



Insurance Laws Amendment Act 1998

No. 35, 1998



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**An Act to amend the law relating to insurance, and
for other purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—General amendments		3
	<i>Insurance Act 1973</i>	3
	<i>Insurance (Agents and Brokers) Act 1984</i>	14
	<i>Insurance Contracts Act 1984</i>	21
Schedule 2—Amendments relating to Lloyd’s		26
	<i>Insurance Act 1973</i>	26
	<i>Insurance (Agents and Brokers) Act 1984</i>	64
	<i>Insurance Supervisory Levies Collection Act 1989</i>	64



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An Act to amend the law relating to insurance, and for other purposes

[Assented to 22 April 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Insurance Laws Amendment Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.

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- (3) If Schedule 1 does not commence under subsection (2) 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.
- (4) Schedule 2 (other than item 27) commences on a day to be fixed by Proclamation. Before the Proclamation is made, the Treasurer must certify, in writing, that the Treasurer is of the opinion that, on that day:
- (a) an instrument will be in force under subsection 68(1) of the *Insurance Act 1973*; and
 - (b) one or more security trust funds will be in existence in fulfilment of an obligation imposed by that instrument.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General amendments

Insurance Act 1973

1 Subsection 3(1) (definition of *accounts*)

Omit “, (2)” (wherever occurring).

2 Subsection 3(1)

Insert:

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

3 Subsection 3(1) (paragraph (b) of the definition of *statutory accounts*)

Omit “or”.

4 Subsection 3(1) (paragraph (c) of the definition of *statutory accounts*)

Repeal the paragraph.

5 Subsection 34(1)

After “Commissioner”, insert “on application by the body corporate”.

6 After subsection 34(1)

Insert:

- (1A) An application must be in a form approved in writing by the Commissioner.
- (1B) An application must be signed by:
 - (a) in the case of a body corporate incorporated in Australia—a director or a secretary of the body corporate; or
 - (b) in the case of a body corporate not incorporated in Australia:
 - (i) the person appointed in accordance with section 118 as, or to act as, the agent of the body corporate; or

(ii) a director or a secretary of the body corporate.

(1C) An application for the approval of arrangements for reinsurance made, or proposed to be made, under an agreement must be lodged with the Commissioner by the start of such period before the agreement comes into force as the Commissioner determines in writing.

(1D) The Commissioner may, in special circumstances, exempt a body corporate from the requirement in subsection (1C) in relation to a specified application.

7 At the end of section 34

Add:

(6) A determination under subsection (1C) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

8 After section 34

Insert:

34A Statements about reinsurance to be lodged with Commissioner

(1) This section applies if a body corporate authorised under this Act to carry on insurance business enters into, or has at any time entered into, a reinsurance agreement.

Note: *Reinsurance agreement* is defined by subsection (11).

Lodgment after agreement comes into force

(2) If the reinsurance agreement comes into force on a day after this section commenced, the body corporate must lodge with the Commissioner, within such period after that day as the Commissioner determines, such statements relating to its overall reinsurance arrangements as are determined by the Commissioner.

Lodgment after each anniversary of the agreement

(3) If:

- (a) the reinsurance agreement is in force on a particular anniversary of the day the agreement came into force; and
 - (b) that anniversary occurs after this section commenced;
- the body corporate must lodge with the Commissioner, within such period after that anniversary as the Commissioner determines, such statements relating to its overall reinsurance arrangements as are determined by the Commissioner.

Lodgment after agreement ends

- (4) If the reinsurance agreement ceases to be in force on a day after this section commenced, the body corporate must lodge with the Commissioner, within such period after that day as the Commissioner determines, such statements relating to its overall reinsurance arrangements as are determined by the Commissioner.

Statements must be in approved form

- (5) Statements lodged under this section must be in accordance with a form determined by the Commissioner.

Statements to be signed

- (6) Statements lodged under this section must be signed by:
 - (a) in the case of a body corporate incorporated in Australia—a director or a secretary of the body corporate; or
 - (b) in the case of a body corporate not incorporated in Australia:
 - (i) the person appointed in accordance with section 118 as, or to act as, the agent of the body corporate; or
 - (ii) a director or a secretary of the body corporate.

Written determinations

- (7) A determination under this section must be in writing.

Electronic lodgment

- (8) The Commissioner may require or permit statements under this section to be lodged with the Commissioner, in accordance with specified software requirements:

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

Determinations are disallowable

- (9) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Offence

- (10) A body corporate that intentionally or recklessly contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.

Meaning of reinsurance agreement

- (11) In this section:

reinsurance agreement means an agreement:

- (a) to which a body corporate authorised under this Act to carry on insurance business is a party; and
- (b) that sets out arrangements for the reinsurance of liabilities of the body corporate in respect of risks against which persons are, or are to be, insured by the body corporate in the course of its carrying on that business.

9 Paragraphs 44(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) such accounts and statements as are determined by the Commissioner; and
- (b) such accounts and statements (if any) as are prescribed.

10 Subsection 44(2)

Repeal the subsection, substitute:

- (2) An account or statement may be determined for the purposes of paragraph (1)(a), or prescribed for the purposes of paragraph (1)(b), as an account or statement in respect of:
 - (a) all business carried on by a body corporate; or
 - (b) specified business carried on by a body corporate.
-

- (2A) The information required to be included in an account or statement lodged under subsection (1) may be information:
- (a) that is required for statistical purposes; or
 - (b) that may be given, or is required to be given, to the Commissioner under a law of the Commonwealth other than this section.
- (2B) Subsection (2A) does not limit subsection (1).

11 Subsections 44(6) and (6A)

Repeal the subsections, substitute:

- (6) Statutory accounts lodged under subsection (1) must be in accordance with a form determined by the Commissioner.

12 Subsection 44(7)

Omit “(1), (4) or (6)”, substitute “(4)”.

13 After subsection 44(7)

Insert:

- (7AA) The Commissioner may require or permit statutory accounts under this section to be lodged with the Commissioner, in accordance with specified software requirements:
- (a) on a specified kind of data processing device; or
 - (b) by way of a specified kind of electronic transmission

14 After subsection 44(7B)

Insert:

- (7C) Section 49A of the *Acts Interpretation Act 1901* applies in relation to regulations as if such a determination were regulations under an Act.

15 Subsection 44(8)

Repeal the subsection, substitute:

- (8) A body corporate must lodge the yearly statutory accounts within whichever of the following periods is applicable:

- (a) if the insurance business carried on by the body corporate consists only of the business of undertaking liability by way of reinsurance—the period of 5 months after the end of the financial year of the body corporate;
- (b) in any other case—the period of 4 months after the end of the financial year of the body corporate.

16 Subsection 44(8A)

Omit “paragraph (8)(a) or (b)”, substitute “subsection (3), (4) or (8)”.

17 Section 45

Repeal the section, substitute:

45 “Reporting approach and compliance” certificate to accompany statutory accounts

- (1) Statutory accounts are taken not to have been lodged by a body corporate under subsection 44(1) unless the accounts are accompanied by a certificate that complies with this section.
- (2) In the case of a body corporate incorporated in Australia, the certificate must:
 - (a) be in a form approved in writing by the Commissioner; and
 - (b) set out such statements and opinions about:
 - (i) the statutory accounts; and
 - (ii) the financial position of the body corporate;as are required by the approved form; and
 - (c) specify the day on which it was given; and
 - (d) if there are 2 or more directors of the body corporate—be given in accordance with a resolution of the directors of the body corporate; and
 - (e) be signed by at least 2 directors of the body corporate or, if there is only one director, by that director.
- (3) In the case of a body corporate not incorporated in Australia, the certificate must:
 - (a) be in a form approved in writing by the Commissioner; and
 - (b) set out such statements and opinions about:

- (i) the statutory accounts; and
 - (ii) the financial position of the body corporate;
as are required by the approved form; and
 - (c) specify the day on which it was given; and
 - (d) be signed by:
 - (i) the person appointed in accordance with section 118 as, or to act as, the agent of the body corporate; or
 - (ii) at least 2 directors of the body corporate or, if there is only one director, by that director.
- (4) An instrument made by the Commissioner for the purposes of paragraph (2)(a) or (3)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) For the purposes of this section, if particular statutory accounts are lodged with the Commissioner by way of electronic transmission, those accounts are taken to have been **accompanied** by a certificate if the certificate is given to the Commissioner within 5 business days after the transmission.
- (6) In this section:
- business day** means a day that is not:
- (a) a Saturday; or
 - (b) a Sunday; or
 - (c) a public holiday in the place concerned.

18 Section 48

Omit “or, where subsection 44(6) applies to the body corporate, 5 months,”.

19 Subsection 49J(1)

Omit all the words after “lodge”, substitute “with the Commissioner such accounts and statements as the Commissioner determines”.

20 Subsection 49J(2)

Repeal the subsection, substitute:

- (2) An account or statement may be determined for the purposes of subsection (1) as an account or statement in respect of:
 - (a) all business carried on by a body corporate; or
 - (b) specified business carried on by a body corporate.
- (2A) The information required to be included in an account or statement lodged under subsection (1) may be information:
 - (a) that is required for statistical purposes; or
 - (b) that may be given, or is required to be given, to the Commissioner under a law of the Commonwealth other than this section.
- (2B) Subsection (2A) does not limit subsection (1).

21 After subsection 49J(5)

Insert:

- (5A) The Commissioner may require or permit statutory accounts under this section to be lodged with the Commissioner, in accordance with specified software requirements:
 - (a) on a specified kind of data processing device; or
 - (b) by way of a specified kind of electronic transmission.

22 After subsection 49J(7)

Insert:

- (7A) Section 49A of the *Acts Interpretation Act 1901* applies in relation to regulations as if such a determination were regulations under an Act.

23 Section 49K

Repeal the section, substitute:

49K “Reporting approach and compliance” certificate to accompany statutory accounts

- (1) Statutory accounts are taken not to have been lodged by a body corporate under subsection 49J(1) unless the accounts are accompanied by a certificate that complies with this section.

- (2) In the case of a body corporate incorporated in Australia, the certificate must:
- (a) be in a form approved in writing by the Commissioner; and
 - (b) set out such statements and opinions about:
 - (i) the statutory accounts; and
 - (ii) the financial position of the body corporate;as are required by the approved form; and
 - (c) specify the day on which it was given; and
 - (d) if there are 2 or more directors of the body corporate—be given in accordance with a resolution of the directors of the body corporate; and
 - (e) be signed by at least 2 directors of the body corporate or, if there is only one director, by that director.
- (3) In the case of a body corporate not incorporated in Australia, the certificate must:
- (a) be in a form approved in writing by the Commissioner; and
 - (b) set out such statements and opinions about:
 - (i) the statutory accounts; and
 - (ii) the financial position of the body corporate;as are required by the approved form; and
 - (c) specify the day on which it was given; and
 - (d) be signed by:
 - (i) the person appointed in accordance with section 118 as, or to act as, the agent of the body corporate; or
 - (ii) at least 2 directors of the body corporate or, if there is only one director, by that director.
- (4) An instrument made by the Commissioner for the purposes of paragraph (2)(a) or (3)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) For the purposes of this section, if particular statutory accounts are lodged with the Commissioner by way of electronic transmission, those accounts are taken to have been **accompanied** by a certificate if the certificate is given to the Commissioner within 5 business days after the transmission.

(6) In this section:

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the place concerned.

24 At the end of paragraph 123(1)(a)

Add “and”.

25 At the end of paragraph 123(1)(aa)

Add “and”.

26 Paragraph 123(1)(b)

Repeal the paragraph.

27 Paragraph 123(1)(c)

Omit “, underwriting account, profit and loss account or balance-sheet”.

28 Paragraph 123(2)(a)

Omit “other” (wherever occurring).

29 Subsection 123(5)

Repeal the subsection.

30 Application—amendments relating to accounts and statements

- (1) Despite the amendments of the *Insurance Act 1973* made by this Schedule, that Act continues to apply, in relation to accounts and statements that are required to be lodged under subsection 44(1) or 49J(1) of that Act in respect of a financial year of a body corporate that ended before the commencement of this item, as if those amendments had not been made.
- (2) Despite the amendments of the *Insurance Act 1973* made by this Schedule, that Act continues to apply, in relation to statements that are required to be lodged under subsection 44(6) of that Act in respect of a

quarter that ended before the commencement of this item, as if those amendments had not been made.

31 Application—section 34 of the *Insurance Act 1973*

The amendments of section 34 of the *Insurance Act 1973* made by this Schedule apply to applications made after the commencement of this item.

32 Transitional—regulations under section 44 of the *Insurance Act 1973*

- (1) This item applies to regulations that were in force for the purposes of paragraph 44(2)(m) of the *Insurance Act 1973* immediately before the commencement of this item.
- (2) The regulations have effect, after the commencement of this item, as if they had been made for the purposes of paragraph 44(1)(b) of the *Insurance Act 1973*.

33 Transitional—determinations under section 44 of the *Insurance Act 1973*

- (1) This item applies to a determination that was in force for the purposes of paragraph 44(2)(m) of the *Insurance Act 1973* immediately before the commencement of this item.
- (2) The determination has effect, after the commencement of this item, as if it had been made for the purposes of paragraph 44(1)(a) of the *Insurance Act 1973*.

34 Transitional—determinations under section 49J of the *Insurance Act 1973*

- (1) This item applies to a determination that was in force for the purposes of paragraph 49J(2)(d) of the *Insurance Act 1973* immediately before the commencement of this item.
- (2) The determination has effect, after the commencement of this item, as if it had been made for the purposes of subsection 49J(1) of the *Insurance Act 1973*.

Insurance (Agents and Brokers) Act 1984

35 Section 9 (definition of agency agreement)

Repeal the definition.

36 Section 9 (definition of agent)

Repeal the definition.

37 Section 9

Insert:

contract of insurance includes a contract of life insurance.

Note: *Contract of life insurance* has a meaning affected by section 9D.

38 After section 9C

Insert:

9D Extended meaning of *contract of life insurance*

- (1) For the purposes of this Act, if:
 - (a) a life policy (within the meaning of the *Life Insurance Act 1995*) would not ordinarily be regarded as a contract of life insurance; and
 - (b) liability under the policy is borne by a company registered under the *Life Insurance Act 1995*; and
 - (c) the policy was entered into after the commencement of this section;the policy is taken to be a contract of life insurance.
- (2) Without prejudice to its effect apart from this subsection, subsection (1) also has the effect it would have if the 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.

39 Paragraph 16(1)(a)

Omit “give notice to the intending insured”, substitute “clearly inform the intending insured”.

40 Paragraph 16(1)(b)

Omit “give notice to the insured”, substitute “clearly inform the insured”.

41 Paragraph 16(1A)(a)

Omit “give notice to the intending insured”, substitute “clearly inform the intending insured”.

42 Paragraph 16(1A)(b)

Omit “give notice to the insured”, substitute “clearly inform the insured”.

43 Subsection 17(1)

Omit “told the insured”, substitute “clearly informed the insured”.

44 After subsection 17(1)

Insert:

- (1A) A registered insurance broker who intends to act under an agency agreement (other than a binder) with an insurer in dealing with or settling a claim under a contract of insurance must not deal with or settle the claim on behalf of the insurer unless the broker has first clearly informed the insured that, in dealing with or settling the claim, the broker:
- (a) will be acting under an authority given to the broker by the insurer to deal with or settle the claim; and
 - (b) will be dealing with or settling the claim as agent of the insurer and not of the insured.

Penalty: 60 penalty units.

Note: The heading to section 17 of the *Insurance (Agents and Brokers) Act 1984* is altered by inserting “**or agency agreements**” after “**binders**”.

45 Subsection 17(2)

After “(1)”, insert “or (1A)”.

46 Paragraph 20(2A)(b)

Omit “furnished”, substitute “given”.

47 Paragraph 20(3)(a)

Omit “a prescribed form furnished to the Commissioner”, substitute “an approved form given to the Commissioner under subsection (1)”.

48 Paragraph 20(3)(b)

Omit “furnish”, substitute “give”.

49 Paragraph 23(d)

Omit “furnished”, substitute “given”.

50 Subsection 26(1)

Repeal the subsection, substitute:

(1) A registered insurance broker:

(a) must pay into an account maintained by the broker with a bank solely for the purposes of this section all moneys received by the broker:

(i) from or on behalf of an insured or intending insured for or on account of an insurer in connection with a contract of insurance or proposed contract of insurance; or

(ii) from or on behalf of an insurer for or on account of an insured or intending insured; and

(b) may pay into that account any moneys received by the broker from or on behalf of:

(i) an insured or intending insured; or

(ii) an insurer;

on the broker’s own account in connection with a contract of insurance or proposed contract of insurance.

51 Subsection 26(1A)

Omit all the words after “building society”, substitute “or credit union”.

52 Subsection 26(3)

Repeal the subsection, substitute:

(3) Except with the written consent of the Commissioner, a registered insurance broker must take all reasonable steps to ensure that, at all times, the sum of:

- (a) the balance of an account maintained by the broker under subsection (1); and
- (b) the total amount previously withdrawn from the account and currently invested under subsection (4);

is greater than or equal to the sum of:

- (c) any amounts that an insurer is entitled to receive from the account; and
- (d) any amounts that an insured or intending insured is entitled to receive from the account.

(3A) For the purposes of paragraph (3)(c), if, at a particular time, money received by a registered insurance broker for or on account of an insurer as mentioned in subparagraph (1)(a)(i) is paid into an account, the insurer is taken to be entitled to receive payment of:

- (a) the amount; or
- (b) if any deductions from the amount are authorised by a written agreement between the insurer and the broker—the amount less the deductions;

throughout the period:

- (c) beginning at that time; and
- (d) ending when the payment is actually made to the insurer; even if the amount has been invested under subsection (4).

(3B) For the purposes of paragraph (3)(d), if, at a particular time, money received by a registered insurance broker for or on account of an insured or intending insured as mentioned in subparagraph (1)(a)(ii) is paid into an account, the insured or intending insured is taken to be entitled to receive payment of the amount throughout the period:

- (a) beginning at that time; and
- (b) ending when the payment is actually made to the insured or intending insured;

even if the amount has been invested under subsection (4).

53 Subsection 26(4)

After “intending insured”, insert “for or on account of an insurer”.

54 Subsection 26(11)

Omit “banker”, substitute “bank, building society or credit union”.

55 Subsection 28(3)

Omit “to whom payment from that account may be made under paragraph 26(3)(a) or (b)”, substitute “who, under subsection 26(3A) or (3B), are taken to be entitled to receive payment from that account”.

56 Subsection 28(7)

Omit “paragraph 26(3)(c)”, substitute “subsection 26(4)”.

57 Subsection 31C(2)

Omit “prescribed”, substitute “approved”.

58 Subsection 31C(3)

Omit “Regulations”, substitute “To avoid doubt, an approved form”.

59 Paragraph 31C(3)(b)

Omit “furnished”, substitute “given”.

60 Paragraph 31C(4)(a)

Omit “a prescribed form furnished to the Commissioner”, substitute “an approved form given to the Commissioner under subsection (1)”.

61 Paragraph 31C(4)(b)

Omit “furnish”, substitute “give”.

62 Paragraph 31D(1)(c)

Omit “furnished”, substitute “given”.

63 Paragraph 31F(c)

Omit “furnished”, substitute “given”.

64 Paragraph 34(1)(c)

Omit “prescribed form”, substitute “approved form”.

65 Paragraph 34(1)(c)

Omit “prescribed manner”, substitute “approved manner”.

66 After subsection 34(2)

Insert:

(3) A reference in this section to the *approved manner* is a reference to the manner specified in a written instrument made by the Commissioner for the purposes of this subsection.

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

67 Paragraph 34L(1)(a)

Omit “or under a warrant under section 34E”.

68 After subsection 34L(1)

Insert:

(1A) If:

(a) an authorised officer who enters premises under a warrant under section 34E finds the thing (the *evidence*) which the officer entered the premises to find; and

(b) the officer seizes the evidence;

then:

(c) subject to any contrary order of a court, the officer must return the evidence if:

(i) the reason for its seizure no longer exists; or

(ii) a decision is made not to use it in evidence;

unless the evidence is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership; and

(d) the officer must allow it to be inspected at any reasonable time by anyone who would be entitled to inspect it if it were not in the officer’s possession.

69 Subparagraph 34L(2)(a)(i)

Omit “subsection (1)”, substitute “whichever of subsections (1) and (1A) is applicable”.

70 Subsection 34L(2)

Omit “subsection (1) applies”, substitute “subsection (1) or (1A), as the case may be, applies”.

71 Sections 41A and 41B

Relocate the sections to after section 41.

72 Section 45

Omit “furnished”, substitute “given”.

73 Application—definition of *contract of insurance* in section 9 of the *Insurance (Agents and Brokers) Act 1984*

The definition of *contract of insurance* inserted in section 9 of the *Insurance (Agents and Brokers) Act 1984* by this Schedule, to the extent it extends the ordinary meaning of the expression “contract of insurance”, applies in relation to contracts entered into after the commencement of this item.

74 Application—subsections 26(3A) and (3B) of the *Insurance (Agents and Brokers) Act 1984*

- (1) Subsections 26(3A) and (3B) of the *Insurance (Agents and Brokers) Act 1984* apply in relation to money received by a broker before or after the commencement of this item.
- (2) The reference in subsection 26(3A) of the *Insurance (Agents and Brokers) Act 1984* to subparagraph 26(1)(a)(i) of that Act includes a reference to paragraph 26(1)(a) of that Act as in force at any time before the commencement of this item.
- (3) The reference in subsection 26(3B) of the *Insurance (Agents and Brokers) Act 1984* to subparagraph 26(1)(a)(ii) of that Act includes a reference to paragraph 26(1)(b) of that Act as in force at any time before the commencement of this item.

75 Application—section 31C of the *Insurance (Agents and Brokers) Act 1984*

The amendments of section 31C of the *Insurance (Agents and Brokers) Act 1984* made by this Schedule apply to applications made after the commencement of this item.

76 Application—section 34L of the *Insurance (Agents and Brokers) Act 1984*

The amendments of section 34L of the *Insurance (Agents and Brokers) Act 1984* made by this Schedule apply to evidence seized after the commencement of this item.

Insurance Contracts Act 1984

77 After section 9

Insert:

9A Exclusion of pleasure craft from the *Marine Insurance Act 1909*

- (1) The *Marine Insurance Act 1909* does not apply to a contract of marine insurance made in respect of a pleasure craft unless the contract is made in connection with the pleasure craft's capacity as cargo.
- (2) For the purposes of this section, a *pleasure craft* is a ship that is:
 - (a) used or intended to be used:
 - (i) wholly for recreational activities, sporting activities, or both; and
 - (ii) otherwise than for reward; and
 - (b) legally and beneficially owned by one or more individuals; and
 - (c) not declared by the regulations to be exempt from this subsection.
- (3) For the purposes of paragraph (2)(a), any minor, infrequent and irregular use of a ship for activities other than:
 - (a) recreational activities; or
 - (b) sporting activities;

is to be ignored.

(4) In this section:

contract of marine insurance has the same meaning as in the *Marine Insurance Act 1909*.

78 After section 21

Insert:

21A Eligible contracts of insurance—disclosure of specified matters

(1) This section applies to an eligible contract of insurance unless it is entered into by way of renewal.

Position of the insurer

- (2) The insurer is taken to have waived compliance with the duty of disclosure in relation to the contract unless the insurer complies with either subsection (3) or (4).
- (3) Before the contract is entered into, the insurer requests the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms.
- (4) Before the contract is entered into, both:
- (a) the insurer requests the insured to answer one or more specific questions that are relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; and
 - (b) the insurer expressly requests the insured to disclose each exceptional circumstance that:
 - (i) is known to the insured; and
 - (ii) the insured knows, or a reasonable person in the circumstances could be expected to know, is a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; and

- (iii) is not a matter that the insurer could reasonably be expected to make the subject of a question under paragraph (a); and
- (iv) is not a matter covered by subsection 21(2).

(5) If:

- (a) the insurer complies with subsection (3) or (4); and
- (b) the insurer asks the insured to disclose to the insurer any other matters that would be covered by the duty of disclosure in relation to the contract;

the insurer is taken to have waived compliance with the duty of disclosure in relation to those matters.

Position of the insured

(6) If:

- (a) the insurer complies with subsection (3); and
- (b) in answer to each question referred to in subsection (3), the insured discloses each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;

the insured is taken to have complied with the duty of disclosure in relation to the contract.

(7) If:

- (a) the insurer complies with subsection (4); and
- (b) in answer to each question referred to in paragraph (4)(a), the insured discloses each matter that:
 - (i) is known to the insured; and
 - (ii) a reasonable person in the circumstances could be expected to have disclosed in answer to that question;and
- (c) the insured complies with the request referred to in paragraph (4)(b);

the insured is taken to have complied with the duty of disclosure in relation to the contract.

Onus of proof—exceptional circumstance

- (8) In any proceedings relating to this section, the onus of proving that a matter is an exceptional circumstance covered by subparagraph (4)(b)(iii) lies on the insurer.

Definition

- (9) In this section:

eligible contract of insurance means a contract of insurance that is specified in the regulations.

79 Subsection 22(1)

After “disclosure”, insert “and, if section 21A applies to the contract, also clearly inform the insured in writing of the general nature and effect of section 21A”.

80 At the end of section 57

Add:

- (4) This section applies to the exclusion of any other law that would otherwise apply.
- (5) In subsection (4):

law means:

- (a) a statutory law of the Commonwealth, a State or a Territory;
or
(b) a rule of common law or equity.

81 After subsection 69(1)

Insert:

- (1A) If:
- (a) an insured may, because of subsection (1), be informed orally of the matters referred to in subsection 22(1); and
- (b) the regulations prescribe a form of words to be used in giving the information orally;
- the information may be given using the prescribed form of words.

82 Application—section 9A of the *Insurance Contracts Act 1984*

Section 9A of the *Insurance Contracts Act 1984* applies to a contract of marine insurance entered into after the commencement of this item.

83 Application—section 21A of the *Insurance Contracts Act 1984*

Section 21A of the *Insurance Contracts Act 1984* applies to an eligible contract of insurance entered into after the commencement of this item.

84 Application—section 22 of the *Insurance Contracts Act 1984*

The amendment of section 22 of the *Insurance Contracts Act 1984* made by this Schedule applies to an eligible contract of insurance entered into after the commencement of this item.

Schedule 2—Amendments relating to Lloyd's

Insurance Act 1973

1 Subsection 3(1) (definition of *accounts*)

Omit “the Schedule”, substitute “Part VII”.

2 Subsection 3(1)

Insert:

Federal Court means the Federal Court of Australia.

3 Subsection 3(1) (definition of *Lloyd's*)

Omit “Imperial Act”, substitute “Act of the United Kingdom”.

4 Subsection 21(3)

Omit “Part VII”, substitute “section 93”.

5 Before section 93

Insert:

Division 1—Preliminary

65 Simplified outline

The following is a simplified outline of this Part:

- Lloyd's will be required to ensure that there are in existence security trust fund arrangements under which final judgments obtained in Australia against Lloyd's underwriters in respect of certain insurance liabilities may be satisfied out of trust property.
- Security trust funds in existence in fulfilment of such a requirement are called *designated security trust funds*.

- The Commissioner may make rules that are applicable to designated security trust funds.
- Lloyd's underwriters are authorised to carry on insurance business. However, that authorisation may be suspended or cancelled if there has been a contravention of this Part.
- The Commissioner may require the appointment of an actuary to carry out an investigation of the extent to which a designated security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund.
- The Commissioner has powers of inquiry, direction and investigation in relation to designated security trust funds that correspond to the powers conferred by Part V in relation to authorised corporate insurers.
- The Federal Court may make an order placing a designated security trust fund under judicial trusteeship.
- Lloyd's, or a company nominated by Lloyd's, is required to lodge with the Treasurer a security deposit valued at \$2 million. The deposit is available to meet the costs of judicial trusteeship of designated security trust funds.

66 Definitions

In this Part:

designated security trust fund has the meaning given by section 69.

insurance liability means a liability under a contract of insurance.

judicial trustee has the meaning given by section 92.

legal personal representative means:

- (a) the executor of the will, or the administrator of the estate, of a deceased person; or

- (b) the trustee of the estate of a person under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by another person; or
- (d) a person who, by order of a court or otherwise, has the legal administration or control of the affairs of another person.

qualified corporation means a body corporate that is:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; and
- (b) a company incorporated, or taken to be incorporated, under the Corporations Law.

security trust fund has the meaning given by section 67.

Division 2—Security trust fund arrangements

67 Security trust funds

- (1) For the purposes of this Part, a **security trust fund** is a trust fund established by deed, where:
 - (a) the trust property is available to satisfy final judgments obtained in Australia against Lloyd's underwriters in respect of a class of insurance liabilities specified in the deed; and
 - (b) the trustee is a qualified corporation.
- (2) For the purposes of this Part, the class of insurance liabilities specified in the deed as mentioned in paragraph (1)(a) is said to be **secured** by the trust fund.
- (3) For the purposes of this Part, a contract of insurance is **covered** by a security trust fund if insurance liabilities under the contract are secured by the fund.
- (4) For the purposes of this section, a judgment is a **final judgment** if, and only if, it can no longer be appealed or set aside.
- (5) In this section:

Lloyd's underwriter includes:

- (a) a former Lloyd's underwriter; and
-

- (b) the legal personal representative of a Lloyd's underwriter or a former Lloyd's underwriter.

68 Security trust fund arrangements

- (1) The Commissioner may, by written instrument, require Lloyd's to ensure that, at all times when the instrument is in force, there are in existence:

- (a) such security trust fund arrangements; and
- (b) such ancillary or incidental arrangements;

as are specified in, or ascertained in accordance with, the instrument.

Note: The required arrangements may be varied—see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An instrument under subsection (1) may make provision for or in relation to a matter by conferring a power on the Commissioner.
 - (3) An instrument under subsection (1) may:
 - (a) require a trust deed for a security trust fund to be approved by the Commissioner; and
 - (b) require alterations of a trust deed for a security trust fund to be approved by the Commissioner; and
 - (c) require the trustee of a security trust fund to be approved by the Commissioner.
 - (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
 - (5) If:
 - (a) an instrument under subsection (1) requires a trust deed for a security trust fund to be approved by the Commissioner; and
 - (b) the approval is not obtained;the failure to obtain the approval does not affect the validity of the establishment or operation of the fund.
 - (6) If:
 - (a) an instrument under subsection (1) requires an alteration of a trust deed for a security trust fund to be approved by the Commissioner; and
-

- (b) the approval is not obtained;
the alteration has no effect.
- (7) If:
 - (a) an instrument under subsection (1) requires the trustee of a security trust fund to be approved by the Commissioner; and
 - (b) the approval is not obtained;
the failure to obtain the approval does not affect the validity of the appointment of the trustee.
- (8) Before making an instrument under subsection (1), the Commissioner must consult Lloyd's unless the Commissioner is satisfied that the delay that would be involved in consulting Lloyd's would be likely to prejudice the interests of the holders of contracts of insurance covered, or to be covered, by the fund or funds concerned. A failure to comply with this subsection does not affect the validity of the instrument.
- (9) Section 70 does not, by implication, limit this section.
- (10) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (11) A reference in subsection (1) to an ***ancillary or incidental arrangement*** includes a reference to an arrangement for the funding of a security trust fund.
- (12) Lloyd's must comply with an instrument in force under subsection (1).

69 Designated security trust funds

In this Part, a security trust fund that is, or was at any time, in existence in fulfilment of an obligation imposed by an instrument under subsection 68(1) is called a ***designated security trust fund***.

70 Rules about designated security trust funds

- (1) The Commissioner may, by written instrument, make rules that are applicable to the operation of designated security trust funds.
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- (2) An instrument under subsection (1) may make provision for or in relation to a matter by conferring a power on the Commissioner.
- (3) An instrument under subsection (1) may make provision for or in relation to the following matters:
 - (a) the making available to the public of copies of trust deeds for funds;
 - (b) the keeping and retention of records in relation to funds;
 - (c) the accounts, financial reports and actuarial reports to be prepared in relation to funds;
 - (d) the auditing of accounts and financial reports prepared in relation to funds;
 - (e) the disclosure of information about funds to the Commissioner;
 - (f) the inspection by the Commissioner of records kept by funds;
 - (g) the preparation, and lodgment with the Commissioner, of returns in relation to funds;
 - (h) the valuation of the assets of funds.
- (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
- (5) Before making an instrument under subsection (1), the Commissioner must consult Lloyd's unless the Commissioner is satisfied that the delay that would be involved in consulting Lloyd's would be likely to prejudice the interests of the holders of contracts of insurance covered by one or more designated security trust funds. A failure to comply with this subsection does not affect the validity of the instrument.
- (6) Section 68 does not, by implication, limit this section.
- (7) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) The trustee of a designated security trust fund must comply with any rules in force under subsection (1).

- (9) A person who intentionally or recklessly contravenes subsection (8) is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.

71 Transfers to trustee of security trust fund—presumption of regularity

If:

- (a) money or property is transferred to a person in the capacity of trustee of a particular designated security trust fund; and
- (b) the transfer is for the purposes of this Division;

the money or property is taken to have been transferred to the person to be held on trust in accordance with the terms of the fund's trust deed, irrespective of:

- (c) the intention of the transferor; or
- (d) the authority or capacity of the transferor.

72 When security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund

- (1) For the purposes of this Part, in determining the extent to which a security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund, regard must be had to:
 - (a) the arrangements relating to the establishment and operation of the fund; and
 - (b) any ancillary or incidental arrangements.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.
- (3) A reference in subsection (1) to an *ancillary or incidental arrangement* includes a reference to an arrangement for the funding of a security trust fund.

73 Affairs of security trust fund

For the purposes of this Part, the *affairs* of a security trust fund include the extent to which the fund constitutes, or is likely to

constitute, an adequate security for the class of insurance liabilities secured by the fund.

Division 3—General powers of Commissioner

74 Commissioner may direct that Lloyd's underwriters must not issue or renew policies

- (1) If it appears to the Commissioner that:
- (a) there has been a contravention of any of the provisions of:
 - (i) this Division; or
 - (ii) Division 2 or 4; or
 - (b) as a result of an enactment of an Act of the United Kingdom, a substantial change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or
 - (c) as a result of a making of a by-law by Lloyd's, the rights or obligations of Lloyd's underwriters are substantially changed;

the Commissioner may, with the Treasurer's agreement, by written notice given to Lloyd's, give either or both of the following directions:

- (d) a direction that Lloyd's underwriters must not issue policies or undertake liability under contracts of insurance;
 - (e) a direction that Lloyd's underwriters must not renew policies.
- (2) If:
- (a) a direction under subsection (1) has been in force for a period of more than 180 days; and
 - (b) Lloyd's requests the Commissioner, in writing, to review the direction;
- the Commissioner must consider whether the direction should:
- (c) remain in force; or
 - (d) be varied; or
 - (e) be revoked.

- (3) In considering the matter referred to in subsection (2), the Commissioner must have regard to:
 - (a) whether an investigation under Subdivision B of Division 4 is being, or has been, undertaken; and
 - (b) whether a determination under section 93 is in force; and
 - (c) such other matters (if any) as the Commissioner considers relevant.
- (4) If:
 - (a) a request is made under subsection (2) in relation to a direction; and
 - (b) the direction is still in force immediately before the end of the period of 30 days that began when the request was made; the direction ceases to be in force at the end of that period unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied.
- (5) A Lloyd's underwriter must comply with a direction in force under subsection (1).
- (6) A person who intentionally or recklessly contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.
- (7) A copy of a notice under subsection (1) is to be published in the *Gazette*.

75 Actuarial investigation of adequacy of security provided by designated security trust funds

- (1) The Commissioner may, by written notice given to Lloyd's, require Lloyd's to cause an actuary to be appointed to:
 - (a) carry out an investigation of the extent to which a specified designated security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund; and
 - (b) make a report on that investigation, being a report that contains statements of the actuary's opinion about each of the matters specified in the notice.

- (2) The actuary must not be:
 - (a) an officer of Lloyd's; or
 - (b) an officer of a body corporate specified in a written determination made by the Commissioner for the purposes of this paragraph.
- (3) Lloyd's must, within 14 days after the date on which the notice was given, advise the Commissioner, in writing, of the name of the actuary.
- (4) If the Commissioner notifies Lloyd's that the actuary is not acceptable to the Commissioner, Lloyd's must, within 14 days after the date on which the notice was given:
 - (a) cause a different actuary to be appointed; and
 - (b) advise the Commissioner, in writing, of the name of the actuary so appointed.
- (5) The Commissioner may, within 14 days after the advice was given under subsection (3) or (4), notify Lloyd's, in writing, that the actuary is not acceptable to the Commissioner.
- (6) Lloyd's must cause the actuary's report to be given to the Commissioner:
 - (a) within 30 days after the date on which the notice was given to Lloyd's under subsection (1); or
 - (b) within such further time as the Commissioner, by written notice, allows.
- (7) The actuary's report must be signed by the actuary.
- (8) Lloyd's must comply with this section.
- (9) A determination under paragraph (2)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (10) In this section:

officer, in relation to a body corporate, has the same meaning as in the Corporations Law.

76 Provision for liabilities in the accounts of designated security trust funds

- (1) The Commissioner may, with the Treasurer's agreement, by written notice given to the trustee of a designated security trust fund, direct that the trustee must, within such period after the giving of the notice as is specified in the notice, make provision, or further provision, in the accounts of the fund:
 - (a) of a specified amount; or
 - (b) of an amount determined in a specified manner;in respect of any or all of the liabilities secured by the fund.
- (2) The period specified in the direction must be at least 14 days.
- (3) The powers of the Commissioner under this section are in addition to, and do not limit, the powers of the Commissioner under Division 4.
- (4) The trustee of a designated security trust fund must comply with a direction given to the trustee under subsection (1).
- (5) If:
 - (a) a direction under subsection (1) is in force in relation to a fund; and
 - (b) the fund commences to be under judicial trusteeship in accordance with Division 5;the direction ceases to have effect on that commencement.
- (6) A direction given to the trustee of a designated security trust fund under subsection (1) does not require the trustee to incur any financial liability by way of funding the security trust fund.

Division 4—Investigations

Subdivision A—Inquiries and directions by Commissioner

77 Inquiries by Commissioner

- (1) The Commissioner may, by written notice given to Lloyd's or the trustee of a designated security trust fund, require Lloyd's or the
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trustee, as the case may be, to give to the Commissioner, within such period after the giving of the notice as is specified in the notice, such information about the affairs of:

- (a) in the case of a notice given to Lloyd's—a specified designated security trust fund; or
 - (b) in the case of a notice given to the trustee of a designated security trust fund—the fund;
- as is specified in the notice.
- (2) The period specified in the notice must be at least 14 days.
 - (3) A person must comply with a requirement under subsection (1).
 - (4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.

78 Direction not to deal with certain assets

- (1) This section applies to a designated security trust fund if the Commissioner has reason to believe that the fund does not constitute, or is unlikely to constitute, an adequate security for the class of insurance liabilities secured by the fund.
- (2) The Commissioner may, with the Treasurer's agreement, by written notice given to the trustee of the fund, direct:
 - (a) that the trustee must not dispose of, or otherwise deal with or remove from Australia, any asset of the fund; or
 - (b) that the trustee must not dispose of, or otherwise deal with or remove from Australia, a specified asset of the fund; or
 - (c) that the trustee must deal with a specified asset of the fund on such terms and conditions as are specified in the notice.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) If:
 - (a) a direction under subsection (2) has been in force in relation to a fund for a period of more than 6 months; and
 - (b) Lloyd's or the trustee of the fund requests the Commissioner, in writing, to review the direction;

the Commissioner must consider whether the direction should:

- (c) remain in force; or
 - (d) be varied; or
 - (e) be revoked.
- (4) In considering the matter referred to in subsection (3), the Commissioner must have regard to:
- (a) whether an investigation under Subdivision B is being, or has been, undertaken in relation to the fund; and
 - (b) whether a determination under section 93 is in force; and
 - (c) such other matters (if any) as the Commissioner considers relevant.
- (5) If:
- (a) a request is made under subsection (3) in relation to a direction; and
 - (b) the direction is still in force immediately before the end of the period of 30 days that began when the request was made;
- the direction ceases to be in force at the end of that period unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied.
- (6) A person must comply with a direction under subsection (2).
- (7) A person who intentionally or recklessly contravenes subsection (6) is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.
- (8) This section does not affect the validity of a transaction entered into in contravention of a direction under subsection (2).
- (9) If:
- (a) a direction under subsection (2) is in force in relation to a fund; and
 - (b) the fund commences to be under judicial trusteeship in accordance with Division 5;
- the direction ceases to have effect on that commencement.

Subdivision B—Investigations

79 Investigation of designated security trust fund by Commissioner or inspector

- (1) If it appears to the Commissioner that:
 - (a) a designated security trust fund does not constitute, or is unlikely to constitute, an adequate security for the class of insurance liabilities secured by the fund; or
 - (b) Lloyd's or the trustee of a designated security trust fund has contravened a provision of this Part;the Commissioner may, by written notice given to Lloyd's, require Lloyd's to show cause, within such period after the giving of the notice as is specified in the notice, why the Commissioner should not, on specified grounds:
 - (c) investigate the whole or any part of the affairs of the fund; or
 - (d) appoint a person to make such an investigation and report to the Commissioner the results of his or her investigation.
 - (2) The period specified in the notice must be at least 14 days.
 - (3) If:
 - (a) Lloyd's fails, within the period specified in the notice, to show cause to the satisfaction of the Commissioner why an investigation should not be made; and
 - (b) the Commissioner is satisfied that it is in the public interest that an investigation should be made;the Commissioner may:
 - (c) make the investigation himself or herself; or
 - (d) by signed instrument, appoint a person (in this Division called the *inspector*) to make the investigation.
 - (4) Before beginning an investigation of a trust fund, the Commissioner or the inspector, as the case may be, must give the trustee of the fund:
 - (a) in all cases—a written notice by the Commissioner specifying the matters into which the investigation is to be made, being the whole or some part of the affairs of the trust fund; and
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- (b) in the case of the inspector—a copy of the instrument appointing the inspector.
- (5) The inspector is to be a person resident in Australia.
- (6) The inspector is taken, for the purposes of section 126, to be a member of the staff assisting the Commissioner.

80 Entry on premises

- (1) If the Commissioner or the inspector, while investigating the whole or a part of the affairs of a designated security trust fund, believes on reasonable grounds that it is necessary for the purposes of the investigation to enter land or premises occupied by:
 - (a) the trustee, or a former trustee, of the fund; or
 - (b) the custodian, or a former custodian, of the fund; or
 - (c) the investment manager, or a former investment manager, of the fund;the Commissioner or the inspector may, at all reasonable times, enter the land or premises and may:
 - (d) examine books on the land or premises that relate to the affairs of the trust fund or that the Commissioner or inspector believes on reasonable grounds relate to those affairs; and
 - (e) take possession of any of those books for such period as the Commissioner or inspector thinks necessary for the purposes of the investigation; and
 - (f) make copies of, or take extracts from, any of those books.
- (2) The Commissioner or the inspector must permit a person otherwise entitled to possession of the books, or a person authorised by that person, to inspect those books.
- (3) The Commissioner or the inspector must not exercise the power conferred by subsection (1) to enter residential land or residential premises if the occupier of the land or premises has not consented to the entry.

- (4) A person must not intentionally or recklessly obstruct or hinder the Commissioner or the inspector in the exercise of his or her powers under this section.

Penalty for contravention of this subsection: Imprisonment
for 6 months.

81 Powers of the Commissioner or the inspector to obtain information etc.

- (1) For the purposes of this section, a person is a *prescribed person* in relation to a designated security trust fund if:
- (a) the person is, or has at any time been, the trustee, custodian or investment manager of the trust fund; or
 - (b) the person would be a prescribed person (within the meaning of Part V) in relation to a person referred to in paragraph (a) if it were assumed that a reference in the definition of *prescribed person* in subsection 50(1) to a body corporate included a reference to an individual.
- (2) If the Commissioner or the inspector is investigating a designated security trust fund, the Commissioner or the inspector may, by written notice given to a person who is a prescribed person in relation to the fund, require the person:
- (a) to produce to the Commissioner or the inspector any or all of the books relating to the affairs of the fund that are in the custody or under the control of the person; or
 - (b) to give to the Commissioner or the inspector all reasonable assistance in connection with the investigation; or
 - (c) to appear before the Commissioner or the inspector for examination concerning matters relevant to the investigation.
- (3) If books are produced to the Commissioner or the inspector under this section:
- (a) the Commissioner or the inspector may take possession of them for such period as the Commissioner or inspector thinks necessary for the purposes of the investigation; and
 - (b) the Commissioner or inspector may make copies of, and take extracts, from them.

However, the Commissioner must permit a person otherwise entitled to possession of the books, or a person authorised by that person, to inspect those books.

- (4) A person who complies with a requirement of the Commissioner or the inspector under this section does not incur any liability to any other person only because of that compliance.

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

- (1) A person must not intentionally or recklessly contravene a requirement of the Commissioner or the inspector under section 81 that is applicable to the person, to the extent to which the person is able to comply with it.

Penalty: Imprisonment for 6 months.

- (2) A person must not, under section 81, intentionally or recklessly give information or evidence that is false or misleading.

Penalty: Imprisonment for 6 months.

- (3) A person being examined by the Commissioner or the inspector is not excused from answering a question put to the person by the Commissioner or the inspector on the ground that the question might tend to incriminate the person.

- (4) However, if the answer might tend to incriminate the person, none of the following:

- (a) the question;
- (b) the answer;
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer;

is admissible in evidence against the person in criminal proceedings other than proceedings in relation to an offence against subsection (2).

83 Person may be represented by a legal practitioner

A barrister or solicitor acting for a person being examined by the Commissioner or the inspector:

- (a) may attend the examination; and
 - (b) may, to the extent that the Commissioner or the inspector allows:
 - (i) address the Commissioner or the inspector; or
 - (ii) examine the person;
- in relation to matters in respect of which the Commissioner or the inspector has questioned the person.

84 Notes of examination of person

- (1) The Commissioner or the inspector may cause notes of an examination of a person under this Division to be recorded in writing and read to or by that person.
- (2) The Commissioner or the inspector may require the person to sign the notes.
- (3) Notes signed by the person may be used in evidence in proceedings under this Act against the person. This rule has effect subject to subsections 82(3) and (4).
- (4) A copy of the notes signed by the person are to be given to the person without charge if the person makes a written request to the Commissioner or the inspector for a copy.
- (5) If the inspector causes notes to be recorded under this section, the notes must be given to the Commissioner with the report of the investigation concerned.

85 Delegation

- (1) The Commissioner or the inspector may, by signed instrument, delegate to a member of the staff assisting the Commissioner any or all of his or her powers under this Division.
- (2) A delegate must, on the request of the trustee of a designated security trust fund in relation to which the delegated powers are

exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy, for inspection.

86 Report of the Commissioner or the inspector

- (1) The inspector:
 - (a) may make one or more reports in writing to the Commissioner during the investigation of the whole or a part of the affairs of the trust fund and must, if so directed in writing by the Commissioner, make such reports as are specified in the direction; and
 - (b) must, on the completion or termination of the investigation, report in writing to the Commissioner on the result of the investigation.
 - (2) The Commissioner must, on the completion or termination of an investigation made by the Commissioner, make a report in writing on the result of the investigation.
 - (3) A report made on the completion of the investigation must include:
 - (a) a statement of the opinion of the Commissioner or the inspector in relation to the extent to which the fund constitutes an adequate security for the class of insurance liabilities secured by the fund; and
 - (b) the recommendations of the Commissioner or the inspector in relation to the following:
 - (i) whether a notice should be given under subsection 93(2);
 - (ii) whether an application should be made under subsection 88(1).
 - (4) The Commissioner or inspector must not include in a report:
 - (a) a recommendation relating to the institution of criminal proceedings; or
 - (b) a statement to the effect that, in his or her opinion, a specified person has committed a criminal offence.
 - (5) If the inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, the inspector must advise the Commissioner, in writing of that opinion.
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- (6) The Commissioner must give a copy of a report made by or given to the Commissioner under this section to Lloyd's and the trustee of the fund concerned. This subsection has effect subject to subsection (7).
- (7) The Commissioner:
 - (a) must seek the advice of the Attorney-General before giving a copy of the report to Lloyd's or the trustee; and
 - (b) must not give a copy of the report to Lloyd's or the trustee if the Attorney-General advises the Commissioner that, having regard to proceedings that have been or might be instituted, a copy of the report should not be given to Lloyd's or the trustee.
- (8) If a copy of the report has been given to Lloyd's or the trustee, the Commissioner may, if he or she considers that it is in the public interest to do so and after taking into consideration any advice he or she has received from the Attorney-General, cause the whole or some part of the report to be published.
- (9) A court before which proceedings (whether under this Act or otherwise) are brought against a person in respect of matters dealt with in a report under this Division may order that a copy of the report be given to the person.

Subdivision C—Offences

87 Offences

A person must not, with intent to defeat the purposes of this Division or with intent to delay or obstruct the carrying out of an investigation under this Division:

- (a) conceal, destroy, mutilate or alter a book relating to the affairs of a trust fund the affairs of which are being investigated under this Division; or
- (b) send, cause to be sent, or conspire with another person to send, out of Australia a book or any money or property belonging to or under the control of the trustee of such a trust fund.

Penalty: Imprisonment for 6 months.

Division 5—Judicial trusteeship of designated security trust funds

88 Application for order for judicial trusteeship

- (1) The Commissioner may apply to the Federal Court for an order that a designated security trust fund be placed under judicial trusteeship.
- (2) A party to the trust deed of a designated security trust fund may apply to the Federal Court for an order that the fund be placed under judicial trusteeship.
- (3) A person is not entitled to make an application under subsection (2) unless:
 - (a) the person has given the Commissioner at least one month's notice in writing of the person's intention to apply; or
 - (b) the Federal Court grants leave to make the application.
- (4) On an application by the Commissioner:
 - (a) Lloyd's; and
 - (b) a party to the fund's trust deed;are entitled to be heard.
- (5) On an application by a party to the fund's trust deed:
 - (a) the Commissioner; and
 - (b) any other party to the trust deed;are entitled to be heard.

89 Grounds for order for judicial trusteeship

- (1) On an application under section 88, the Federal Court may make an order that a designated security trust fund be placed under judicial trusteeship if the Federal Court is satisfied:
 - (a) that the whole or a part of the affairs of the fund have been investigated under Division 4; and

- (b) that, having regard to the results of the investigation, it is in the interests of the holders of contracts of insurance covered by the fund that the order be made.
- (2) On an application under section 88, the Federal Court may make an order that a designated security trust fund be placed under judicial trusteeship if:
 - (a) the Federal Court is satisfied:
 - (i) that section 93 has ceased to have effect; or
 - (ii) that Lloyd's has contravened section 68; or
 - (iii) that the trustee of the fund has contravened section 70; or
 - (iv) that there are reasonable grounds for believing that the management or financial position of the fund may be unsatisfactory; or
 - (v) that the time needed to make or complete an investigation of the whole or part of the affairs of the fund under Division 4 would be likely to be such as to prejudice the interests of holders of contracts of insurance covered by the fund; and
 - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund that the order be made.

90 Commencement of judicial trusteeship

The judicial trusteeship of a designated security trust fund commences:

- (a) on the day specified in the order for judicial trusteeship as the day on which judicial trusteeship is to commence; or
- (b) if no day is so specified—when the order is made.

91 Stay of proceedings during judicial trusteeship

- (1) While a designated security trust fund is under judicial trusteeship, a proceeding in a court against the trustee of the fund or in relation to any of the property of the fund cannot be proceeded with, except:
 - (a) with the judicial trustee's written consent; or
-

- (b) with the leave of the Federal Court and in accordance with such terms (if any) as the Federal Court imposes.
- (2) Subsection (1) does not apply to a proceeding in respect of an offence.
- (3) A judicial trustee is not subject to any liability in respect of a refusal to give a consent for the purposes of subsection (1).

92 Appointment of judicial trustee

- (1) If the Federal Court orders the judicial trusteeship of a designated security trust fund, the court must, by its order:
 - (a) if there is already a trustee of the fund—remove the trustee of the fund; and
 - (b) appoint an individual as the trustee of the fund while the fund remains under judicial trusteeship.

The appointee is called the *judicial trustee*.

- (2) The Court may at any time cancel the appointment of a judicial trustee and appoint another individual as judicial trustee.
- (3) This Act does not prevent the Federal Court from appointing the same individual to be the judicial trustee of 2 or more security trust funds.
- (4) Only an individual who is an official liquidator may be appointed as a judicial trustee.
- (5) In this section:

official liquidator has the same meaning as in the Corporations Law.

92A Terms and conditions of appointment of judicial trustee

- (1) The Federal Court may determine the terms and conditions of the appointment of the judicial trustee, including fees.
 - (2) The determination has effect despite anything in:
 - (a) any other provision of this Act; and
 - (b) an instrument under this Act; and
-

- (c) any other law; and
 - (d) the trust deed relating to the fund concerned.
- (3) The Federal Court may make an order under subsection (1) to the effect that the judicial trustee's fees are to be paid out of the corpus of the fund concerned.
- (4) Subsection (3) does not limit subsection (1).

92B Property vesting orders

- (1) If an individual is appointed as judicial trustee of a designated security trust fund, the Federal Court must make a written order vesting the property of the fund in the judicial trustee.
- (2) If the appointment of the judicial trustee comes to an end (otherwise than because of the winding-up of the fund) the Federal Court must make an order vesting the property of the fund in:
- (a) if there is to be a fresh judicial trustee—the fresh judicial trustee; or
 - (b) if the appointment comes to an end because the judicial trusteeship of the fund is cancelled—the person who, upon that cancellation, becomes the trustee of the fund.
- (3) If an order is made by the Federal Court under this section vesting property of a fund in a person:
- (a) if the property was vested in law in the trustee—the property immediately vests in law in the person named in the order by force of this Act; and
 - (b) if the property was vested in equity in the trustee—the property immediately vests in equity in the person named in the order by force of this Act.
- (4) Paragraph (3)(a) has effect subject to subsections (5) and (6).
- (5) If:
- (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the registration of such an order;

the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

(6) If:

- (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
- (b) that law enables the person named in the order to be registered as the owner of that property;

the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

92C Powers of judicial trustee

While an individual is judicial trustee:

- (a) the individual has and may exercise all the rights, title and powers, and must perform all the functions and duties, of the trustee; and
- (b) the fund's trust deed, this Act, a legislative instrument under this Act and any other law, apply in relation to the individual as if the individual were the trustee.

92D Court's control of judicial trustee

- (1) A judicial trustee is subject to the control of the Federal Court.
- (2) In addition to duties imposed by this Division, a judicial trustee has such duties as the Federal Court directs.
- (3) A judicial trustee may apply to the Federal Court at any time for instructions:
 - (a) as to the way in which the judicial trusteeship should be conducted; or
 - (b) in relation to any matter arising during the judicial trusteeship.
- (4) Before applying to the Federal Court for instructions, the judicial trustee 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.
- (6) The Federal Court must not give a direction or an instruction under this section that is inconsistent with the fund's trust deed.

92E Direction not to deal with certain assets

- (1) If:
- (a) a designated security trust fund is under judicial trusteeship; and
 - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund to make an order under this subsection;
- the Court may order:
- (c) that the judicial trustee must not dispose of, or otherwise deal with or remove from Australia, any asset of the fund; or
 - (d) that the judicial trustee must not dispose of, or otherwise deal with or remove from Australia, a specified asset of the fund; or
 - (e) that the judicial trustee must deal with a specified asset of the fund on such terms and conditions as are specified in the order.
- (2) The Federal Court may rescind or vary an order under subsection (1).

92F Provision for liabilities in the accounts of designated security trust funds

- (1) If:
- (a) a designated security trust fund is under judicial trusteeship; and
 - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund to make an order under this subsection;

the Court may order that the judicial trustee must, within such period after the making of the order as is specified in the order, make provision, or further provision, in the accounts of the fund;

- (c) of a specified amount; or
 - (d) of an amount determined in a specified manner;
- in respect of any or all of the liabilities secured by the fund.
- (2) The Federal Court may rescind or vary an order under subsection (1).
 - (3) An order under subsection (1) does not require the judicial trustee to incur any financial liability by way of funding the security trust fund.

92G Application by Commissioner for instructions to judicial trustee

- (1) The Commissioner may apply to the Federal Court for an order that the Federal Court give instructions to the judicial trustee relating to the conduct of the judicial trusteeship of a designated security trust fund.
- (2) The judicial trustee is entitled to be heard on the application.
- (3) A party to the fund's trust deed is entitled to be heard on the application.

92H Request by Commissioner for information

- (1) The Commissioner may ask a judicial trustee for information about the conduct of the judicial trusteeship.
- (2) The judicial trustee must comply with the Commissioner's request.

92J Duration of judicial trusteeship

If the Federal Court orders that a designated security trust fund be placed under judicial trusteeship, the fund remains under judicial trusteeship until:

- (a) the judicial trusteeship is cancelled; or
 - (b) the fund is wound up.
-

92K Cancellation of judicial trusteeship

- (1) A judicial trustee appointed in relation to a designated security trust fund may apply to the Federal Court for an order cancelling the judicial trusteeship.
- (2) Any other interested person may apply to the Federal Court for an order cancelling the judicial trusteeship of a designated security trust fund.
- (3) On an application under subsection (1) or (2), the Federal Court may cancel the order for the judicial trusteeship of the fund 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) The Federal Court must not make an order cancelling the judicial trusteeship of the fund unless the Court is satisfied that:
 - (a) upon the cancellation taking effect, a qualified corporation will become the trustee of the fund; and
 - (b) if an instrument under subsection 68(1) requires the trustee to be approved by the Commissioner—the trustee has been approved by the Commissioner.
- (5) Before applying to the Federal Court under subsection (1) or (2), the judicial trustee or interested person must:
 - (a) inform the Commissioner that the trustee or person intends to make the application; and
 - (b) give the Commissioner written details of the application.
- (6) The Commissioner is entitled to be heard on an application made under subsection (1) or (2).

92L Report by judicial trustee

- (1) As soon as practicable after becoming the judicial trustee of a designated security trust fund, the judicial trustee must file with the Federal Court a report that:

- (a) recommends the course of action that is, in his or her opinion, most advantageous to the interests of the holders of contracts of insurance covered by the fund; and
 - (b) sets out the reasons for that recommendation.
- (2) As soon as practicable after filing a report under this section, the judicial trustee must give a copy of the report to the Commissioner and Lloyd's.
- (3) 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 Federal 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.

92M Judicial trustee may formulate a scheme for the winding-up or dissolution, or both, of a designated security trust fund

- (1) The judicial trustee of a designated security trust fund may, by writing, formulate a scheme for the winding-up or dissolution, or both, of the fund.
 - (2) The scheme must be consistent with any principles that are set out in the fund's trust deed for the purposes of this section.
 - (3) The scheme may make provision for and in relation to the following matters:
 - (a) empowering the judicial trustee to make written determinations about the following matters:
 - (i) whether the fund has a liability to a holder of a contract of insurance covered by the fund;
 - (ii) if the fund has such a liability—the amount of that liability;
 - (b) requiring notification of determinations referred to in paragraph (a) to be given to affected holders of contracts of insurance covered by the fund;
 - (c) providing that, for the purposes of the winding-up of a fund:
 - (i) the trustee of the fund is taken to have a liability for the amount specified in the determination to the person to whom the determination relates; and
-

- (ii) that person is to be bound by the judicial trustee's determination;
 - (d) the manner in which the assets of the fund are to be applied, in a winding-up of the fund, to discharge liabilities of the fund.
- (4) If the judicial trustee makes a determination that the fund has, or does not have, a liability to a holder of a contract of insurance covered by the fund, the Federal Court may, on application by the holder, review the determination.
- (5) Despite paragraph (3)(c), a person who is notified of an amount as mentioned in paragraph (3)(b) may dispute the amount:
 - (a) in accordance with the Rules of Court of the Federal Court; or
 - (b) as the Federal Court otherwise directs in the particular case.
- (6) Subsection (3) does not limit subsection (1).
- (7) A scheme formulated under this section has no effect unless it is approved by the Federal Court on the application of the judicial trustee of the fund concerned.
- (8) The Federal Court must not approve a scheme formulated under this section unless the Court is satisfied that the scheme is in the interests of the holders of contracts of insurance covered by the fund concerned.
- (9) A designated security trust fund must not be wound up or dissolved except in accordance with a scheme formulated under this section.
- (10) The Commissioner and any person interested are entitled to be heard on an application under subsection (7).

92N Resignation

- (1) A judicial trustee appointed under this Division may resign that appointment by filing with the Federal Court a notice of resignation.

- (2) Within 28 days after the day on which the notice of resignation was filed with the Federal Court, the Court must:
 - (a) accept the resignation; and
 - (b) appoint another individual as judicial trustee.
- (3) A resignation under subsection (1) does not take effect until it is accepted by the Federal Court under subsection (2).

92P Indemnity

A judicial trustee 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 of the performance of powers, functions or duties conferred or imposed on the judicial trustee by this Act.

92Q Security deposit

- (1) Lloyd's must, within 28 days after the commencement of this section, deposit with the Treasurer securities of the Commonwealth the value of which as at that commencement is not less than \$2,000,000.
- (2) If, at the end of a calendar year, the value of the securities deposited in accordance with this section falls short of \$2,000,000, Lloyd's must, within 28 days after the end of that year, deposit with the Treasurer securities of the Commonwealth the value of which as at the end of that year was not less than the amount of the shortfall.
- (3) An obligation imposed on Lloyd's by subsection (1) or (2) may be discharged by a company nominated in a written notice given by Lloyd's to the Commissioner.
- (4) The deposit of securities with the Treasurer in accordance with this section is effective to transfer the legal and beneficial interest in the securities to the Commonwealth.
- (5) If interest is derived on securities deposited with the Treasurer in accordance with this section, the Treasurer must authorise the payment of an amount equal to that interest by the Commonwealth to:

- (a) Lloyd's; or
- (b) if a company nominated by Lloyd's deposited those securities—that company.

The Consolidated Revenue Fund is appropriated for payments under this subsection.

- (6) If, at the end of a calendar year, the value of the securities deposited in accordance with this section exceeds \$2,000,000, the Treasurer must, after receiving a written request from Lloyd's, return to:

- (a) Lloyd's; or
- (b) if a company nominated by Lloyd's deposited those securities—that company;

such of those securities as the Treasurer determines unless:

- (c) a direction is in force under section 74 or 78; or
- (d) a determination is in force under section 93; or
- (e) a designated security trust fund is under judicial trusteeship.

The value of the returned securities as at the end of that year must be less than or equal to the amount of the excess.

- (7) For the purposes of this section, if securities are listed on the official list of a securities exchange in Australia, the *value* of those securities at a particular time is a reference to the value of those securities on that day worked out by reference to that securities exchange and:

- (a) by reference to:
 - (i) the sale of securities of the same class last recorded before that time by the securities exchange; or
 - (ii) the selling offer for securities of the same class last recorded before that time by the securities exchange;whichever is less; or

(b) by reference to the buying bid for securities of the same class last recorded before that time by the securities exchange; whichever is greater.

92R Application of security deposit—costs of judicial trusteeship of designated security trust fund

- (1) The securities lodged with the Treasurer under section 92Q are available to discharge any expenses that are directly attributable to the judicial trusteeship of a designated security trust fund under this Division.
- (2) The Treasurer may apply the securities in discharge of those expenses.
- (3) The expenses referred to in subsection (1) include, but are not limited to:
 - (a) expenses incurred in connection with an application made by the Commissioner under this Division; and
 - (b) expenses incurred in connection with the Commissioner being heard before the Federal Court under this Division; and
 - (c) the payment of the fees of a judicial trustee.

92S Return of security deposit

- (1) If:
 - (a) section 93 has ceased to have effect; and
 - (b) the Treasurer is satisfied that there are no outstanding liabilities of Lloyd's underwriters that are covered by any designated security trust fund;the Treasurer must return to:
 - (c) Lloyd's; or
 - (d) if a company nominated by Lloyd's deposited securities with the Treasurer under section 92Q—that company;such of the securities lodged by Lloyd's or that company, as the case may be, under section 92Q as have not been applied under section 92R.
- (2) In this section:

Lloyd's underwriter includes:

 - (a) a former Lloyd's underwriter; and

(b) the legal personal representative of a Lloyd's underwriter or a former Lloyd's underwriter.

Division 6—Authorisation of Lloyd's underwriters

6 Paragraph 93(2)(a)

Omit “, or failure to comply with,”.

7 Paragraph 93(2)(a)

Omit “the Schedule”, substitute “Division 2, 3 or 4”.

8 Paragraph 93(2)(b)

Omit “Imperial Act”, substitute “Act of the United Kingdom”.

9 Subsections 93(2), (3), (6) and (7)

Omit “this Part”, substitute “this section”.

10 Subsection 93(10)

Omit “this Part” (first occurring), substitute “this section”.

11 Paragraph 93(10)(a)

Omit “this Part”, substitute “this section”.

12 At the end of paragraph 93(10)(a)

Add “and”.

13 Paragraph 93(10)(b)

Repeal the paragraph.

14 Paragraph 93(10)(c)

Omit “this Part”, substitute “this section”.

15 After section 93

Insert:

Division 7—Miscellaneous

16 Section 94

Repeal the section, substitute:

94 Trustee of designated security trust fund not to be treated as carrying on insurance business

To avoid doubt, the trustee of a designated security trust fund is not guilty of an offence against section 21 only because the trustee does an act in the capacity of trustee.

94A Injunctions

- (1) If the trustee of a designated security trust fund has engaged, is engaging, or proposes to engage, in any conduct in contravention of this Part or the fund's trust deed, the Federal Court may, on the application of the Commissioner, grant an injunction:
 - (a) restraining the trustee from engaging in the conduct; or
 - (b) if the Court thinks it desirable to do so, requiring the trustee to do a particular act.
- (2) If the trustee of a designated security trust fund has refused or failed, or is proposing to refuse or fail, to do an act that the trustee is required by this Part or the fund's trust deed to do, the Federal Court may, on the application of the Commissioner, grant an injunction requiring the trustee to do the act.
- (3) The Court may grant an interim injunction pending the determination of an application.
- (4) The Court may discharge or vary an injunction granted under subsection (1) or (2).
- (5) The Commissioner cannot be required, as a condition of the grant of an interim injunction, to give an undertaking as to damages.
- (6) The power of the Court to grant an injunction restraining a trustee from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the trustee intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the trustee has previously engaged in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a trustee to do an act may be exercised whether or not it appears to the Court that the trustee intends to refuse or fail, or to continue to refuse or fail, to do that act or thing.
- (8) The powers conferred on the Court by this section are in addition to, and not instead of, any other powers of the Court.

17 Sections 95, 96 and 97

Repeal the sections, substitute:

95 Agent of Lloyd's

- (1) Lloyd's must at all times be represented for the purposes of this Act by an individual resident in Australia and appointed by Lloyd's as the agent of Lloyd's for the purposes of this Act.
- (2) Subsections 118(2) to (5) (inclusive) apply to Lloyd's in a corresponding way to the way in which they apply to a body corporate of the kind referred to in subsection 118(1).
- (3) Subsections 118(2) to (5) (inclusive) apply to an appointment under subsection (1) of this section in a corresponding way to the way in which they apply to an appointment under subsection 118(1).
- (4) Anything done in his or her representative capacity by a person appointed by Lloyd's as, or to act as, its agent in accordance with this section (including section 118 as applied by this section) is taken, for the purposes of this Part, to have been done by Lloyd's. However this subsection does not affect any liability of the agent under this Part.

96 Address for service

- (1) Lloyd's must at all times have an address in Australia for service for the purposes of this Act.
- (2) The address does not become the address for service of Lloyd's until Lloyd's has given notice in writing of the address to the Commissioner. An address so notified continues to be the address for service of Lloyd's until another address has been so notified.

97 Lloyd's to give notice of by-laws

If:

- (a) an Act of the United Kingdom is enacted relating specifically to Lloyd's; or
- (b) a by-law is made under the Acts of the United Kingdom known as Lloyd's Acts 1871-1951 or any later Act of the United Kingdom relating to Lloyd's;

Lloyd's must, within the period of 21 days after the enactment of the Act or the making of the by-law, give notice to the Commissioner accordingly.

18 Section 120

Omit "Part VII", substitute "section 93".

Note: The heading to section 120 of the *Insurance Act 1973* is altered by omitting "Part VII" and substituting "section 93".

19 Section 120

Omit "that Part", substitute "section 93".

20 Subsection 121(1)

Omit ", except Part VII,".

21 Paragraph 121(1)(c)

After "case of a body corporate", insert "(other than Lloyd's)".

22 At the end of subsection 121(1)

Add:

; or (d) in the case of Lloyd's, by leaving it at the address for service notified to the Commissioner in accordance with section 96 or by sending it by registered post to Lloyd's at that address.

23 Subsection 128(1)

Before "105(15)" (wherever occurring), insert "70(9), 74(6), 77(4), 78(7), 80(4), 82(1), 82(2),".

24 Schedule

Repeal the Schedule.

25 Transitional—statutory deposit

- (1) This item applies to any securities held by the Treasurer in accordance with paragraph 1 of the Schedule to the *Insurance Act 1973* immediately before the commencement of this item.
- (2) Sections 92Q and 92S of the *Insurance Act 1973* have effect as if those securities had been deposited under section 92Q of that Act, immediately after the commencement of this item, by:
 - (a) Lloyd's; or
 - (b) if a company is nominated in a written notice given by Lloyd's to the Commissioner—that company.

26 Transitional—agent and address

- (1) This item applies to anything done by Lloyd's in accordance with paragraph 6 or 7 of the Schedule to the *Insurance Act 1973* before the commencement of this item.
- (2) The *Insurance Act 1973* has effect, after the commencement of this item, as if those things had been done by Lloyd's in accordance with section 95 or 96, as the case may be, of that Act.

27 Transitional—exercise of approval powers between Royal Assent and commencement

If:

- (a) in accordance with section 4 of the *Acts Interpretation Act 1901*, an instrument is made under section 68 or 70 of the *Insurance Act 1973* before the commencement of item 5; and

- (b) the instrument is expressed to confer power on the Commissioner to give an approval;

the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power, before the commencement of item 5 as if the instrument had come into operation before the commencement of item 5.

Insurance (Agents and Brokers) Act 1984

28 Section 9

Insert:

Lloyd's underwriter has the same meaning as in the *Insurance Act 1973*.

29 Section 9 (definition of *unauthorised foreign insurer*)

Repeal the definition, substitute:

unauthorised foreign insurer means:

- (a) an insurer who:
 - (i) does not have an authority under the *Insurance Act 1973* to carry on insurance business; and
 - (ii) is not a person who, because of section 5 of that Act, is not required to have such an authority; and
 - (iii) carries on insurance business outside Australia and the external Territories to which the *Insurance Act 1973* extends; or
- (b) if a direction is in force under section 74 the *Insurance Act 1973*—a Lloyd's underwriter.

Insurance Supervisory Levies Collection Act 1989

30 Section 3 (paragraph (b) of the definition of *leviable day*)

Omit "Part VII", substitute "section 93".

31 Paragraph 6(2)(a)

Repeal the paragraph, substitute:

(a) that consists of a calendar year; and

32 Paragraph 7(2)(a)

Repeal the paragraph, substitute:

(a) the 30 April next following the end of that period;

*[Minister's second reading speech made in—
House of Representatives on 4 December 1997
Senate on 5 March 1998]*

(235/97)

