give effect to a course or courses of action recommended in a report under section 175:

- (a) the Commissioner and any other person interested is entitled to be heard; and
- (b) the Court may make an order giving effect to such course or courses of action as it considers in the circumstances to be most advantageous to the general interest of the owners of policies issued by the life company concerned.

(2) The courses of action to which an order may give effect are those set out in subsection 175(2).

(3) An order under this section:

- (a) is binding on all persons; and
- (b) takes effect despite anything in the articles of association of the company or other rules of the company.

### **Transfer of business to another company**

**177.(1)** If the Court orders the transfer of the business, or part of the business, of a company to another company, the judicial manager must prepare a scheme for the transfer in accordance with Part 9.

(2) Until the Court confirms the scheme under that Part, the management of the company, or of that part of the business of the company, as the case may be, continues to be vested in the judicial manager.

### **Resignation**

**178.** A judicial manager appointed under this Division may resign the appointment as judicial manager by filing with the Court a signed notice of resignation.

### **Indemnity**

**179.** A judicial manager is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers, functions or duties conferred or imposed on the judicial manager by this Act.

***Division 2—Winding-up***

**Winding-up of life companies**

**180.** A life company is not to be wound up except by order of the Court on an application under subsection 175(6) or section 181.

**Order on application by Commissioner**

**181.(1)** Subject to subsection (2), the Commissioner is entitled to apply for an order that a life company be wound up.

(2) The Commissioner may only make an application if, having regard to the conclusions reached by him or her as a result of an investigation under Division 3 of Part 7, the Commissioner is satisfied that it is necessary or proper that the application be made.

(3) On an application under subsection (1), the Court may make an order that a life company be wound up if the Court is satisfied that it is in the interests of the owners of policies issued by the company that such an order be made.

**Operation of Corporations Law**

**182.** Subject to this Division, the winding-up of a life company is to be conducted in accordance with the Corporations Law of a State or internal Territory, being the law under which the company is incorporated or is taken to be incorporated.

**Notification to Commissioner regarding applications by liquidator**

**183.(1)** Before making an application to the Court in relation to a matter arising under the winding-up of a life company, a liquidator must give the Commissioner written notice that the liquidator intends to make the application.

(2) The notice must include details of the proposed application.

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

**Application by Commissioner for directions**

**184.(1)** The Commissioner may apply to the Court for directions regarding any matter arising under the winding-up of a life company.

(2) The Commissioner must give the liquidator written notice that the Commissioner intends to make the application.

(3) The notice must include details of the proposed application.

(4) The liquidator is entitled to be heard on the application.

**Commissioner's power to ask for information**

**185.(1)** The Commissioner may ask a liquidator for information in writing about the winding-up of a life company.

(2) The liquidator must comply with the request.

**Determination of amounts to be treated as liabilities of life company**

**186.(1)** In relation to each person who, according to the company's records, appears to be:

- (a) the owner of a policy issued by the company; or
- (b) interested in a policy issued by the company;

the liquidator must determine:

- (c) whether the company has a policy liability to the person; and
- (d) if the company has such a liability, the amount that represents the value of that policy liability.

(2) Determinations under subsection (1) are to be made in accordance with the directions of the Court.

(3) The liquidator must notify each person referred to in subsection (1) of the amount determined under that subsection in respect of each policy of which the person is the owner or in which the person is interested.

(4) If the liquidator determines an amount under subsection (1), then, for the purposes of the winding-up:

- (a) the company is to be taken to have a liability under the relevant policy in that amount to the person to whom the determination relates; and
- (b) subject to subsection (5), that person is bound by the liquidator's determination.

(5) A person who is notified of an amount under subsection (3) may dispute the amount:

- (a) in accordance with the Rules of Court; or
- (b) as the Court otherwise directs in the particular case.

**Application of statutory fund assets**

**187.(1)** Subject to this section, in the winding-up of a life company, the assets of a statutory fund ("**the primary fund**") must first be applied in accordance with the applicable Corporations Law in discharging debts and claims referred to in subsection 556(1) of that Law.

(2) Subsection (1) has effect only to the extent that debts or claims are liabilities that are referable to the business of the primary fund.

(3) If any assets remain after the application of subsection (1), the assets must be applied according to the following rules:

- (a) the assets are to be applied first in discharge of policy liabilities of the company referable to the primary fund;
- (b) if any assets remain, they are to be applied in discharge of other liabilities that are referable to the business of the fund;
- (c) if, after the application of assets according to paragraphs (a) and (b), any assets of the primary fund remain, those assets are to be applied in such manner as the Court directs;



- (d) directions given for the purpose of paragraph (c) are to be such directions as the Court considers equitable, having regard to:
- (i) the interests of the owners of policies referable to the primary fund;
  - (ii) the interests of the owners of policies referable to statutory funds of the company other than the primary fund; and
  - (iii) the interests of creditors of the company whose debts have not been discharged by the application of assets according to paragraph (b); and
  - (iv) the interests of shareholders of the company.

(4) The reference in subparagraph (3)(d)(iii) to creditors of a company is not limited to creditors to whom amounts are due in relation to the business of a statutory fund. The reference is intended to include all creditors of a company, whatever the nature of the liabilities involved.

(5) If a liability of the company:

- (a) is referable to 2 or more statutory funds; or
- (b) is referable in part to a statutory fund but is also related to business, other than life insurance business, carried on by the company;

the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund, as the case may be.

(6) In making an apportionment under subsection (5), the liquidator must comply with any directions of the Court.

(7) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the company that is referable to the business of the fund.

### **Liability of directors for loss to statutory fund**

**188.(1) If:**

- (a) a life company contravenes this Act in relation to a statutory fund; and
- (b) the contravention results in a loss to the statutory fund; and
- (c) the Court orders that the company be wound up;

the persons who were the directors of the company when the contravention occurred are jointly and severally liable to pay to the company an amount equal to the amount of the loss.

(2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to prevent the occurrence of such a contravention.

(3) On application by the liquidator of the company, the Court may order any person liable under subsection (1) to pay to the company the whole or any part of the loss.

(4) A person cannot be made liable both under this section and under Division 2 of Part 4 in respect of the same contravention.

## **PART 9—TRANSFERS AND AMALGAMATIONS OF LIFE INSURANCE BUSINESS**

### **Interpretation**

**189.** A reference in this Part to a company affected by a scheme is a reference to a company that is a party or proposed party to an agreement or deed by which the transfer or amalgamation provided for by the scheme is, or is to be, carried out.

### **Transfer or amalgamation of life insurance business**

**190.(1)** No part of the life insurance business of a life company may be:

- (a) transferred to another life company; or
- (b) amalgamated with the business of another life company;

except under a scheme confirmed by the Court.

(2) The reference in paragraph (1)(a) to a life company includes a reference to a company that is registered under this Act but has not begun to carry on life insurance business in Australia.

(3) A scheme must set out:

- (a) the terms of the agreement or deed under which the proposed transfer or amalgamation is to be carried out; and
- (b) particulars of any other arrangements necessary to give effect to the scheme.

(4) Subsection (1) does not require that a transfer or amalgamation of life insurance business be made under a scheme approved by the Court if:

- (a) immediately before the transfer or amalgamation, the business is referable to a statutory fund that relates only to life insurance business carried on outside Australia; and
- (b) the transfer or amalgamation will result in the business becoming referable to a statutory fund that relates only to life insurance business carried on outside Australia.

### **Steps to be taken before application for confirmation**

**191.(1)** In this section:  
“**affected policy owner**” means the owner of a policy that is referable to a statutory fund affected by a scheme;

**“approved summary”** means a summary approved by the Commissioner.

(2) An application for confirmation of a scheme may not be made unless:

- (a) a copy of the scheme and any actuarial report on which the scheme is based have been given to the Commissioner in accordance with the regulations; and
- (b) notice of intention to make the application has been published by the applicant in accordance with the regulations; and
- (c) an approved summary of the scheme has been given to every affected policy owner.

(3) Without limiting the provision that may be made by the regulations for the purposes of paragraph (2)(b), the notice referred to in that paragraph must include, in relation to each company affected by the scheme, details of the place and time at which an affected policy owner may obtain a copy of the scheme.

(4) An affected policy owner is entitled, on his or her request, to be provided by the company with one copy of the scheme free of charge.

(5) The Court may dispense with the need for compliance with paragraph (2)(c) in relation to a particular scheme if it is satisfied that, because of the nature of the scheme or the circumstances attending its preparation, it is not necessary that the paragraph be complied with.

### **Actuarial report on scheme**

**192.(1)** When a copy of a scheme has been given to the Commissioner for the purpose of paragraph 191(2)(a), the Commissioner may arrange for an independent actuary to make a written report on the scheme.

(2) The Commissioner may give a copy of the report to each company affected by the scheme.

### **Application to Court**

**193.(1)** Any of the companies affected by a scheme may apply to the Court for confirmation of the scheme.

(2) An application for confirmation must be made in accordance with the regulations.

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

### **Confirmation of scheme**

**194.** The Court may:

- (a) confirm a scheme without modification; or
- (b) confirm the scheme subject to such modifications as it thinks appropriate; or
- (c) refuse to confirm the scheme.

**Effect of confirmation etc.**

**195.** When a scheme is confirmed:

- (a) it becomes binding on all persons; and
- (b) it has effect in spite of anything in the articles of association of any company affected by the scheme; and
- (c) the company on whose application the scheme was confirmed must cause a copy of the scheme to be lodged at an office of the Australian Securities Commission in every State and Territory in which a company affected by the scheme carried on business.

**Costs of actuary's report**

**196.(1)** When a scheme is confirmed, the company that applied for the confirmation becomes liable to pay to the Commonwealth an amount equal to the expenses reasonably incurred by the Commissioner in obtaining a report under section 192 in relation to the scheme.

(2) An amount due under subsection (1) may be recovered by the Commonwealth as a debt in any court of competent jurisdiction.

**Documents to be lodged in case of transfer or amalgamation**

**197.(1)** If any part of the life insurance business carried on by a life company is transferred to, or amalgamated with the life insurance business of, another company, the latter company must give the Commissioner such documents as are required by the regulations.

(2) The documents must be lodged within the time fixed by the regulations or within such further time as the Commissioner, in accordance with the regulations, allows.

**PART 10—PROVISIONS RELATING TO POLICIES**

*Division 1—Issue of policies*

**Alteration of proposal and policy forms**

**198.(1)** The Commissioner may give a life company written notice requiring the company to submit to the Commissioner any form of proposal or policy document ordinarily used by the company in Australia.

(2) If the Commissioner thinks that a form submitted in answer to a notice under subsection (1) does not comply with this Act or is likely to mislead, he or she may give the life company written notice:

- (a) setting out particulars of the way in which the form fails to comply with this Act or is likely to mislead; and
- (b) inviting the life company to make submissions to the Commissioner on any matter set out in the notice.

**(3) If:**

(a) at least 14 days have elapsed since the Commissioner gave notice to the life company; and

(b) either:

(i) the company has not made any submissions to the Commissioner; or

(ii) having taken into account the submissions made by the life company, the Commissioner is satisfied that the form in question fails to comply with this Act or is likely to mislead;

the Commissioner may give the life company a written direction to change the form in the way specified in the direction.

**(4)** A life company must not make use of a form in respect of which the Commissioner has given a direction under subsection (3), or allow such a form to be used by a representative of the company, unless the form has been changed in accordance with the direction.

### **Capacity of young persons to insure etc.**

**199.(1)** A person who is at least 10 but has not reached 16 may, with the written consent of a parent or a person who stands in the place of a parent:

- (a) enter into a life policy on his or her own life or on another life; or
- (b) take an assignment of a life policy.

**(2)** A person who has reached 16 but has not reached 18 has the same capacity to exercise rights or powers in relation to a life policy of which he or she is the owner as a person who has reached 18.

### ***Division 2—Assignments and mortgages***

#### **Assignment of life policy**

**200.(1)** The rights of a person as owner of a life policy may only be assigned under this section.

**(2)** An assignment is not effective unless the following requirements have been satisfied:

- (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the form prescribed by the regulations;
- (b) the memorandum must be endorsed on the policy document or on an annexure to the policy document that is referred to in the policy document or in another annexure to the policy document;
- (c) the memorandum must be signed by the transferor and the transferee;
- (d) the assignment must be registered in a register of assignments kept by the life company concerned;

- (e) the date of registration must be inserted in the memorandum;
  - (f) the memorandum must be signed by the principal executive officer of the life company or by a person authorised by the principal executive officer to sign such memoranda.
- (3) If all the requirements of subsection (2) are satisfied, an assignment has the following effects:
- (a) the transferee has all the rights and powers, and is subject to all the liabilities, of the transferor under the policy;
  - (b) the transferee may sue in his or her own name on the policy;
  - (c) payment to the transferee of money due under the policy discharges the life company from all liability under the policy in respect of the money;
  - (d) the memorandum of transfer is conclusively presumed to have been registered in accordance with subsection (2) on the date shown in the memorandum;
  - (e) as between the life company and a person claiming money under the policy, the transferee is conclusively presumed, for all purposes, to have been the absolute owner of the policy at the time of registration of the assignment, free from all trusts, rights, equities and interests, and entitled to receive the money and give a good discharge for it;
  - (f) any security over the policy given by the transferee is effective in spite of any trust or any right, equity or interest of another person;
  - (g) the surrender of the policy by the transferee is effective in spite of any trust or any right, equity or interest of another person;
  - (h) the life company, in respect of any dealing it has with the transferee, is not required or concerned to inquire as to the circumstances in which, or the consideration for which, the policy was assigned to the transferee or any previous transferee;
  - (i) subject to section 202, the life company, in respect of any dealing it has with the transferee, is not affected by express, implied or constructive notice of any trust, right, equity or interest.
- (4) An assignment under this section does not:
- (a) make the transferee a member of the life company; or
  - (b) deprive the transferor of membership of the company in respect of the policy;
- except in accordance with the articles of association of the company.
- (5) This section does not:
- (a) impose on a person under 16 any liability to which he or she would not be subject apart from this section; or
  - (b) confer on a person under 16 any power or capacity he or she would not have apart from this section; or

(c) render effective a receipt, security or surrender given by a person under 16 if it would not be effective apart from this section.

(6) The rights and liabilities under a life policy are not merged or extinguished, either at law or in equity, merely because the policy is assigned, whether at law or in equity, to the life company that issued the policy.

(7) A life company is not obliged to register an assignment under paragraph (2)(d) if the company is required or permitted, by another law of the Commonwealth, to refuse to register the assignment.

### **Mortgages and trusts**

**201.(1)** If a policy is assigned by way of mortgage or on trust:

- (a) the mortgage or trust is not effective unless it is created by some means other than the memorandum of transfer; and
- (b) no notice of the mortgage or trust is to be entered on the memorandum of transfer or endorsed on the policy; and
- (c) subject to section 202, the life company is not affected by express, implied or constructive notice of the mortgage or trust.

(2) In spite of subsection (1), the transferee under an assignment may be described in the memorandum of transfer as the trustee or trustees of a superannuation fund.

### **Effect of notice of trust etc.**

**202.(1)** A life company is not entitled to rely on section 200 or 201 in relation to a matter in which the company has not acted in good faith.

(2) A life company is not entitled to rely on section 200 or 201 in relation to any trust, right, equity or interest of which the company has received express notice in writing.

(3) If a life company has received express notice in writing of a trust, right, equity or interest claimed in relation to money payable under a policy, the company may pay the money into the Court.

(4) Payment of the money into the Court discharges the company from liability to any person in respect of the money.

(5) The money is to be paid out in accordance with an order of the Court.

### **Transfer of policy after change of trustee**

**203.(1)** If:

- (a) either:
  - (i) a policy has been issued or assigned to a person as trustee; or
  - (ii) a policy has become vested in a person as trustee in some other way; and
- (b) the person is no longer the trustee under the relevant trust;

another person may give the life company written notice that the person giving the notice is now the trustee under the trust.

(2) A notice is to be given in accordance with the regulations.

(3) The regulations may require that a notice be in the form of, or be verified by, a statutory declaration.

(4) If notice is given in accordance with this section, the life company may record the name of the person who gave the notice as the owner of the policy.

(5) When the person's name is recorded under subsection (4), the person becomes the owner of the policy by force of this section.

### ***Division 3—Protection of policies***

#### **Protection of interest of insured**

**204.(1)** The rights and interests of a person under:

- (a) a life policy effected on his or her life; or
- (b) a life policy effected on the life of the person's spouse;

are not liable to be applied or made available by any judgment, order or process of a court in discharge of a debt owed by the person.

(2) Subsection (1) applies:

- (a) regardless of when a policy was issued; and
- (b) in the case of a policy referred to in paragraph (1)(a)—whether or not the policy is owned by the person.

(3) This section has effect subject to the *Bankruptcy Act 1966*.

#### **Protection of policy money on person's death**

**205.(1)** If, on the death of a person, money becomes payable to the person's estate under a policy effected on the person's life, the following provisions apply:

(a) except as permitted by paragraph (b), the money is not liable to be applied or made available:

- (i) under any judgment, order or process of a court; or
- (ii) in any other manner whatsoever;

in payment of the person's debts;

(b) the money may be applied in payment of a debt of the person if:

- (i) the person had entered into a contract that provided expressly for the money to be so applied; or
- (ii) the person had charged the money with the payment of the debt; or



- (iii) the person gave an express direction, in his or her will or other testamentary document signed by the person, that the money be so applied;
- (c) none of the following constitutes an express direction for the purposes of subparagraph (b)(iii):
  - (i) a mere direction that debts be paid;
  - (ii) a charge of debts on the whole or a part of the person's estate;
  - (iii) the creation of a trust for the payment of debts.
- (2) This section has effect regardless of when a policy was issued.
- (3) This section has effect subject to the *Bankruptcy Act 1966*.

***Division 4—Surrender values, paid-up policies and non-forfeiture of policies***

**Application of Division**

**206.(1)** Subject to subsections (2) and (3), this Division applies to all life policies.

(2) This Division does not apply to life policies declared by the regulations to be excluded from the operation of this Division.

(3) The regulations may provide that this Division applies to a class of life policies subject to specified modifications. If such provision is made, this Division applies to the class of life policies accordingly.

**Surrender of policies**

**207.(1)** The owner of a policy which has been in force for at least 3 years may request the company that issued the policy to surrender the policy.

(2) A request under subsection (1) must be in writing.

(3) Subject to section 208, if the policy owner makes a request under subsection (1), the company must pay to the policy owner an amount equal to the surrender value of the policy less the amount of any debt owed to the company under, or secured by, the policy.

(4) Subject to subsection (6), if apart from this subsection, the surrender value of a policy at a particular time would be less than an amount calculated, for the purposes of this subsection, in accordance with actuarial standards, the last-mentioned amount is the surrender value of the policy at that time.

(5) Subsection (6) applies to a life policy issued before the commencement of this Act and still in force immediately after that commencement.

(6) If, apart from this subsection, the surrender value of a policy under this Act would at any time be less than the surrender value of the policy immediately before the commencement of this Act, the surrender value of the policy immediately before that commencement is the surrender value of the policy for the purposes of this Act.

### **Relaxation of company's obligations to surrender**

**208.(1)** A life company may apply to the Commissioner for the suspension or variation of its obligation to make payments under section 207.

(2) If the Commissioner thinks that such payments would prejudice:

- (a) the financial stability of the company; or
- (b) the interests of the policy owners of the company;

the Commissioner may, in writing, suspend or vary the company's obligation to pay the surrender values for such period as the Commissioner thinks fit.

(3) A suspension or variation may be subject to such conditions as the Commissioner thinks fit.

### **Paid-up policies**

**209.(1)** If premiums under a policy have been paid in respect of a period of at least 3 years, the owner of the policy may request the life company concerned:

- (a) to vary the policy so that no further premiums are payable; and
- (b) to treat the policy as a paid-up policy.

(2) A request under subsection (1) must be in writing.

(3) On receiving the request, the life company must vary the policy by reducing the amount payable under the policy to an amount calculated in accordance with actuarial standards.

(4) The policy, as varied, is to be taken to be a paid-up policy.

(5) If, when a request is made under subsection (1):

- (a) the policy-owner owes a debt to the life company under the policy;  
or
- (b) a debt owed by the policy-owner to the life company is secured by the policy;

the company may either:

- (c) treat the debt as a debt secured by the paid-up policy; or
- (d) in calculating the reduced amount payable under the policy, take the debt into account in accordance with actuarial standards.

(6) If a debt is taken into account in accordance with paragraph (5)(d), the debt is discharged.

**Non-forfeiture of policies in certain cases of non-payment of premiums**

**210.(1)** A life policy is not liable to be forfeited only because of the non-payment of a premium (the “**overdue premium**”) if:

- (a) at least 3 years’ premiums have been paid on the policy; and
- (b) the surrender value of the policy exceeds the total of:
  - (i) the amount of the overdue premium; and
  - (ii) the total of any other amounts owed to the company under, or secured by, the policy.

(2) For the purposes of paragraph (1)(b), the surrender value of the policy is to be worked out as at the day immediately before the day on which the overdue premium falls due.

(3) Until the overdue premium is paid, the company may charge interest on it on terms not less favourable to the policy owner than such terms (if any) as are prescribed by the regulations.

(4) The overdue premium and any unpaid interest charged on it are taken, for the purposes of this Act, to be a debt owing to the company under the policy.

(5) A life company may only forfeit a life policy because of the non-payment of a premium if:

- (a) the company has given the policy owner a written notice:
  - (i) setting out the amount of the premium and the day on which it became, or will become, due; and
  - (ii) stating that the policy will be forfeited at the end of 28 days after the giving of the notice or 28 days after the day on which the premium became, or will become, due, whichever is the later if the amount due to the company has not been paid; and
- (b) at least 28 days have elapsed since:
  - (i) the day on which the notice was given; or
  - (ii) the day on which the premium became due;whichever is the later.

***Division 5—Payment of policy money***

**Probate or administration not necessary in certain cases—a single policy**

**211.(1)** If:

- (a) there is only a single life policy under which money is payable by a particular life company to the personal representative of a deceased person; and
- (b) the money does not exceed \$50,000 or such other amount as is prescribed for the purposes of this paragraph;

the company may pay the money to:

- (c) the spouse, father, mother, child, brother, sister, niece or nephew of the deceased person; or
- (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:
  - (i) under the deceased person's will; or
  - (ii) under the law relating to the disposition of the property of deceased persons; or
- (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person's estate.

(2) A company may pay the money without requiring the production of any probate or letters of administration.

(3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policy.

(4) A person to whom a company makes a payment under this section must apply the money in due course of administration.

(5) In this section "money", in relation to a life policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

### **Probate or administration not necessary in certain cases—2 or more policies**

#### **212.(1) If:**

- (a) there are 2 or more life policies under which money is payable by a particular life company to the personal representative of a deceased person; and
- (b) the total of the money payable under the policies does not exceed the amount of \$50,000 or such other amount as is prescribed for the purposes of this paragraph;

the company may pay the money to:

- (c) the spouse, father, mother, child, brother, sister, niece or nephew of the deceased person; or
- (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:

- (i) under the deceased person's will; or
  - (ii) under the law relating to the disposition of the property of deceased persons; or
- (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person's estate.
- (2) A company may pay the money without requiring the production of any probate or letters of administration.
- (3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policies.
- (4) A person to whom a company makes a payment under this section must apply the money in due course of administration.
- (5) In this section, "**money**", in relation to a life policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

#### **Death of policy owner who is not the life insured**

**213.(1)** This section applies:

- (a) if the owner of a life policy dies before the person whose life is insured by the policy; and
  - (b) either:
    - (i) the adjusted surrender value of the policy is less than the prescribed amount; or
    - (ii) the policy is one of 2 or more policies owned by the deceased owner and issued by the same company the total adjusted surrender values of which are less than the prescribed amount.
- (2) If a person (the "**applicant**") satisfies the company that issued the policy:
- (a) that he or she is entitled, under the will or on the intestacy of the deceased owner, to the benefit of the policy; or
  - (b) that he or she is entitled to obtain probate of the will or to take out letters of administration of the estate of the deceased owner;
- the company may endorse on the policy a declaration that the applicant has so satisfied the company and is the owner of the policy.
- (3) The company may endorse the policy without requiring the production of any probate or letters of administration.
- (4) If subsection (2) applies, the applicant becomes, subject to subsection (5), the owner of the policy.
- (5) Subsection (4) does not:

- (a) confer on the applicant any beneficial interest in the policy that he or she would not otherwise have had; or
- (b) affect any right or interest of a person other than the applicant in relation to the policy.

(6) For the purposes of this section, the adjusted surrender value of a policy is the surrender value of the policy as at the day on which the owner died, less any debt due to the company under, or secured by, the policy.

(7) In this section, “**prescribed amount**” means \$25,000 or such other amount as is prescribed by the regulations for the purposes of this section.

### **Company not bound to see to the application of money paid by it**

**214.** A company is not, in any circumstances, bound to see to the application of any money it pays in respect of a policy.

### **Power to pay money into Court**

**215.(1)** A life company may pay into the Court any money payable by the company in respect of a policy for which, in the company’s opinion, no sufficient discharge can otherwise be obtained.

(2) Payment of the money into the Court discharges the company from any liability under the policy in relation to the money.

(3) Any money paid into the Court under this section is to be dealt with according to the order of the Court.

(4) This section has effect subject to the Rules of the Court.

### **Unclaimed money**

**216.(1)** Within 3 months after the end of each calendar year, a life company must give to the Commissioner a statement in the form prescribed by the regulations of all unclaimed money as at the end of that year.

(2) A life company must not intentionally or recklessly fail to comply with subsection (1).

Penalty: 50 penalty units.

(3) When the company gives the statement to the Commissioner, it must at the same time pay to the Commonwealth an amount equal to the amount of unclaimed money worked out under subsection (6).

(4) If, between the end of the calendar year and the date on which the statement is given to the Commissioner, the company has paid any money to persons to whom the amounts were due by the company, the company must give the Commissioner, with the statement under subsection (1), a statement in the form prescribed by the regulations relating to the amounts so paid.

(5) A life company must not intentionally or recklessly fail to comply with subsection (3) or (4).

Penalty: 50 penalty units.

(6) For the purposes of subsection (3), the amount to be paid to the Commonwealth is an amount worked out in accordance with the formula:

**Statement amount – Money paid**

where:

**“Statement amount”** means the total of unclaimed money shown in the statement referred to in subsection (1);

**“Money paid”** means the total of any amounts paid to persons to whom the amounts were due by the company between the end of the calendar year and the date on which the statement referred to in subsection (1) is given to the Commissioner.

(7) If:

(a) unclaimed money has been paid by a company to the Commonwealth under this section; and

(b) the Commissioner or an authorised officer certifies in writing that, apart from this section, the company or a successor company would have paid that money to a person;

the Treasurer must:

(c) cause the unclaimed money to be paid to that company; and

(d) direct the company to pay the money to the person specified in the direction.

(8) A direction must be in writing.

(9) The company must not intentionally or recklessly fail to comply with a direction under paragraph (7)(d).

Penalty: 50 penalty units.

(10) If a company satisfies the Commissioner or an authorised officer that an amount paid to the Commonwealth under this section is more than the amount that would have been payable under the policy to the policy owner, an amount equal to the excess is to be refunded to the company.

(11) Subject to subsection (7), if a company pays an amount to the Commonwealth under this section, the company is, upon that payment, discharged from further liability in respect of that amount.

(12) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of this section.

(13) The Commissioner must keep a register that contains:

(a) particulars of each amount of unclaimed money specified in a statement given to the Commissioner for the purposes of subsection (1); and

(b) particulars of the persons to whom, if this section had not been enacted, the money would have been payable.

(14) The particulars referred to in paragraph (13)(b) may include a person's tax file number.

(15) In this section:

**“authorised officer”** means the Commissioner or an officer of the Australian Public Service authorised by the Commissioner for the purposes of this section;

**“successor company”**, in relation to another company (the **“first company”**), means the company to which the life insurance business of the first company has been transferred;

**“unclaimed money”** means:

- (a) all sums of money that have become legally payable by a company in respect of policies; but
- (b) in respect of which the time within which proceedings may be taken for their recovery has expired;

and includes:

- (c) sums of money payable on the maturity of a life policy which are not claimed within 7 years after the maturity date of the policy; and
- (d) any money that the company considers should be treated as unclaimed money.

### **No deduction in respect of other policies**

**217.(1)** Subject to subsection (2), if a claim arising under a policy is paid, no deductions are to be made on account of premiums or debts due to the company under any other policy, except with the written consent of the claimant.

(2) The claimant may give written consent to any deductions.

### ***Division 6—Children's advancement policies***

#### **Interpretation**

**218.(1)** In this Division:

**“child's advancement policy”** means a life policy issued, before a child has reached full age, by a person other than the child, which contains one or both of the following:

- (a) provision for payment of a sum to the executors, administrators or assigns of the child on the child's death after the child reaches the vesting age; or
- (b) provision for payment of a sum to the child or his or her assigns on the child reaching an age that is at least the vesting age;



**“full age”** means:

- (a) in relation to a life policy issued before 18 May 1989—the age of 21 years; and
- (b) in relation to a life policy issued on or after 18 May 1989 but before the commencement of this Act—the age of 18 years; and
- (c) in relation to a life policy issued after the commencement of this Act—the age of 16 years;

**“vesting age”**, in relation to a child whose life is insured by a life policy, means:

- (a) an age of 10 years or more specified in the policy for the purpose of defining the time at which money becomes payable under the policy; or
- (b) the age of 25 years;

whichever is the earlier.

(2) For the purposes of the definition of “vesting age” in subsection (1), if a policy specifies a date without specifying the age of the child at that date, the policy is to be taken to specify the age that is the age of the child at that date.

### **Property in child’s advancement policy**

**219.(1)** Subject to subsection (2), this section applies to every child’s advancement policy, whether effected before or after the commencement of this Act.

(2) This section does not apply to a child’s advancement policy effected by a parent, or a person who stands in the place of a parent, of a child in which it is expressly provided that this section does not apply to it.

(3) Subject to section 220 and unless and until the child reaches the vesting age:

- (a) the policy is the absolute property, both at law and in equity, of the person effecting the policy or his or her assigns; and
- (b) that person or his or her assigns:
  - (i) in the case of a policy effected after the commencement of the *Life Insurance Act 1945* and before the commencement of this Act—is taken to have had the power to assign, mortgage, charge, surrender, vary or otherwise deal with the policy; or
  - (ii) in any other case—may assign, mortgage, charge, surrender, vary or otherwise deal with the policy.

(4) If a child whose life is insured under a child’s advancement policy reaches the vesting age, the policy is taken, from the day on which the child reaches that age, to be the absolute property of the child, both at law and in equity, subject:

- (a) to any debt owing to the company under, or secured by, the policy; and
- (b) to any dealing done by the policy owner before the child reaches the vesting age.

**Death or bankruptcy of policy owner**

**220.(1)** This section applies if the person who effects a child's advancement policy dies or becomes bankrupt:

- (a) during the child's lifetime; and
- (b) before the child reaches the vesting age.

**(2)** Subject to any dealings in relation to the policy effected by the policy owner before his or her death or bankruptcy, the representative of the policy owner holds the policy in trust for the child until:

- (a) the child reaches the vesting age; or
- (b) the child dies before reaching the vesting age.

**(3)** The representative of the policy owner may:

- (a) assign, mortgage, charge, surrender, vary or otherwise deal with the policy; and
- (b) apply the proceeds as he or she thinks fit for the maintenance or benefit of the child and the payment of premiums in respect of the policy.

**(4)** The company which issued the policy is under no obligation to see to the application of the proceeds of the policy.

**(5)** If the child dies before reaching the vesting age, the money payable in respect of the policy is to be applied in the way in which it would be applied apart from this section.

**(6)** In this section:

**“dealings”** does not include any testamentary dealings;

**“representative”**, in relation to a policy owner, means:

- (a) if the policy owner has died—the executor or administrator of the policy owner; or
- (b) if the policy owner is bankrupt—the Official Receiver or the trustee of the policy owner's estate.

*Division 7—Lost or destroyed policy documents*

**Lost or destroyed policy—issue of replacement policy document**

**221.(1)** This section applies if:

- (a) the owner of a policy; or
- (b) a person claiming the benefit of section 211, 212 or 213 in respect of a policy;

claims that the policy document is lost or has been destroyed.

(2) A person referred to in subsection (1) may ask the company liable under the policy to issue to the person a replacement policy document in substitution for the lost document.

(3) The company may issue a replacement policy document to the policy owner if it is satisfied that there is sufficient evidence of the loss or destruction of the original policy document.

(4) The company may only issue a replacement policy document to a person referred to in paragraph (1)(b) if the company is satisfied that section 211, 212 or 213, as the case may be, should be applied in favour of the person in relation to the policy.

(5) If the company does not issue a replacement policy document within 6 months after it receives a request from a policy owner, the policy owner may apply to a court of summary jurisdiction of a State or Territory for an order under subsection (6).

(6) If, on an application under subsection (5), a court is satisfied that an original policy document is lost or has been destroyed, the court may order the company concerned to issue a replacement policy document to the applicant on such terms (if any), and within such period, as the court thinks fit.

(7) A request under subsection (2) must be in writing.

(8) This section is subject to sections 222, 223, 224 and 225.

(9) The courts of summary jurisdiction of the States are invested with federal jurisdiction to hear and determine applications under subsection (5).

(10) Subject to the Constitution, jurisdiction is conferred on the courts of summary jurisdiction of the Territories to hear and determine applications under subsection (5).

### **Form of replacement policy document**

**222.** A replacement policy document:

(a) must, as far as possible:

(i) be a copy of the original policy document; and

(ii) contain a copy of every endorsement on the original policy document; and

(b) must state the reason why the replacement policy document was issued.

### **Notice before issuing replacement policy document**

**223.(1)** This section applies if the amount of the net claim value of a policy at the date the replacement policy document is issued is more than \$25,000 or such other amount as is prescribed.

(2) For the purposes of subsection (1), the net claim value of a policy at a particular time is the amount calculated according to the regulations.

(3) At least 10 days before issuing the replacement policy document, the company must give notice of its intention to do so:

- (a) in a newspaper circulating in the district in which the owner of the policy resides; or
- (b) if a person claiming the benefit of section 211, 212 or 213 applies for the replacement policy document—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or
- (c) in a newspaper circulating in the district in which the company considers the original policy document to have been lost or destroyed.

(4) The applicant for a replacement policy document must meet all the expenses of the advertisement and of the issue of the replacement policy document. The expenses must be paid at the time the person asks the company to issue the replacement policy document.

(5) After a replacement policy document has been issued, the company must arrange for the following details to be entered in the appropriate register kept under Division 8:

- (a) the fact that a replacement policy document has been issued;
- (b) the reason for the issue of the replacement policy document.

### **Claim under policy where policy document lost or destroyed**

#### **224.(1) If:**

- (a) a person claiming to be the owner of a policy or claiming the benefit of section 211, 212 or 213 in respect of a policy:
  - (i) claims that the original policy document is lost or has been destroyed; and
  - (ii) gives to the company evidence of the loss or destruction that the company considers sufficient; and
  - (iii) makes a claim under the policy or makes any other request or claim in respect of it that would result in the termination of the policy; and
- (b) the company liable under the policy:
  - (i) has given at least 10 days notice of its intention to satisfy the claim or comply with the request; and
  - (ii) after giving notice, satisfies the claim or complies with the request; and
  - (iii) records details of its action in the appropriate register kept under Division 8;

the company is discharged from all liability to any person under the policy.

(2) A notice under subparagraph (1)(b)(i) is to be given:

- (a) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims to be the owner of the policy—in a newspaper circulating in the district in which the person resides; or
- (b) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims the benefit of section 211, 212 or 213 in respect of the policy—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or
- (c) in a newspaper circulating in a district in which the company considers the original policy to have been lost or destroyed.

(3) The expenses of the advertisement are to be paid by the person who made the claim or the request referred to in subparagraph (1)(a)(iii).

### **Application of sections 221, 222, 223 and 224 to replacement policy document**

**225.** If the owner of a policy or a person claiming the benefit of section 211, 212 or 213 in respect of a policy claims that a replacement policy document is lost or has been destroyed, sections 221, 222, 223 and 224 apply to the replacement policy document as if it were an original policy document.

## ***Division 8—General***

### **Registers**

**226.(1)** A life company must have a register of life policies for each State and Territory in which it carries on life insurance business.

(2) A life company may have such other registers as it thinks fit.

### **Registration of life policies**

**227.(1)** A life company must register each life policy issued by the company in Australia:

- (a) in the register for the State or Territory in which the policy owner lives; or
- (b) if there is no such register or the policy owner has requested that the policy be registered in some other register—in the register chosen by the policy owner.

(2) A life company must register each life policy issued by the company outside Australia in a register for policies issued outside Australia.

(3) The owner of a life policy issued in Australia may, in writing, ask the company that issued the policy to transfer the policy from a register to another register.

(4) The company must comply with a request under subsection (3).

(5) A policy may be transferred:

(a) from a register for policies issued outside Australia to any other register; or

(b) to a register for policies issued outside Australia from any other register;

if the policy owner makes a written request for the transfer and the life company concerned agrees to the transfer.

(6) The owner of a policy is liable to pay to a life company an amount equal to the total of the expenses incurred by the company in connection with a transfer of the policy under subsection (3) or (4).

### **Effect of suicide on policy**

**228.** A life company may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide if the policy expressly excludes liability in case of suicide.

### **Condition as to war risk void**

**229.(1)** Subject to subsection (2), any term or condition of a life policy is void if it limits, to an amount less than the total of the sum insured and bonuses, the amount payable under the policy if the life insured by the policy dies on war service.

(2) Subsection (1) does not apply if there is written on the policy document an acknowledgment signed by the person to whom the policy was issued that the policy is subject to the term or condition.

### **Policies not invalidated by contraventions of the Act**

**230.** A life company's failure to comply with this Act does not invalidate any life policy issued by the company.

## **PART 11—MISCELLANEOUS**

### **Annual report**

**231.(1)** The Commissioner must, as soon as practicable after the end of each financial year, give the Treasurer a written report on the operation of this Act during that financial year.

(2) The Treasurer must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.

### **Delegation**

**232.(1)** The Commissioner may, in writing, delegate any power or function of the Commissioner under this Act to a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*.

**(2)** In the exercise of a delegated power, or the performance of a delegated function, a delegate is subject to the directions of the Commissioner.

### **Operation of State and Territory laws**

**233.(1)** Except as provided by subsections (2) and (3), 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 the law is capable of operating concurrently with this Act.

**(2)** Subject to subsection (3), the Parliament intends that, in relation to life insurance business (including State life insurance extending beyond the limits of the State concerned), this Act is to apply to the exclusion of:

- (a) a superseded State Act; and
- (b) any State Act amending a superseded State Act; and
- (c) any State Act enacted in substitution for a superseded State Act.

**(3)** Nothing in this section is intended to affect prejudicially the rights, powers or privileges of the owner, or a person entitled to the benefit, of a policy issued before 20 June 1946 (the date of commencement of the *Life Insurance Act 1945*).

**(4)** In this section, “**superseded State Act**” means a State Act referred to in subsection 8(1) of the *Life Insurance Act 1945*, as in force immediately before the commencement of this Act, that is still in operation.

### **Prohibition of mixed insurance business**

**234.(1)** A life company must not intentionally carry on any insurance business other than life insurance business.

Penalty: 300 penalty units.

**(2)** Subsection (1) does not prohibit an existing life company from carrying on general insurance business if the company was carrying on general insurance business immediately before the commencement of this Act.

### **Injunctions**

**235.(1)** If a life company has engaged, is engaging, or proposes to engage, in any conduct in contravention of this Act, of a direction given under this Act or of a condition imposed on the registration of the company, the Court may grant an injunction:

- (a) restraining the company from engaging in the conduct; or
- (b) if the Court thinks it desirable to do so, requiring the company to do a particular act.

(2) If a life company has refused or failed, or is proposing to refuse or fail, to do an act that the company is required by this Act to do, the Court may grant an injunction requiring the company to do the act.

(3) An injunction under subsection (1) or (2) may only be granted on the application of the Commissioner.

(4) The Court may grant an interim injunction pending the determination of an application.

(5) The Court may discharge or vary an injunction granted under subsection (1) or (2).

(6) The Commissioner cannot be required, as a condition of the grant of an interim injunction, to give an undertaking as to damages.

(7) The power of the Court to grant an injunction restraining a life company from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the company intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the company has previously engaged in conduct of that kind.

(8) The power of the Court to grant an injunction requiring a person to do an act may be exercised whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.

(9) The powers conferred on the Court by this section are in addition to, and not in derogation of, any other powers of the Court.

### **Review of certain decisions**

**236.(1)** In this section:

**“person affected by a reviewable decision”**, in relation to a reviewable decision, means:

- (a) in the case of a refusal under section 85 to approve a person for the purposes of Part 6 or a revocation of an approval given in respect of a person under that section—that person; or
- (b) in the case of a refusal under subsection 93(6) to approve a person or a declaration under subsection 94(3) in respect of a person—that person; or
- (c) in any other case—the company in relation to which the decision was made;



**“reviewable decision”** means any of the following decisions:

- (a) a declaration under subsection 12(2);
- (b) a declaration under subsection 14(5);
- (c) a declaration under subsection 15(4);
- (d) a decision under subsection 22(1);
- (e) a decision to vary a direction under subsection 22(3) or (4);
- (f) a refusal to revoke or vary a direction under subsection 22(4);
- (g) a decision to cancel registration under subsection 26(2);
- (h) a refusal to give an approval under paragraph 31(c);
- (i) a decision under subsection 49(1);
- (j) a decision under subsection 49(4);
- (k) a refusal to give an approval under subsection 52(4);
- (l) a refusal to give an approval under subsection 53(4);
- (m) a refusal to give an approval under subsection 62(4);
- (n) a refusal to give an approval under subsection 63(2);
- (o) a direction under subsection 68(1);
- (p) a decision to vary a direction under subsection 68(5) or (6);
- (q) a refusal to revoke or vary a direction under subsection 68(6);
- (r) a direction under subsection 73(1);
- (s) a decision to vary a direction under subsection 73(5) or (6);
- (t) a refusal to revoke or vary a direction under subsection 73(6);
- (u) a refusal to give an approval under subsection 77(6);
- (v) a refusal to give an approval under subsection 85(1);
- (w) a revocation, under subsection 86(1), of an approval under subsection 85(1);
- (x) a refusal to give an approval under subsection 91(2);
- (y) a refusal to give an approval under subsection 93(6);
- (z) a declaration under subsection 94(3);
- (za) a requirement under subsection 115(3);
- (zb) a decision under subsection 118(5);
- (zc) a decision under subsection 119(2);
- (zd) a direction under subsection 121(3);
- (ze) a decision to vary a direction under subsection 121(6) or (7);
- (zf) a refusal to revoke or vary a direction under subsection 121(7);
- (zg) a refusal to give an approval under subsection 125(2);
- (zh) a requirement under subsection 131(1);
- (zi) a requirement under subsection 132(1);
- (zj) a direction under subsection 134(1);
- (zk) a direction under subsection 150(1);

- (zl) a decision to vary a direction under subsection 150(5) or (6);
- (zm) a refusal to revoke or vary a direction under subsection 150(6);
- (zn) a direction under subsection 198(3);
- (zo) a decision under subsection 216(10).

(2) A person affected by a reviewable decision may request the Commissioner to reconsider the decision.

(3) The request must be made by written notice given to the Commissioner 21 days after the person first receives notice of the decision, or within such further period as the Commissioner allows.

(4) The request must set out the reasons for making the request.

(5) On receipt of the request, the Commissioner must reconsider the decision and may, subject to subsection (6), confirm or revoke the decision or vary the decision in such manner as the Commissioner thinks fit.

(6) If the Commissioner does not confirm, revoke or vary a decision within 60 days after the Commissioner received the request under subsection (2) to reconsider the decision, the Commissioner is taken to have confirmed the decision under subsection (5) on the last day of that period.

(7) If the Commissioner confirms, revokes or varies a decision before the end of the period referred to in subsection (6), the Commissioner must give written notice to the person telling the person:

- (a) the result of the reconsideration of the decision; and
- (b) the reasons for confirming, revoking or varying the decision, as the case may be.

(8) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner that has been confirmed or varied under subsection (5).

(9) If a decision is taken to be confirmed because of subsection (6), 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 of 28 days beginning on the day on which the decision is taken to be confirmed.

(10) If a request is made under subsection (3) 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.

### **Constitution and procedure of Tribunal**

237.(1) Subject to subsections 21(1A) and 23(1) of the *Administrative Appeals Tribunal Act 1975*, the Administrative Appeals Tribunal is to be constituted by a presidential member and 2 non-presidential members for the purposes of a review of a reviewable decision.

(2) In giving a direction as to the persons who are to constitute the 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 is to ensure that each non-presidential member of the Tribunal as so constituted is a person who, in the President's opinion, has special knowledge or skill in relation to life insurance business.

(3) A non-presidential member of the Tribunal must not sit as a member of the 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 decision, if he or she is a director or employee of a company or body carrying on life insurance business or insurance business (whether in Australia or elsewhere).

(4) 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 Tribunal.

(5) The hearing of a proceeding relating to a reviewable decision is to take place in private and the 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*.

### **Prospectus to be given to Commissioner**

**238.** If a life company lodges with the Australian Securities Commission under Part 7.12 of the Corporations Law of a State or an internal Territory a prospectus relating to securities of the company, the company must give a copy of the prospectus to the Commissioner.

### **Documents relating to takeover schemes**

**239.(1)** This section applies if a life company or the holding company of a life company:

- (a) lodges a document, or a copy of a document, with the Australian Securities Commission; or
- (b) is given a document, or a copy of a document;

for the purposes of Part 6.3 of the Corporations Law of a State or an internal Territory.

(2) The company must give to the Commissioner a copy of a document referred to in paragraph (1)(a) or (b) within 7 days after the document is lodged or received, as the case may be.

### **Register of Life Companies**

**240.(1)** The Commissioner must keep a register to be known as the Register of Life Companies.

(2) Subject to this section and the regulations, the Register is to be kept in such form and manner as the Commissioner determines.

(3) The Register must contain the prescribed information in relation to each company that is registered under this Act.

(4) The Register may be kept by means of a computer.

### **Inspection of Register etc.**

**241.(1)** The Commissioner must ensure that the Register is available for inspection by any person during normal business hours.

(2) A person who has paid the prescribed fee is entitled to inspect the Register.

(3) If the Register is kept wholly or partly by means of a computer, subsection (1) is taken to be complied with, so far as the Register is kept in that way, by giving persons access to computer terminals that they can use to inspect the Register, either by viewing a screen display or by obtaining a computer print-out.

### **Non-shareholder members of life company—voting by post**

**242.(1)** This section applies to any life company that is not a company limited only by shares.

(2) Within one year after it is registered under this Act, a life company to which this section applies must make arrangements for:

- (a) the establishment of a postal voters' roll in relation to:
  - (i) voting in contested elections of directors of the company; and
  - (ii) voting on questions relating to the alteration of the company's articles of association;
- (b) the enrolment on the postal voters' roll of any member of the company who is not a shareholder, who applies to be enrolled and who is entitled to vote:
  - (i) in elections referred to in subparagraph (a)(i); or
  - (ii) on questions referred to in subparagraph (a)(ii); and
- (c) the voting by post in such elections or on such questions by members so enrolled; and
- (d) the inspection of the postal voters' roll, and the taking of copies of, or extracts from, the roll, after the close of nominations and before the close of the voting in any election of a director of the company by any candidate in the election.

(3) All regular votes cast under any arrangements referred to in subsection (1) are valid for all purposes.

(4) If a member of a life company who is enrolled on the postal voters' roll does not exercise his or her right to vote by post on 3 consecutive occasions when he or she is entitled to vote, the company may remove his or her name from the roll. However, he or she is eligible to be re-enrolled on his or her request.

### **Inspection of documents**

**243.(1)** The Commissioner must ensure that any document given to the Commissioner under subsection 118(2) is available for inspection by any member of the public at an office of the Commissioner during normal business hours.

- (2) A person may:
- (a) inspect a document referred to in subsection (1); and
  - (b) make a copy of, or extract from, the document;
- if the person pays the fee (if any) prescribed by the regulations.

### **Commissioner's power to obtain statistics etc.**

**244.(1)** The Commissioner must collect such statistics as are prescribed by Commissioner's rules.

(2) The statistics must be collected as at such time and in such manner as prescribed by Commissioner's rules.

(3) Life companies must give to the Commissioner such information as the Commissioner reasonably requires to enable the statistics to be collected.

(4) A life company must comply with a request.

(5) The Commissioner may publish, in such form as he or she thinks appropriate, any statistics collected under subsection (1).

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

**245.(1)** For the purposes of this section, a person is a disqualified person if, at any time:

- (a) the person has been convicted of an offence against this Act or the *Life Insurance Act 1945*; or
- (b) the person has been convicted of an offence against any other law of the Commonwealth or a law of a State, a Territory or a foreign country, being an offence in respect of:
  - (i) conduct relating to insurance; or
  - (ii) dishonest conduct; or
- (c) the person has:
  - (i) become bankrupt; or

- (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
- (iii) compounded with his or her creditors.

(2) A disqualified person must not be, or act as, a director or the principal executive officer or the appointed actuary of a company registered under this Act.

(3) A person must not intentionally or recklessly contravene subsection (2).

Penalty: Imprisonment for 2 years.

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

Penalty: 600 penalty units.

(5) It is a defence to a prosecution under subsection (4) if the defendant proves that:

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

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

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

### **Principal executive officer**

**246.(1)** Subject to subsection (3), the principal executive officer of a life company, for the purposes of this Act, is the person nominated under subsection 20(4) or under subsection (2) of this section.

(2) An existing life company must give the Commissioner written notice specifying the person who is to be the principal executive officer of the life company for the purposes of this Act.

(3) Notice under subsection (2) must be given within 3 months after the commencement of this Act.

(4) A life company may, at any time, give the Commissioner written notice specifying a person who is to be the principal executive officer of the life company for the purposes of this Act.

(5) On the giving by a life company of a notice under subsection (4), the person specified in the notice becomes the principal executive officer of the life company for the purposes of this Act.

### **Protection of person who discloses information etc. under compulsion**

**247.** A person who:

- (a) discloses information; or
- (b) produces records;

in accordance with a requirement or direction of a person apparently acting under this Act is not liable to anyone else in respect of the disclosure or production, regardless of whether the requirement or direction was lawfully made or given.

### **Offences**

**248.(1)** No proceedings for an offence against this Act may be instituted after the end of the period of 3 years after the commission of the offence.

(2) The institution of proceedings against a company for an offence against this Act does not prevent the institution of proceedings for:

- (a) the judicial management; or
- (b) the winding-up;

of the company, or of part of the business of the company, on a ground that relates to the matter that constitutes the offence.

### **False or misleading documents**

**249.** A person who, in a document required by or under this Act to be signed by the person:

- (a) makes any statement that to the person's knowledge is false or misleading in a material particular; or
- (b) omits a material particular without which the document is, to the person's knowledge, false or misleading in a material respect;

is guilty of an offence.

Penalty: Imprisonment for 12 months.

### **Conduct by directors, servants and agents**

**250.(1)** If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate 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 body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate 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 body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

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

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

(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual 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 individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) 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
- (b) the person's reasons for the intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or a Territory.

(7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(8) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*, being an offence that relates to this Act.

## **Secrecy**

**251.(1)** In this section:

**“compliance officer”** means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or



(b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or

(c) any other person who, because of his or her employment, or in the course of that employment:

(i) has acquired protected information; or

(ii) has had access to protected documents;

other than a member or officer of, or a person employed or engaged by:

(iii) a financial sector supervisory agency; or

(iv) a law enforcement agency;

**“court”** includes a tribunal, authority or person having the power to require the production of documents or the answering of questions;

**“financial sector supervisory agency”** means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section;

**“law enforcement agency”** means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section;

**“protected document”** means a document given or produced under, or for the purposes of, this Act and containing information relating to the affairs of a life company;

**“protected information”** means information disclosed or obtained under, or for the purposes of this Act and relating to the affairs of a life company.

(2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act, directly or indirectly:

(a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or

(b) produce to any person, or to a court, a protected document.

(3) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, relating to the affairs of a life company if the life company agrees in writing to the disclosure of the information or the production of the document, as the case may be.

(4) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, to:

(a) the Treasurer, the Secretary of the Department or an officer of the Department authorised by the Secretary of the Department for the purposes of this section; or

(b) a court for the purposes of this Act; or

(c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or

(d) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person.

(5) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, to:

- (a) a law enforcement agency; or
- (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) a person engaged under subsection 13(3) of that Act.

(6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.

(7) A compliance officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.

(8) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court any protected document, except when it is necessary to do so for the purposes of this Act.

(9) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary of the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

(10) A document that:

- (a) is a protected document; or
- (b) contains protected information;

is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

### **Commissioner's rules**

**252.(1)** The Commissioner may, in writing, make rules prescribing all matters required or permitted by this Act to be prescribed by Commissioner's rules.

(2) Rules made by the Commissioner are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Regulations**

**253.(1)** The Governor-General may make regulations:

- (a) prescribing matters required or permitted by this Act to be prescribed, other than matters required or permitted to be prescribed by Commissioner's rules or actuarial standards; or
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may:

- (a) prescribe the time within which any appeal to the Court provided for by this Act will lie; and
- (b) prescribe penalties not exceeding 10 penalty units for any contravention of the regulations.

## **PART 12—HOW THIS ACT AFFECTS EXISTING LIFE COMPANIES ETC.**

### **Companies registered under *Life Insurance Act 1945***

**254.(1)** An existing life company is taken, for the purposes of this or any other Act, to be registered under this Act.

(2) An existing life company that is incorporated outside Australia is taken, for the purposes of this Act, to be a company within the meaning of this Act.

(3) If, immediately before this Act commenced, an existing life company was subject to a condition imposed under section 20 of the *Life Insurance Act 1945*, the condition has effect as if it were a condition imposed under section 22 of this Act.

(4) Section 25 of this Act applies to an existing life company as if:

- (a) the reference in that section to the registration of a company under this Act was a reference to the registration of the existing life company under the *Life Insurance Act 1945*; and
- (b) the reference in that section to the application for registration were a reference to the application for registration by the existing life company under the *Life Insurance Act 1945*.

(5) Section 26 of this Act applies to an existing life company as if the period of 12 months referred to in paragraph (1)(a) of that section began on the day on which the company was registered under the *Life Insurance Act 1945*.

(6) A certificate of registration given, under section 22 of the *Life Insurance Act 1945*, to an existing life company has the same status, and this Act has effect, as if the certificate had been issued under subsection 21(5) of this Act.

(7) The following provisions of this Act do not apply to an existing life company that is incorporated outside Australia:

- (a) subsections 23(1) and (4);
- (b) section 242;
- (c) section 245.

(8) This Act does not apply in relation to life insurance business carried on outside Australia by an existing life company that is incorporated outside Australia.

(9) Subsection 23(3) applies in relation to an existing life company that is incorporated outside Australia as if:

- (a) the words “that is limited both by shares and by guarantee or that does not have any share capital” were omitted; and
- (b) the reference in that subsection to eligible assets were a reference to eligible assets in Australia.

### **Continuing capital requirements**

**255.(1)** Section 47 of the *Insurance Laws Amendment Act 1991* (the “**Amendment Act**”) has effect after the commencement of this Act as follows:

- (a) the reference to a company registered under the *Life Insurance Act 1945* is to be read as a reference to an existing life company;
- (b) the reference in subsection (2) to section 19A of the *Life Insurance Act 1945* is to be read as a reference to section 23 of this Act.

(2) If regulations are made for the purposes of subsection 23(1), (3) or (4), the regulations may make provision modifying the operation of section 47 of the *Insurance Laws Amendment Act 1991*.

### **Approved auditor**

**256.** A person who held an approval by the Commissioner under section 47 of the *Life Insurance Act 1945* immediately before the commencement of this Act is taken to be a person approved by the Commissioner under section 85 of this Act.

### **Approved actuary**

**257.** A person who held an approval by the Commissioner under subsection 47A(4) of the *Life Insurance Act 1945* in relation to a life company immediately before the commencement of this Act is taken to be a person approved by the Commissioner under subsection 93(6) of this Act in relation to that company.

### **Documents required to be lodged**

**258.** If:

- (a) immediately before the commencement of this Act, a company was required to lodge a document under section 52 of the *Life Insurance Act 1945*; and
- (b) the company had not lodged that document before that commencement (whether or not the time within which the document was required to be lodged had expired);

the *Life Insurance Act 1945*, as in force immediately before that commencement, continues in force in relation to the obligation to lodge the document and any failure to lodge the document in accordance with section 52.

### **Reinsurance between statutory funds**

**259.(1)** After the commencement of this Act, a life company does not contravene Part 4 by engaging in the practice of reinsurance between statutory funds in relation to a particular policy if:

- (a) the policy was issued before the commencement of this Act; and
- (b) immediately before that commencement, the company was engaging in the practice in relation to the policy; and
- (c) in a report of his or her investigation of the company's financial condition as at the end of the last financial year that ended before the commencement of this Act, the appointed actuary stated that the continuance of the practice in relation to the policy did not adversely affect the financial condition of the company, or unfairly affect the interests of the owners of other policies, during that financial year.

**(2)** The reference in paragraph (1)(c) to an investigation of a company's financial condition is a reference to an investigation made under section 113.

**(3)** This section has effect in spite of section 39.

**(4)** Until the end of the first financial year of an existing life company that ends after the commencement of this Act, this section has effect in relation to the company as if:

- (a) all words of subsection (1) after "policy" in paragraph (1)(b) were omitted; and
- (b) subsection (2) were omitted.

### **Scheme for transfer or amalgamation**

**260.** If a copy of a scheme was lodged with the Commissioner under section 75 of the *Life Insurance Act 1945* before the commencement of this Act:

- (a) Division 9 of Part III of that Act, as in force immediately before the commencement of this Act, continues to apply in relation to the scheme and the life insurance business to which the scheme relates; and
- (b) Part 9 of this Act does not apply in relation to that scheme.

#### **Modification of operation of Divisions 5 and 6 of Part 4**

**261.(1)** The regulations may make provision modifying the operation of Division 5 or 6 of Part 4 in relation to existing life companies.

(2) If regulations made for the purposes of subsection (1) modify the operation of Division 5 of Part 4:

- (a) the operation of that Division in relation to existing life companies is modified in accordance with the regulations; and
- (b) the modifications apply to an existing life company in relation to the allocation of profits or losses disclosed by, or capital payments identified in, accounts or financial statements given by the company to the Commissioner under this Act or the *Life Insurance Act 1945* and relating to a period that commences before 1 January 1996.

(3) If regulations made for the purposes of subsection (1) modify the operation of Division 6 of Part 4:

- (a) the operation of that Division is modified in relation to existing life companies in accordance with the regulations; and
- (b) the modifications apply to an existing life company until the end of the last period commencing before 1 January 1996 in relation to which financial statements are given by the company to the Commissioner under section 82.

#### **Existing benefit society business**

**262.(1)** If:

- (a) immediately before the commencement of this Act, a society was registered under a law of a State or Territory relating to the registration of benefit societies; and
- (b) because of that registration, business carried on by the society was not life insurance business within the meaning of the *Life Insurance Act 1945*;

business carried on by the society after the commencement of this Act, to the extent that it is the same as business referred to in paragraph (b), is not life insurance business for the purposes of this Act.

(2) Subsection (1) ceases to apply to business carried on by a society if the society, for whatever reason, ceases to be a society registered under a law of a State or Territory relating to the registration of benefit societies.

(3) This section ceases to have effect at the end of the period of 2 years beginning at the commencement of this Act.

**Judicial management and winding-up**

**263.(1)** If a company, or part of the business of a company, was under judicial management, or being wound up, under the *Life Insurance Act 1945* immediately before the commencement of this Act:

- (a) the *Life Insurance Act 1945* as in force immediately before the commencement of this Act continues to apply in relation to the company; and
  - (b) Parts 8 and 9 of this Act do not apply in relation to the company.
- (2) Subsection (1) ceases to apply to a company if:
- (a) the company was under judicial management under the *Life Insurance Act 1945* immediately before the commencement of this Act; and
  - (b) the Court has cancelled the order for judicial management under the *Life Insurance Act 1945*, as continued in force by subsection (1); and
  - (c) no order for the winding-up of the company or part of the business of the company has been made by the Court under that Act (as so continued in force) before, or at the time of, the cancellation of the order for judicial management.

**Saving provision: sections 83, 84 and 94 of the *Life Insurance Act 1945***

**264.** In spite of section 6 of the *Life Insurance (Consequential Amendments and Repeals) Act 1995*, sections 83, 84 and 94 of the *Life Insurance Act 1945*, as in force immediately before the commencement of this Act, continue to apply to policies to which those sections applied immediately before the commencement of this Act as if the *Life Insurance Act 1945* had not been repealed.

---

SCHEDULE

Section 8

DICTIONARY

**“annual actuarial investigation”** means an investigation carried out for the purposes of section 113;

**“appointed actuary”**, in relation to a life company or anything done, or to be done, by a life company, means the person holding an appointment by the company under section 93;

**“approved auditor”** means a person in respect of whom an approval under subsection 85(1) is in force;

**“articles of association”**, in relation to a company, includes:

- (a) the documents by which the company is constituted; and
- (b) any other document governing activities or conduct of the company or its members;

**“Australian fund”** has the meaning given by section 74;

**“Australian/overseas fund”** has the meaning given by section 74;

**“Australian participating business”** has the meaning given by section 56;

**“Australian policy”** means a policy issued in Australia;

**“Australian policy owners’ retained profits”** has the meaning given by section 61;

**“Board”** means the Life Insurance Actuarial Standards Board;

**“business of a statutory fund”** has the meaning given by section 13;

**“class of life insurance business”** has the meaning given by section 12;

**“Commissioner”** means the Insurance and Superannuation Commissioner under the *Insurance and Superannuation Commissioner Act 1987*;

**“company”** means:

- (a) a company incorporated under the Corporations Law of a State or an internal Territory; or
- (b) a body corporate incorporated, or continued in existence, by or under any other law of a State or Territory;

**“continuous disability policy”** means a contract of insurance:

- (a) that is, by its terms, to be of more than 3 years’ duration; and
- (b) under which a benefit is payable in the event of:
  - (i) the death, by accident or by some other cause specified in the contract, of the person whose life is insured (**“the insured”**); or
  - (ii) injury to, or disability of, the insured as a result of accident or sickness; or
  - (iii) the insured being found to have a specified condition or disease; and



**SCHEDULE—continued**

- (c) the terms of which do not permit alteration, at the instance of the life company concerned, of both the benefits provided for by the contract and the premiums payable under the contract;
- but does not include a contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984*;
- “Court”** means the Federal Court of Australia;
- “eligible assets”**, in relation to a company, means the assets of the company that, according to the regulations, are eligible assets of the company;
- “executive officer”**, in relation to a company, means a person, whatever his or her title and whether or not a director of the company, who is concerned, or takes part, in the day-to-day management of the company;
- “existing life company”** means a body corporate that, immediately before the commencement of this Act, was registered under the *Life Insurance Act 1945*;
- “financial condition report”** means a report of an investigation carried out for the purposes of section 113 or 115;
- “friendly society”** means a society registered under a law of a State or Territory providing for the registration of friendly societies;
- “investment account benefits”** has the meaning given by section 14;
- “investment account contract”** has the meaning given by section 14;
- “investment-linked benefits”** has the meaning given by section 14;
- “investment-linked contract”** has the meaning given by section 14;
- “issue”**, in relation to a policy, has the meaning given by section 10;
- “life business”** means business that consists of:
- (a) the issuing of life policies or the undertaking of liability under life policies; or
  - (b) any business that relates to business referred to in paragraph (a);
- “life company”** means a company that is carrying on life insurance business in Australia;
- “life insurance business”** has the meaning given by section 11;
- “life policy”** has the meaning given by section 9;
- “non-participating business”** means life insurance business that consists of the provision of non-participating benefits under policies;
- “official liquidator”** has the same meaning as in the Corporations Law of a State or internal Territory;
- “ordinary business”** means life insurance business other than superannuation business;
- “ordinary policy”** means a policy other than a superannuation policy;
- “overseas fund”** has the meaning given by section 74;

**SCHEDULE—continued**

**“overseas participating business”** has the meaning given by section 56;

**“overseas policy”** means a policy issued outside Australia;

**“overseas policy owners’ retained profits”** has the meaning given by section 61;

**“participating business”** means life insurance business that consists of the provision of participating benefits under policies;

**“person affected by a reviewable decision”** has the meaning given by section 236;

**“policy”** means a life policy or a sinking fund policy;

**“policy document”** means a document that sets out, or the documents that together set out, the terms of a contract that is a life policy or a sinking fund policy, and includes an endorsement on such a document;

**“policy liability”**, in relation to a life company, means:

- (a) a liability that has arisen under a policy; or
- (b) a liability that, subject to the terms and conditions of a policy, will arise on the happening of an event, or at a time, specified in the policy;

**“premium”** includes an instalment of premium;

**“Register”** means the Register of Life Companies kept under section 240;

**“related company”**:

- (a) in Part 7—has the meaning given by section 129; and
- (b) otherwise—has the meaning given by section 16;

**“reviewable decision”** has the meaning given by section 236;

**“securities exchange”** means a body that is a securities exchange for the purposes of Chapter 6 of the Corporations Law of a State or internal Territory;

**“share premium account”** has the same meaning as in the Corporations Law;

**“shareholders’ capital”** has the meaning given by section 61;

**“shareholders’ retained profits (Australian participating)”** has the meaning given by section 61;

**“shareholders’ retained profits (overseas and non-participating)”** has the meaning given by section 61;

**“sinking fund business”** means business that consists of:

- (a) the issuing of sinking fund policies or the undertaking of liability under sinking fund policies; or
- (b) any business that relates to business referred to in paragraph (a);

**“sinking fund policy”** means a contract that has the following features:

**SCHEDULE—continued**

- (a) the company issuing the policy undertakes to pay money on one or more specified dates;
- (b) neither the payment of that money nor the payment of premiums is dependent on the death or survival of the person to whom the policy is issued or of any other person;

**“spouse”**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person;

**“starting amount”** has the meaning given by section 61;

**“superannuation business”** means life insurance business that consists of:

- (a) the issuing of superannuation policies or the undertaking of liability under superannuation policies; or
- (b) any business that relates to business referred to in paragraph (a);

**“superannuation policy”** means:

- (a) a life policy that is maintained for the purposes of a superannuation or retirement scheme and is owned by the trustee under the scheme; or
- (b) a life policy included in a class of policies declared by the regulations to be superannuation policies for the purposes of this Act;

**“this Act”** includes the regulations, actuarial standards in force under Division 4 of Part 6 and Commissioner’s rules;

**“trade union”** means an association registered under a law of a State or Territory providing for the registration of trade unions;

**“value”**, in relation to an asset, means the market value of the asset less the costs likely to be incurred in realising the asset.

---

*[Minister’s second reading speech made in—  
House of Representatives on 16 November 1994  
Senate on 6 December 1994]*