

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VOTES AND PROCEEDINGS

No. 109

WEDNESDAY, 16 NOVEMBER 1994

1 The House met, at 9.30 a.m., pursuant to adjournment. The Speaker (the Honourable Stephen Martin) took the Chair, and read Prayers.

**2 ELECTORAL MATTERS—JOINT STANDING COMMITTEE—REPORT—
STATEMENTS BY MEMBERS—MOTION TO TAKE NOTE OF PAPER**

Mr Connolly presented the following report and related papers:

Electoral Matters—Joint Standing Committee—The 1993 federal election—

Report, incorporating 2 dissenting reports, November 1994.

Evidence received by the committee.

Minutes of proceedings.

Ordered—That the report be printed.

Mr Connolly, Mr S. F. Smith, Mr Cobb, Mr Melham and Mr Tuckey, by leave, made statements in connection with the report.

Mr Cobb, by leave, moved—That the House take note of the report.

Debate adjourned (Mr Snowdon—Parliamentary Secretary to the Minister for Employment, Education and Training), and the resumption of the debate made an order of the day for the next sitting.

3 RACIAL HATRED BILL 1994

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Mr Cameron addressing the House—

It being 3 p.m., the debate was interrupted in accordance with standing order 101A, and the resumption of the debate made an order of the day for a later hour this day.

4 QUESTIONS

Questions without notice were asked.

5 PAPERS

The following papers were presented:

Administrative Appeals Tribunal Act—Administrative Appeals Tribunal—Report for 1993-94.

Australian Defence Industries Ltd (ADI)—Report for 1993-94.

Australian Film, Television and Radio School Act—Australian Film, Television and Radio School—Report for 1993-94.

Coal Industry Act—Joint Coal Board—47th report, for 1993-94.

Employment, Education and Training Act—National Board of Employment, Education and Training—Report by the Australian Research Council, including the Board's comments—Reviews of grants outcomes—No. 15—Classics, classical archaeology and prehistory 1986-1990.

National Gallery Act—National Gallery of Australia—Report for 1993-94.

6 PAPERS—MOTION TO TAKE NOTE OF PAPERS

Mr Beazley (Leader of the House) moved—That the House take note of the following papers:

Administrative Appeals Tribunal Act—Administrative Appeals Tribunal—Report for 1993-94.

Australian Defence Industries Ltd (ADI)—Report for 1993-94.

Coal Industry Act—Joint Coal Board—47th report, for 1993-94.

Debate adjourned (Mr Howard), and the resumption of each debate made an order of the day for the next sitting.

7 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—INDUSTRIAL RELATIONS

The House was informed that Mr Howard had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The threat to the Christmas holiday period posed by strike action by the Transport Workers Union, underwritten by the Government's changes to the Industrial Relations Act".

The proposed discussion having received the necessary support—

Mr Howard addressed the House.

Discussion ensued.

Discussion concluded.

8 SUSPENSION OF STANDING AND SESSIONAL ORDERS—BILLS REFERRED TO MAIN COMMITTEE

Mr McLeay (Chief Government Whip), by leave, moved—That so much of the standing and sessional orders be suspended as would prevent the Chief Government Whip from moving a motion to refer the Organisation for Economic Co-operation and Development (Financial Support Fund) Repeal Bill 1994 and the Quarantine Amendment Bill 1994 to the Main Committee for consideration.

Question—put and passed.

9 BILLS REFERRED TO MAIN COMMITTEE

Mr McLeay (Chief Government Whip) moved—That the Organisation for Economic Co-operation and Development (Financial Support Fund) Repeal Bill 1994 and the Quarantine Amendment Bill 1994 be referred to the Main Committee for consideration.

Question—put and passed.

10 HEALTH AND OTHER SERVICES (COMPENSATION) BILL 1994

Dr Theophanous (Parliamentary Secretary to the Minister for Human Services and Health) presented a Bill for an Act relating to the consequences of certain compensation payments, and for related purposes.

Bill read a first time.

Paper: Dr Theophanous presented an explanatory memorandum to the Bill.

Ordered—That the second reading be made an order of the day for the next sitting.

11 HEALTH AND OTHER SERVICES (COMPENSATION) CARE CHARGES BILL 1994

Dr Theophanous (Parliamentary Secretary to the Minister for Human Services and Health) presented a Bill for an Act relating to charges in respect of certain compensation payments.

Bill read a first time.

Paper: Dr Theophanous presented an explanatory memorandum to the Bill.

Ordered—That the second reading be made an order of the day for the next sitting.

12 HEALTH AND OTHER SERVICES (COMPENSATION) ADMINISTRATION FEE BILL 1994

Dr Theophanous (Parliamentary Secretary to the Minister for Human Services and Health) presented a Bill for an Act relating to an administration fee in respect of certain compensation payments.

Bill read a first time.

Paper: Dr Theophanous presented an explanatory memorandum to the Bill.

Ordered—That the second reading be made an order of the day for the next sitting.

13 HEALTH AND OTHER SERVICES (COMPENSATION) (CONSEQUENTIAL AMENDMENTS) BILL 1994

Dr Theophanous (Parliamentary Secretary to the Minister for Human Services and Health), pursuant to notice, presented a Bill for an Act to make certain amendments relating to the *Health and Other Services (Compensation) Act 1994*.

Bill read a first time.

Paper: Dr Theophanous presented an explanatory memorandum to the Bill.

Ordered—That the second reading be made an order of the day for the next sitting.

14 CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 1994

Mr Lindsay (Parliamentary Secretary to the Minister for Industry, Science and Technology) presented a Bill for an Act to amend the *Customs Tariff Act 1987*.

Bill read a first time.

Paper: Mr Lindsay presented an explanatory memorandum to the Bill.

Ordered—That the second reading be made an order of the day for the next sitting.

15 CONSTRUCTION OF A NEW CHANCERY AT PORT MORESBY, PAPUA NEW GUINEA—APPROVAL OF WORK

Mr Walker (Minister for Administrative Services), pursuant to notice, moved—That, in accordance with the provisions of the *Public Works Committee Act 1969*, it is expedient to carry out the following proposed work which was referred to the Parliamentary Standing Committee on Public Works and on which the committee has duly reported to Parliament: Construction of a new chancery at Port Moresby, Papua New Guinea.

Question—put and passed.

16 RACIAL HATRED BILL 1994

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Question—put.

The House divided (the Speaker, Mr Martin, in the Chair)—

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Mr Adams	Mr Elliott	Mr Humphreys	Mr Punch
Mr Baldwin	Mr M. J. Evans	Mr Jenkins	Mr Quick
Mr Beazley	Ms Fatin	Mr Jones	Mr Sawford*
Mr Beddall	Mr Ferguson	Mrs Kelly	Mr Sciacca
Mr Bilney	Mr Fitzgibbon	Mr Knott	Mr L. J. Scott
Mr Brereton	Mr Free	Mr Latham	Mr Simmons
Mr Brown	Mr Gear	Mr Lavarch	Mrs S. J. Smith
Mr Chynoweth	Mr Gibson	Mr Lee	Mr S. F. Smith
Mr Cleary	Mr Gorman	Mr Lindsay	Mr Snow
Mr Cleeland	Mr Grace*	Ms McHugh	Mr Snowdon
Ms Crawford	Mr Griffin	Mr McLeay	Mr Swan
Mr Crean	Mr Griffiths	Mr Melham	Mr Tanner
Mr Cunningham	Mr Haviland	Mr A. A. Morris	Dr Theophanous
Ms Deahm	Ms Henzell	Mr P. F. Morris	Mr Tickner
Mr Dodd	Mr Holding	Mr Newell	Mr Walker
Mr Duffy	Mr Hollis	Mr O'Connor	Mr Willis
Mr Duncan	Mr Horne	Mr O'Keefe	Mr Woods
Mrs Easson	Mr Howe	Mr Price	

NOES, 59

Mr Abbott	Mr Downer	Mr Lieberman	Mr Ronaldson
Mr Aldred	Mr R. D. C. Evans	Mr Lloyd	Mr Ruddock
Mr Anderson	Mr Filing	Mr McArthur	Mr B. C. Scott
Mr J. N. Andrew	Mr Fischer	Mr McGauran	Mr Sinclair
Mr K. J. Andrews	Mr Forrest	Mr McLachlan	Mr Slipper
Mr Atkinson	Mrs Gallus	Mr Miles	Mr Somlyay
Mr Beale	Mr Hall	Mr Moore	Mrs Sullivan
Mr Bradford	Mr Halverson	Mrs Moylan	Mr Taylor
Mr Cadman	Mr Hawker*	Mr Nehl	Mr Truss
Mr Cameron	Dr Hewson	Mr Neville	Mr Tuckey
Mr Charles	Mr Hicks*	Mr Nugent	Mr Vaile
Mr Cobb	Mr Howard	Mr Prosser	Mr Wakelin
Mr Connolly	Mr Jull	Mr Pyne	Mr Williams
Mr Costello	Mr Katter	Mr Reid	Ms Worth
Mr Dobie	Dr Kemp	Mr Rocher	

* Tellers

And so it was resolved in the affirmative—Bill read a second time.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Lavarch (Attorney-General), the Bill was read a third time.

17 MERIT PROTECTION (AUSTRALIAN GOVERNMENT EMPLOYEES) AMENDMENT BILL 1994—REPORT FROM MAIN COMMITTEE

The Speaker reported that the Merit Protection (Australian Government Employees) Amendment Bill 1994 had been fully considered in the Main Committee and agreed to without amendment, and presented a certified copy of the Bill.

Bill agreed to.

On the motion of Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training), by leave, the Bill was read a third time.

**18 INTERNATIONAL AIR SERVICES COMMISSION AMENDMENT BILL 1994—
REPORT FROM MAIN COMMITTEE**

The Deputy Speaker reported that the International Air Services Commission Amendment Bill 1994 had been fully considered in the Main Committee and agreed to without amendment, and presented a certified copy of the Bill.

Bill agreed to.

On the motion of Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training), by leave, the Bill was read a third time.

19 LIFE INSURANCE BILL 1994—REPORT FROM MAIN COMMITTEE

The Deputy Speaker reported that the Life Insurance Bill 1994 had been fully considered in the Main Committee and agreed to with amendments (*see item No. 5, Minutes of Proceedings of the Main Committee*), and presented a certified copy of the Bill together with a schedule of amendments.

Amendments made by the Main Committee agreed to.

Bill, as amended, agreed to.

On the motion of Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training), by leave, the Bill was read a third time.

**20 LIFE INSURANCE (CONSEQUENTIAL AMENDMENTS AND REPEALS) BILL
1994—REPORT FROM MAIN COMMITTEE**

The Deputy Speaker reported that the Life Insurance (Consequential Amendments and Repeals) Bill 1994 had been fully considered in the Main Committee, a Governor-General's message recommending an appropriation had been reported, and the Bill had been agreed to with amendments, and an amended title (*see item No. 6, Minutes of Proceedings of the Main Committee*), and presented a certified copy of the Bill together with a schedule of amendments.

Amendments and amended title made by the Main Committee agreed to.

Bill, as amended, agreed to.

On the motion of Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training), by leave, the Bill was read a third time.

**21 LAW AND JUSTICE LEGISLATION AMENDMENT BILL (NO. 2) 1994—REPORT
FROM MAIN COMMITTEE**

The Deputy Speaker reported that the Law and Justice Legislation Amendment Bill (No. 2) 1994 had been fully considered in the Main Committee and agreed to without amendment, and presented a certified copy of the Bill.

Bill agreed to.

On the motion of Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training), by leave, the Bill was read a third time.

22 ADJOURNMENT

Mr Snowdon (Parliamentary Secretary to the Minister for Employment, Education and Training) moved—That the House do now adjourn.

Debate ensued.

The House continuing to sit until 8 p.m.—The Deputy Speaker adjourned the House until tomorrow at 9.30 a.m.

PAPER

The following paper was deemed to have been presented on 16 November 1994:
Military Superannuation and Benefits Act—Instrument 1994 No. 2.

ATTENDANCE

All Members attended (at some time during the sitting) except Mr Bevis, Mrs Bishop, Mr Braithwaite*, Mrs Crosio, Mr Keating, Mr Kerr, Mr Langmore, Dr Lawrence, Mr Mack*, Mr Reith, Mr Staples* and Dr Wooldridge.

*On leave

L. M. BARLIN

Clerk of the House of Representatives

1993-94

HOUSE OF REPRESENTATIVES

SUPPLEMENT TO VOTES AND PROCEEDINGS

No. 109

MAIN COMMITTEE

MINUTES OF PROCEEDINGS

WEDNESDAY, 16 NOVEMBER 1994

1 The Main Committee met at 10 a.m.

2 MERIT PROTECTION (AUSTRALIAN GOVERNMENT EMPLOYEES) AMENDMENT BILL 1994

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Question—put and passed—Bill read a second time.

Leave granted for the motion for the Bill to be reported to be moved forthwith.

On the motion of Mr O'Keefe (Parliamentary Secretary to the Minister for Transport), Bill to be reported to the House without amendment.

3 INTERNATIONAL AIR SERVICES COMMISSION AMENDMENT BILL 1994

The order of the day having been read for the second reading—Mr O'Keefe (Parliamentary Secretary to the Minister for Transport) moved—That the Bill be now read a second time.

Debate ensued.

Question—put and passed—Bill read a second time.

Leave granted for the motion for the Bill to be reported to be moved forthwith.

On the motion of Mr Elliott (Parliamentary Secretary to the Treasurer), Bill to be reported to the House without amendment.

4 DECLARATION OF BILLS AS COGNATE BILLS

Mr Elliott (Parliamentary Secretary to the Treasurer), by leave, declared that the Life Insurance Bill 1994 and the Life Insurance (Consequential Amendments and Repeals) Bill 1994 were cognate Bills.

5 LIFE INSURANCE BILL 1994

The order of the day having been read for the second reading—Mr Elliott (Parliamentary Secretary to the Treasurer) moved—That the Bill be now read a second time.

Debate ensued.

Question—put and passed—Bill read a second time.

Consideration in detail

Bill, by leave, taken as a whole.

On the motion of Mr Elliott, by leave, the following amendments were made together:

Clause 9—

Page 3, paragraph (1)(a), lines 9 to 11, omit “, including such a contract that also provides for a benefit under a continuous disability policy”.

Page 3, paragraphs (1)(f) and (g), lines 20 and 21, omit the paragraphs, substitute the following paragraphs:

- “(f) a contract (whether or not it is a contract of insurance) that constitutes an investment account contract;
- (g) a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract.”.

Clause 11, page 4, subclause (1), omit the subclause, substitute the following subclause:

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

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

Clause 12, page 5, paragraph (2)(b), line 8, after “property)” insert “or business relating to the payment of annuities”.

Clause 13, page 5, paragraph (2)(a), line 22, after “liability” insert “(including a policy liability)”.

Clause 14—

Page 5, subclause (2), line 34, omit “of insurance”.

Page 6, subclause (3), line 7, omit the line, substitute:

“(3) In spite of subsection (2), a contract is not an investment account contract if it provides for the account to”.

Page 6, lines 11 to 19, subclause (4), omit the subclause, substitute the following subclauses:

- “(4) An investment-linked contract is a contract:
 - (a) the principal object of which is the provision of benefits calculated by reference to units the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided; and
 - (b) that provides for benefits to be paid:
 - (i) on death; or

- (ii) on a specified date or specified dates or on death before the specified date, or the last of the specified dates, as the case may be.

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

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

“(6) If the Commissioner makes a declaration:

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

Clause 15, pages 6 and 7, omit the clause, substitute the following clause:

Participating, non-participating benefits

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

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

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

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

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

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

“(5) If the Commissioner makes a declaration:

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

Clause 17, page 7, omit the clause, substitute the following clause:

Prohibition of persons other than registered companies carrying on life business

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

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

“(2) Subsection (1) does not prohibit a person from:

- (a) acting as agent of a company registered under this Act; or
- (b) entering into, or undertaking liability under, a contract referred to in subsection (3) if the particular contract is not a contract of insurance.

“(3) Paragraph (2)(b) applies to the following contracts:

- (a) an investment account contract;
- (b) an investment-linked contract.”.

Clause 19, page 7, paragraph (2)(a), line 33, omit “this Part”, substitute “this Act”.

Clause 24, page 11, add at the end the following subclause:

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

Clause 27, page 12, subparagraph (1)(b)(ii), lines 22 and 23, omit “liabilities under policies issued by it”, substitute “policy liabilities”.

Clause 30, page 13, paragraph (c), line 10, after “liabilities” insert “(including policy liabilities)”.

Clause 32, page 14, omit the clause, substitute the following clause:

Duty of company in relation to statutory funds

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

- (a) must comply with this Part; and
- (b) must give priority to the interests of the owners of policies referable to the fund.

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

Clause 34—

Page 14, subclause (3), line 30, omit “A life company”, substitute “Subject to subsection (3A), a life company”.

Page 14, after subclause (3), insert the following subclause:

“(3A) A life company may maintain a single bank account for money that constitutes assets of 2 or more statutory funds if the account is maintained in accordance with Commissioner’s rules.”.

Clause 35, page 15, paragraph (3)(b), lines 7 and 8, omit the paragraph, substitute the following paragraph:

“(b) either:

- (i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the fund; or
- (ii) the way in which that proportion is to be calculated.”.

Clause 36, page 15, paragraph (c), line 29, omit “50”, substitute “48 or 50”.

Clause 38—

Page 16, paragraph (2)(a), line 7, after “liabilities” insert “(including policy liabilities)”.

Page 16, add at the end the following subclause:

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

Clause 42, pages 17 and 18, omit the clause, substitute the following clause:

Investment performance guarantee—limit of certain liabilities

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

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

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

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

“(4) For the purposes of this section:

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

“(5) In this section:

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

Clause 45, page 19, omit the clause, substitute the following clause:

Transfer of assets between funds

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

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

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

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

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

Clause 48, page 20, omit the clause, substitute the following clause:

Duty of directors in relation to statutory funds

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

“(2) The director’s duty is a duty to ensure that, in the investment, administration and management of the assets of the fund, the life company:

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

“(3) In order to avoid doubt, it is declared that, in the event of conflict between the interests of the owners of policies and the interests of shareholders of the life company, a director’s duty is to ensure that the company gives priority to the interests of the policy owners over those of the shareholders.

“(4) In discharging his or her duty, a director of a life company must exercise the degree of care and diligence that a reasonable person in a like position in a life company would exercise in the first-mentioned life company’s circumstances.

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

“(6) If:

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

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

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

“(8) A person is not liable under subsection (6) in relation to an act or omission of a life company if the person proves that he or she used due diligence to prevent the occurrence of the act or omission.

“(9) An action under subsection (6) may be brought:

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

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

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

Clause 50, page 21, subclause (2), omit the subclause, substitute the following subclause:

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

Clause 51, page 21, line 23, omit “director”, substitute “person”.

Clause 53, page 23, paragraph (5)(b), line 14, omit “liabilities”, substitute “policy and other liabilities”.

Clause 55—

Page 23, paragraph (1)(a), line 36, omit the paragraph, substitute the following paragraph:

“(a) policy liabilities; and”.

Page 24, subclause (2), line 10, after “liabilities” insert “(including policy liabilities)”.

Part 4, Division 5 (comprising clauses 56 to 60), pages 24 to 26, omit the Division, substitute the following Division:

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

Interpretation

“56.(1) In this Division:

‘**Australian fund**’ has the same meaning as in Part 6;

‘**Australian/overseas fund**’ has the same meaning as in Part 6;

‘**Australian participating business**’ means participating business carried on in Australia;

‘**overseas fund**’ has the same meaning as in Part 6;

‘**overseas participating business**’ means participating business carried on outside Australia.

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

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

Obligation to allocate operating profit or loss

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

Operating profit etc.

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

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

Allocation of operating profit etc.

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

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

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

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

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

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

“(5) A company allocates a capital payment by:

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

Basis of allocation of operating profit etc.

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

- (a) in the case of a profit of a category representing Australian participating business, at least 80%, or such higher percentage as is specified in the articles of association of the company, of the profit must be treated as, or added to, Australian policy owners’ retained profits of the statutory fund;
- (b) any part of a profit of a category representing Australian participating business and not allocated under paragraph (a) must be treated as, or added to, shareholders’ retained profits (Australian participating) of the statutory fund;
- (c) subject to paragraph (d), any part of a profit of a category representing overseas participating business, to the extent that such an allocation would not be inconsistent with the articles of association of the company, may be treated as, or added to, overseas policy owners’ retained profits of the statutory fund;
- (d) if the articles of association of the company require any part of a profit representing overseas participating business to be treated as overseas policy owners’ retained profits, at least that part of the profit must be treated as, or added to, overseas policy owners’ retained profits of the statutory fund under paragraph (c);
- (e) any part of a profit of a category representing overseas participating business and not allocated under paragraph (c) must be treated as, or added to, shareholders’ retained profits (overseas and non-participating) of the statutory fund;
- (f) a profit of a category representing non-participating business must be treated as, or added to, shareholders’ retained profits (overseas and non-participating) of the statutory fund.

“(2) The allocation of an operating loss of a category of business of a statutory fund must be made in accordance with the following rules:

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

Clause 61—

Page 27, definition of "Australian policy owners' retained profits", line 7, omit "amount of operating profits of the fund", substitute "of the amounts".

Page 27, definition of "Australian policy owners' retained profits", line 12, omit "amount of operating losses", substitute "of the amounts".

Page 27, definition of "overseas policy owners' retained profits", line 17, omit "amount of operating profits of the fund", substitute "of the amounts".

Page 27, definition of "overseas policy owners' retained profits", line 22, omit "amount of operating losses", substitute "of the amounts".

Page 27, definition of "shareholders' retained profits (Australian participating)", line 34, omit "amount of operating profits of the fund", substitute "of the amounts".

Page 27, definition of "shareholders' retained profits (Australian participating)", line 39, omit "amount of operating losses", substitute "of the amounts".

Page 28, definition of "shareholders' retained profits (overseas and non-participating)", line 4, omit "amount of operating profits", substitute "of the amounts".

Page 28, definition of "shareholders' retained profits (overseas and non-participating)", line 5, omit "60(1)(d) and (e)", substitute "60(1)(e) and (f)".

Page 28, definition of "shareholders' retained profits (overseas and non-participating)", line 9, omit "amount of operating losses", substitute "of the amounts".

Page 28, definition of "shareholders' retained profits (overseas and non-participating)", line 10, omit "60(2)(d) and (e)", substitute "60(2)(e) and (f)".

Page 28, add at the end the following subclause:

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

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

Clause 62—

Page 28, paragraph (1)(a), line 18, omit “Australian participating policies”, substitute “Australian policies that provide for participating benefits”.

Page 28, paragraph (1)(b), lines 19 and 20, omit the paragraph, substitute the following paragraphs:

- “(b) subject to paragraph (ba), overseas policy owners’ retained profits may only be distributed to owners of overseas policies that provide for participating benefits;
- (ba) overseas policy owners’ retained profits may be distributed to owners of Australian policies that provide for participating benefits or transferred to shareholders’ funds if the distribution or transfer has been approved by the Commissioner.”.

Page 28, subparagraph (1)(c)(iii), line 26, omit “participating policies”, substitute “policies that provide for participating benefits”.

Page 29, lines 8 and 9, subclause (5), omit the subclause, substitute the following subclause:

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

Clause 63, page 29, subclause (3), omit the subclause, substitute the following subclause:

- “(3) Shareholders’ capital may only be distributed in the following ways:
- (a) by transfer to shareholders’ funds;
 - (b) by transfer to another statutory fund of the company;
 - (c) by distribution to owners of policies that provide for participating benefits.”.

Clause 66, page 30, omit the clause, substitute the following clause:

Purpose of solvency standard

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

Clause 68, page 30, subclause (1), lines 21 and 25, omit “liabilities” (first and second occurring), substitute “policy and other liabilities”.

Clause 71, page 31, line 35, omit “best”.

Clause 73—

Page 32, subclause (1), line 9, omit “best”.

Page 32, subclause (3), omit the subclause.

Clause 75—

Page 33, paragraph (2)(a), line 27, omit the paragraph, substitute the following paragraph:

“(a) Australian participating business;”.

Page 33, paragraphs (3)(a), (b) and (c), lines 31 to 33, omit the paragraphs, substitute the following paragraphs:

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

Clause 76, page 34, omit the clause, substitute the following clause:

Financial records—overseas funds

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

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

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

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

Clause 83—

Page 37, subparagraph (3)(c), line 15, omit “condition”, substitute “position”.

Page 37, paragraphs (4)(a) and (b), lines 20 to 24, omit the paragraphs, substitute the following paragraphs:

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

Clauses 93 and 94, pages 41 and 42, omit the clauses, substitute the following clauses:

Appointment

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

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

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

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

- (a) the person:
 - (i) is ordinarily resident in Australia; and
 - (ii) is a Fellow of the Institute of Actuaries of Australia; and
 - (iii) has been such a Fellow for at least 5 years; or
- (b) an approval of the appointment of the person under subsection (6) is in force.

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

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

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

Cessation of appointment

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

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

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

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

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

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

Clause 99—

Page 44, subclause (1), line 37, omit “The appointed actuary”, substitute “A person who is, or has been, the appointed actuary”.

Page 45, subclause (2), line 1, after “subsection (1)),”, insert “a person who is or has been”.

Clause 113, page 49, paragraph (2)(a), lines 1 and 2, omit “liabilities in respect of its life insurance business”, substitute “policy liabilities”.

Clause 114, page 49, omit the clause, substitute the following clause:

Method of valuing policy liabilities

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

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

Clause 116—

Page 49, subclause (1), line 30, omit the line, substitute “the appointed actuary has given the company written”.

Page 50, subclause (2), line 2, omit the line, substitute “the appointed actuary has given the company written”.

Clause 117, page 50, paragraph (2)(c), lines 14 and 15, omit the paragraph, substitute the following paragraph:

“(c) policy liabilities referable to the fund as at the end of the financial year; and”.

Clause 134, page 56, subclause (1), line 22, omit “obligations”, substitute “policy or other liabilities as they become due”.

Clause 136, page 57, paragraph (a), line 20, omit “obligations”, substitute “policy or other liabilities as they become due”.

Clause 150, page 63, paragraph (1)(a), line 4, omit “liabilities”, substitute “policy or other liabilities as they become due”.

Clause 159, page 68, subparagraph (a)(i), line 10, omit “liabilities”, substitute “policy or other liabilities as they become due”.

Clause 165, page 69, line 37, omit the line, substitute “section 209.”.

Clause 186, page 76, omit the clause, substitute the following clause:

Determination of amounts to be treated as liabilities of life company

“**186.(1)** In relation to each person who, according to the company’s records, appears to be:

- (a) the owner of a policy issued by the company; or
- (b) interested in a policy issued by the company;

the liquidator must determine:

- (c) whether the company has a policy liability to the person; and
- (d) if the company has such a liability, the amount that represents the value of that policy liability.

“(2) Determinations under subsection (1) are to be made in accordance with the directions of the Court.

“(3) The liquidator must notify each person referred to in subsection (1) of the amount determined under that subsection in respect of each policy of which the person is the owner or in which the person is interested.

“(4) If the liquidator determines an amount under subsection (1), then, for the purposes of the winding-up:

- (a) the company is to be taken to have a liability under the relevant policy in that amount to the person to whom the determination relates; and
- (b) subject to subsection (5), that person is bound by the liquidator’s determination.

“(5) A person who is notified of an amount under subsection (3) may dispute the amount:

- (a) in accordance with the Rules of Court; or
- (b) as the Court otherwise directs in the particular case.”.

Clause 187—

Page 76, lines 18 to 22, omit all words before paragraph (1)(c), substitute the following subclauses and words:

“(1A) Subject to this section, in the winding-up of a life company, the assets of a statutory fund (“**the primary fund**”) must first be applied in accordance with the applicable Corporations Law in discharging debts and claims referred to in subsection 556(1) of that Law.

“(1B) Subsection (1A) has effect only to the extent that debts or claims are liabilities that are referable to the business of the primary fund.

“(1) If any assets remain after the application of subsection (1A), the assets must be applied according to the following rules:

- (a) the assets are to be applied first in discharge of policy liabilities of the company referable to the primary fund;”.
- (b) if any assets remain, they are to be applied in discharge of other liabilities that are referable to the business of the fund;

Page 77, add at the end the following subclauses:

“(3) If a liability of the company:

- (a) is referable to 2 or more statutory funds; or
- (b) is referable in part to a statutory fund but is also related to business, other than life insurance business, carried on by the company;

the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund, as the case may be.

“(4) In making an apportionment under subsection (3), the liquidator must comply with any directions of the Court.

“(5) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the company that is referable to the business of the fund.”.

Clause 188, page 77, subclause (2), omit the subclause, substitute the following subclause:

“(2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to prevent the occurrence of such a contravention.”.

Clause 189, page 77, line 27, omit “life”.

Clause 190—

Page 77, after subclause (1), insert the following subclause:

“(1A) The reference in paragraph (1)(a) to a life company includes a reference to a company that is registered under this Act but has not begun to carry on life insurance business in Australia.”.

Page 77, add at the end the following subclause:

“(3) Subsection (1) does not require that a transfer or amalgamation of life insurance business be made under a scheme approved by the Court if:

- (a) immediately before the transfer or amalgamation, the business is referable to a statutory fund that relates only to life insurance business carried on outside Australia; and
- (b) the transfer or amalgamation will result in the business becoming referable to a statutory fund that relates only to life insurance business carried on outside Australia.”.

Clause 191, page 78, subclause (3), line 16, omit “life”.

Clause 197, page 79, subclause (1), line 24, omit “life”.

Parts 10 and 11 (comprising clauses 198 to 226) and the Schedule, pages 79 to 97, omit the Parts and the Schedule, substitute the following Parts and Schedule:

“PART 10—PROVISIONS RELATING TO POLICIES

“Division 1—Issue of policies

Alteration of proposal and policy forms

“198.(1) The Commissioner may give a life company written notice requiring the company to submit to the Commissioner any form of proposal or policy document ordinarily used by the company in Australia.

“(2) If the Commissioner thinks that a form submitted in answer to a notice under subsection (1) does not comply with this Act or is likely to mislead, he or she may give the life company written notice:

- (a) setting out particulars of the way in which the form fails to comply with this Act or is likely to mislead; and
- (b) inviting the life company to make submissions to the Commissioner on any matter set out in the notice.

“(3) If:

- (a) at least 14 days have elapsed since the Commissioner gave notice to the life company; and
- (b) either:
 - (i) the company has not made any submissions to the Commissioner; or
 - (ii) having taken into account the submissions made by the life company, the Commissioner is satisfied that the form in question fails to comply with this Act or is likely to mislead;

the Commissioner may give the life company a written direction to change the form in the way specified in the direction.

“(4) A life company must not make use of a form in respect of which the Commissioner has given a direction under subsection (3), or allow such a form to be used by a representative of the company, unless the form has been changed in accordance with the direction.

Capacity of young persons to insure etc.

“199.(1) A person who is at least 10 but has not reached 16 may, with the written consent of a parent or a person who stands in the place of a parent:

- (a) enter into a life policy on his or her own life or on another life; or
- (b) take an assignment of a life policy.

“(2) A person who has reached 16 but has not reached 18 has the same capacity to exercise rights or powers in relation to a life policy of which he or she is the owner as a person who has reached 18.

“Division 2—Assignments and mortgages

Assignment of life policy

“200.(1) The rights of a person as owner of a life policy may only be assigned under this section.

“(2) An assignment is not effective unless the following requirements have been satisfied:

- (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the form prescribed by the regulations;
- (b) the memorandum must be endorsed on the policy document or on an annexure to the policy document that is referred to in the policy document or in another annexure to the policy document;
- (c) the memorandum must be signed by the transferor and the transferee;
- (d) the assignment must be registered in a register of assignments kept by the life company concerned;
- (e) the date of registration must be inserted in the memorandum;

- (f) the memorandum must be signed by the principal executive officer of the life company or by a person authorised by the principal executive officer to sign such memoranda.

“(3) If all the requirements of subsection (2) are satisfied, an assignment has the following effects:

- (a) the transferee has all the rights and powers, and is subject to all the liabilities, of the transferor under the policy;
- (b) the transferee may sue in his or her own name on the policy;
- (c) payment to the transferee of money due under the policy discharges the life company from all liability under the policy in respect of the money;
- (d) the memorandum of transfer is conclusively presumed to have been registered in accordance with subsection (2) on the date shown in the memorandum;
- (e) as between the life company and a person claiming money under the policy, the transferee is conclusively presumed, for all purposes, to have been the absolute owner of the policy at the time of registration of the assignment, free from all trusts, rights, equities and interests, and entitled to receive the money and give a good discharge for it;
- (f) any security over the policy given by the transferee is effective in spite of any trust or any right, equity or interest of another person;
- (g) the surrender of the policy by the transferee is effective in spite of any trust or any right, equity or interest of another person;
- (h) the life company, in respect of any dealing it has with the transferee, is not required or concerned to inquire as to the circumstances in which, or the consideration for which, the policy was assigned to the transferee or any previous transferee;
- (i) subject to section 202, the life company, in respect of any dealing it has with the transferee, is not affected by express, implied or constructive notice of any trust, right, equity or interest.

“(4) An assignment under this section does not:

- (a) make the transferee a member of the life company; or
- (b) deprive the transferor of membership of the company in respect of the policy;

except in accordance with the articles of association of the company.

“(5) This section does not:

- (a) impose on a person under 16 any liability to which he or she would not be subject apart from this section; or
- (b) confer on a person under 16 any power or capacity he or she would not have apart from this section; or
- (c) render effective a receipt, security or surrender given by a person under 16 if it would not be effective apart from this section.

“(6) The rights and liabilities under a life policy are not merged or extinguished, either at law or in equity, merely because the policy is assigned, whether at law or in equity, to the life company that issued the policy.

“(7) A life company is not obliged to register an assignment under paragraph (2)(d) if the company is required or permitted, by another law of the Commonwealth, to refuse to register the assignment.

Mortgages and trusts

“201.(1) If a policy is assigned by way of mortgage or on trust:

- (a) the mortgage or trust is not effective unless it is created by some means other than the memorandum of transfer; and
- (b) no notice of the mortgage or trust is to be entered on the memorandum of transfer or endorsed on the policy; and
- (c) subject to section 202, the life company is not affected by express, implied or constructive notice of the mortgage or trust.

“(2) In spite of subsection (1), the transferee under an assignment may be described in the memorandum of transfer as the trustee or trustees of a superannuation fund.

Effect of notice of trust etc.

“202.(1) A life company is not entitled to rely on section 200 or 201 in relation to a matter in which the company has not acted in good faith.

“(2) A life company is not entitled to rely on section 200 or 201 in relation to any trust, right, equity or interest of which the company has received express notice in writing.

“(3) If a life company has received express notice in writing of a trust, right, equity or interest claimed in relation to money payable under a policy, the company may pay the money into the Court.

“(4) Payment of the money into the Court discharges the company from liability to any person in respect of the money.

“(5) The money is to be paid out in accordance with an order of the Court.

Transfer of policy after change of trustee

“203.(1) If:

- (a) either:
 - (i) a policy has been issued or assigned to a person as trustee; or
 - (ii) a policy has become vested in a person as trustee in some other way; and
- (b) the person is no longer the trustee under the relevant trust;

another person may give the life company written notice that the person giving the notice is now the trustee under the trust.

“(2) A notice is to be given in accordance with the regulations.

“(3) The regulations may require that a notice be in the form of, or be verified by, a statutory declaration.

“(4) If notice is given in accordance with this section, the life company may record the name of the person who gave the notice as the owner of the policy.

“(5) When the person’s name is recorded under subsection (4), the person becomes the owner of the policy by force of this section.

“Division 3—Protection of policies

Protection of interest of insured

“204.(1) The rights and interests of a person under:

- (a) a life policy effected on his or her life; or
- (b) a life policy effected on the life of the person’s spouse;

are not liable to be applied or made available by any judgment, order or process of a court in discharge of a debt owed by the person.

“(2) Subsection (1) applies:

- (a) regardless of when a policy was issued; and
- (b) in the case of a policy referred to in paragraph (1)(a)—whether or not the policy is owned by the person.

“(3) This section has effect subject to the *Bankruptcy Act 1966*.

Protection of policy money on person's death

“205.(1) If, on the death of a person, money becomes payable to the person's estate under a policy effected on the person's life, the following provisions apply:

- (a) except as permitted by paragraph (b), the money is not liable to be applied or made available:
 - (i) under any judgment, order or process of a court; or
 - (ii) in any other manner whatsoever;
 in payment of the person's debts;
- (b) the money may be applied in payment of a debt of the person if:
 - (i) the person had entered into a contract that provided expressly for the money to be so applied; or
 - (ii) the person had charged the money with the payment of the debt; or
 - (iii) the person gave an express direction, in his or her will or other testamentary document signed by the person, that the money be so applied;
- (c) none of the following constitutes an express direction for the purposes of subparagraph (b)(iii):
 - (i) a mere direction that debts be paid;
 - (ii) a charge of debts on the whole or a part of the person's estate;
 - (iii) the creation of a trust for the payment of debts.

“(2) This section has effect regardless of when a policy was issued.

“(3) This section has effect subject to the *Bankruptcy Act 1966*.

Division 4—Surrender values, paid-up policies and non-forfeiture of policies

Application of Division

“206.(1) Subject to subsections (2) and (3), this Division applies to all life policies.

“(2) This Division does not apply to life policies declared by the regulations to be excluded from the operation of this Division.

“(3) The regulations may provide that this Division applies to a class of life policies subject to specified modifications. If such provision is made, this Division applies to the class of life policies accordingly.

Surrender of policies

“207.(1) The owner of a policy which has been in force for at least 3 years may request the company that issued the policy to surrender the policy.

“(2) A request under subsection (1) must be in writing.

“(3) Subject to section 208, if the policy owner makes a request under subsection (1), the company must pay to the policy owner an amount equal to the surrender value of the policy less the amount of any debt owed to the company under, or secured by, the policy.

“(4) Subject to subsection (6), if apart from this subsection, the surrender value of a policy at a particular time would be less than an amount calculated, for the purposes of this subsection, in accordance with actuarial standards, the last-mentioned amount is the surrender value of the policy at that time.

“(5) Subsection (6) applies to a life policy issued before the commencement of this Act and still in force immediately after that commencement.

“(6) If, apart from this subsection, the surrender value of a policy under this Act would at any time be less than the surrender value of the policy immediately before the commencement of this Act, the surrender value of the policy immediately before that commencement is the surrender value of the policy for the purposes of this Act.

Relaxation of company's obligations to surrender

“208.(1) A life company may apply to the Commissioner for the suspension or variation of its obligation to make payments under section 207.

“(2) If the Commissioner thinks that such payments would prejudice:

- (a) the financial stability of the company; or
- (b) the interests of the policy owners of the company;

the Commissioner may, in writing, suspend or vary the company's obligation to pay the surrender values for such period as the Commissioner thinks fit.

“(3) A suspension or variation may be subject to such conditions as the Commissioner thinks fit.

Paid-up policies

“209.(1) If premiums under a policy have been paid in respect of a period of at least 3 years, the owner of the policy may request the life company concerned:

- (a) to vary the policy so that no further premiums are payable; and
- (b) to treat the policy as a paid-up policy.

“(2) A request under subsection (1) must be in writing.

“(3) On receiving the request, the life company must vary the policy by reducing the amount payable under the policy to an amount calculated in accordance with actuarial standards.

“(4) The policy, as varied, is to be taken to be a paid-up policy.

“(5) If, when a request is made under subsection (1):

- (a) the policy-owner owes a debt to the life company under the policy; or
- (b) a debt owed by the policy-owner to the life company is secured by the policy;

the company may either:

- (c) treat the debt as a debt secured by the paid-up policy; or
- (d) in calculating the reduced amount payable under the policy, take the debt into account in accordance with actuarial standards.

“(6) If a debt is taken into account in accordance with paragraph (5)(d), the debt is discharged.

Non-forfeiture of policies in certain cases of non-payment of premiums

“210.(1) A life policy is not liable to be forfeited only because of the non-payment of a premium (the ‘overdue premium’) if:

- (a) at least 3 years' premiums have been paid on the policy; and
- (b) the surrender value of the policy exceeds the total of:

- (i) the amount of the overdue premium; and
- (ii) the total of any other amounts owed to the company under, or secured by, the policy.

“(2) For the purposes of paragraph (1)(b), the surrender value of the policy is to be worked out as at the day immediately before the day on which the overdue premium falls due.

“(3) Until the overdue premium is paid, the company may charge interest on it on terms not less favourable to the policy owner than such terms (if any) as are prescribed by the regulations.

“(4) The overdue premium and any unpaid interest charged on it are taken, for the purposes of this Act, to be a debt owing to the company under the policy.

“(5) A life company may only forfeit a life policy because of the non-payment of a premium if:

- (a) the company has given the policy owner a written notice:
 - (i) setting out the amount of the premium and the day on which it became, or will become, due; and
 - (ii) stating that the policy will be forfeited at the end of 28 days after the giving of the notice or 28 days after the day on which the premium became, or will become, due, whichever is the later if the amount due to the company has not been paid; and
- (b) at least 28 days have elapsed since:
 - (i) the day on which the notice was given; or
 - (ii) the day on which the premium became due;

whichever is the later.

“Division 5—Payment of policy money

Probate or administration not necessary in certain cases—a single policy

“211.(1) If:

- (a) there is only a single life policy under which money is payable by a particular life company to the personal representative of a deceased person; and
- (b) the money does not exceed \$50,000 or such other amount as is prescribed for the purposes of this paragraph;

the company may pay the money to:

- (c) the spouse, father, mother, child, brother, sister, niece or nephew of the deceased person; or
- (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:
 - (i) under the deceased person’s will; or
 - (ii) under the law relating to the disposition of the property of deceased persons; or
- (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person’s estate.

“(2) A company may pay the money without requiring the production of any probate or letters of administration.

“(3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policy.

“(4) A person to whom a company makes a payment under this section must apply the money in due course of administration.

“(5) In this section ‘**money**’, in relation to a life policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

Probate or administration not necessary in certain cases—2 or more policies

“212.(1) If:

- (a) there are 2 or more life policies under which money is payable by a particular life company to the personal representative of a deceased person; and
- (b) the total of the money payable under the policies does not exceed the amount of \$50,000 or such other amount as is prescribed for the purposes of this paragraph;

the company may pay the money to:

- (c) the spouse, father, mother, child, brother, sister, niece or nephew of the deceased person; or
- (d) a person who satisfies the company that he or she is entitled to the property of the deceased person:
 - (i) under the deceased person’s will; or
 - (ii) under the law relating to the disposition of the property of deceased persons; or
- (e) a person who satisfies the company that he or she is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person’s estate.

“(2) A company may pay the money without requiring the production of any probate or letters of administration.

“(3) A company that makes a payment under this section is discharged from all further liability in respect of the money payable under the policies.

“(4) A person to whom a company makes a payment under this section must apply the money in due course of administration.

“(5) In this section, ‘**money**’, in relation to a life policy, means the total of the money payable under the policy, less any debt due to the company under, or secured by, the policy.

Death of policy owner who is not the life insured

“213.(1) This section applies:

- (a) if the owner of a life policy dies before the person whose life is insured by the policy; and
- (b) either:
 - (i) the adjusted surrender value of the policy is less than the prescribed amount; or
 - (ii) the policy is one of 2 or more policies owned by the deceased owner and issued by the same company the total adjusted surrender values of which are less than the prescribed amount.

“(2) If a person (the ‘**applicant**’) satisfies the company that issued the policy:

- (a) that he or she is entitled, under the will or on the intestacy of the deceased owner, to the benefit of the policy; or
- (b) that he or she is entitled to obtain probate of the will or to take out letters of administration of the estate of the deceased owner;

the company may endorse on the policy a declaration that the applicant has so satisfied the company and is the owner of the policy.

“(3) The company may endorse the policy without requiring the production of any probate or letters of administration.

“(4) If subsection (2) applies, the applicant becomes, subject to subsection (5), the owner of the policy.

“(5) Subsection (4) does not:

- (a) confer on the applicant any beneficial interest in the policy that he or she would not otherwise have had; or
- (b) affect any right or interest of a person other than the applicant in relation to the policy.

“(6) For the purposes of this section, the adjusted surrender value of a policy is the surrender value of the policy as at the day on which the owner died, less any debt due to the company under, or secured by, the policy.

“(7) In this section, ‘**prescribed amount**’ means \$25,000 or such other amount as is prescribed by the regulations for the purposes of this section.

Company not bound to see to the application of money paid by it

“214. A company is not, in any circumstances, bound to see to the application of any money it pays in respect of a policy.

Power to pay money into Court

“215.(1) A life company may pay into the Court any money payable by the company in respect of a policy for which, in the company’s opinion, no sufficient discharge can otherwise be obtained.

“(2) Payment of the money into the Court discharges the company from any liability under the policy in relation to the money.

“(3) Any money paid into the Court under this section is to be dealt with according to the order of the Court.

“(4) This section has effect subject to the Rules of the Court.

Unclaimed money

“216.(1) Within 3 months after the end of each calendar year, a life company must give to the Commissioner a statement in the form prescribed by the regulations of all unclaimed money as at the end of that year.

“(2) A life company must not intentionally or recklessly fail to comply with subsection (1).

Penalty: 50 penalty units.

“(3) When the company gives the statement to the Commissioner, it must at the same time pay to the Commonwealth an amount equal to the amount of unclaimed money worked out under subsection (6).

“(4) If, between the end of the calendar year and the date on which the statement is given to the Commissioner, the company has paid any money to persons to whom the amounts were due by the company, the company must give the Commissioner, with the statement under subsection (1), a statement in the form prescribed by the regulations relating to the amounts so paid.

“(5) A life company must not intentionally or recklessly fail to comply with subsection (3) or (4).

Penalty: 50 penalty units.

“(6) For the purposes of subsection (3), the amount to be paid to the Commonwealth is an amount worked out in accordance with the formula:

Statement amount – Money paid

where:

‘**Statement amount**’ means the total of unclaimed money shown in the statement referred to in subsection (1);

‘**Money paid**’ means the total of any amounts paid to persons to whom the amounts were due by the company between the end of the calendar year and the date on which the statement referred to in subsection (1) is given to the Commissioner.

“(7) If:

- (a) unclaimed money has been paid by a company to the Commonwealth under this section; and
- (b) the Commissioner or an authorised officer certifies in writing that, apart from this section, the company or a successor company would have paid that money to a person;

the Treasurer must:

- (c) cause the unclaimed money to be paid to that company; and
- (d) direct the company to pay the money to the person specified in the direction.

“(8) A direction must be in writing.

“(9) The company must not intentionally or recklessly fail to comply with a direction under paragraph (7)(d).

Penalty: 50 penalty units.

“(10) If a company satisfies the Commissioner or an authorised officer that an amount paid to the Commonwealth under this section is more than the amount that would have been payable under the policy to the policy owner, an amount equal to the excess is to be refunded to the company.

“(11) Subject to subsection (7), if a company pays an amount to the Commonwealth under this section, the company is, upon that payment, discharged from further liability in respect of that amount.

“(12) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of this section.

“(13) The Commissioner must keep a register that contains:

- (a) particulars of each amount of unclaimed money specified in a statement given to the Commissioner for the purposes of subsection (1); and
- (b) particulars of the persons to whom, if this section had not been enacted, the money would have been payable.

“(14) The particulars referred to in paragraph (13)(b) may include a person’s tax file number.

“(15) In this section:

‘**authorised officer**’ means the Commissioner or an officer of the Australian Public Service authorised by the Commissioner for the purposes of this section;

‘successor company’, in relation to another company (the ‘first company’), means the company to which the life insurance business of the first company has been transferred;

‘unclaimed money’ means:

- (a) all sums of money that have become legally payable by a company in respect of policies; but
- (b) in respect of which the time within which proceedings may be taken for their recovery has expired;

and includes:

- (c) sums of money payable on the maturity of a life policy which are not claimed within 7 years after the maturity date of the policy; and
- (d) any money that the company considers should be treated as unclaimed money.

No deduction in respect of other policies

“**217.(1)** Subject to subsection (2), if a claim arising under a policy is paid, no deductions are to be made on account of premiums or debts due to the company under any other policy, except with the written consent of the claimant.

“(2) The claimant may give written consent to any deductions.

“Division 6—Children’s advancement policies

Interpretation

“**218.(1)** In this Division:

‘child’s advancement policy’ means a life policy issued, before a child has reached full age, by a person other than the child, which contains one or both of the following:

- (a) provision for payment of a sum to the executors, administrators or assigns of the child on the child’s death after the child reaches the vesting age; or
- (b) provision for payment of a sum to the child or his or her assigns on the child reaching an age that is at least the vesting age;

‘full age’ means:

- (a) in relation to a life policy issued before 18 May 1989—the age of 21 years; and
- (b) in relation to a life policy issued on or after 18 May 1989 but before the commencement of this Act—the age of 18 years; and
- (c) in relation to a life policy issued after the commencement of this Act—the age of 16 years;

‘vesting age’, in relation to a child whose life is insured by a life policy, means:

- (a) an age of 10 years or more specified in the policy for the purpose of defining the time at which money becomes payable under the policy; or
- (b) the age of 25 years;

whichever is the earlier.

“(2) For the purposes of the definition of ‘vesting age’ in subsection (1), if a policy specifies a date without specifying the age of the child at that date, the policy is to be taken to specify the age that is the age of the child at that date.

Property in child’s advancement policy

“**219.(1)** Subject to subsection (2), this section applies to every child’s advancement policy, whether effected before or after the commencement of this Act.

“(2) This section does not apply to a child’s advancement policy effected by a parent, or a person who stands in the place of a parent, of a child in which it is expressly provided that this section does not apply to it.

“(3) Subject to section 220 and unless and until the child reaches the vesting age:

- (a) the policy is the absolute property, both at law and in equity, of the person effecting the policy or his or her assigns; and
- (b) that person or his or her assigns:
 - (i) in the case of a policy effected after the commencement of the *Life Insurance Act 1945* and before the commencement of this Act—is taken to have had the power to assign, mortgage, charge, surrender, vary or otherwise deal with the policy; or
 - (ii) in any other case—may assign, mortgage, charge, surrender, vary or otherwise deal with the policy.

“(4) If a child whose life is insured under a child’s advancement policy reaches the vesting age, the policy is taken, from the day on which the child reaches that age, to be the absolute property of the child, both at law and in equity, subject:

- (a) to any debt owing to the company under, or secured by, the policy; and
- (b) to any dealing done by the policy owner before the child reaches the vesting age.

Death or bankruptcy of policy owner

“220.(1) This section applies if the person who effects a child’s advancement policy dies or becomes bankrupt:

- (a) during the child’s lifetime; and
- (b) before the child reaches the vesting age.

“(2) Subject to any dealings in relation to the policy effected by the policy owner before his or her death or bankruptcy, the representative of the policy owner holds the policy in trust for the child until:

- (a) the child reaches the vesting age; or
- (b) the child dies before reaching the vesting age.

“(3) The representative of the policy owner may:

- (a) assign, mortgage, charge, surrender, vary or otherwise deal with the policy; and
- (b) apply the proceeds as he or she thinks fit for the maintenance or benefit of the child and the payment of premiums in respect of the policy.

“(4) The company which issued the policy is under no obligation to see to the application of the proceeds of the policy.

“(5) If the child dies before reaching the vesting age, the money payable in respect of the policy is to be applied in the way in which it would be applied apart from this section.

“(6) In this section:

‘dealings’ does not include any testamentary dealings;

‘representative’, in relation to a policy owner, means:

- (a) if the policy owner has died—the executor or administrator of the policy owner; or

- (b) if the policy owner is bankrupt—the Official Receiver or the trustee of the policy owner's estate.

“Division 7—Lost or destroyed policy documents

Lost or destroyed policy—issue of replacement policy document

“221.(1) This section applies if:

- (a) the owner of a policy; or
 (b) a person claiming the benefit of section 211, 212 or 213 in respect of a policy; claims that the policy document is lost or has been destroyed.

“(2) A person referred to in subsection (1) may ask the company liable under the policy to issue to the person a replacement policy document in substitution for the lost document.

“(3) The company may issue a replacement policy document to the policy owner if it is satisfied that there is sufficient evidence of the loss or destruction of the original policy document.

“(4) The company may only issue a replacement policy document to a person referred to in paragraph (1)(b) if the company is satisfied that section 211, 212 or 213, as the case may be, should be applied in favour of the person in relation to the policy.

“(5) If the company does not issue a replacement policy document within 6 months after it receives a request from a policy owner, the policy owner may apply to a court of summary jurisdiction of a State or Territory for an order under subsection (6).

“(6) If, on an application under subsection (5), a court is satisfied that an original policy document is lost or has been destroyed, the court may order the company concerned to issue a replacement policy document to the applicant on such terms (if any), and within such period, as the court thinks fit.

“(7) A request under subsection (2) must be in writing.

“(8) This section is subject to sections 222, 223, 224 and 225.

“(9) The courts of summary jurisdiction of the States are invested with federal jurisdiction to hear and determine applications under subsection (5).

“(10) Subject to the Constitution, jurisdiction is conferred on the courts of summary jurisdiction of the Territories to hear and determine applications under subsection (5).

Form of replacement policy document

“222. A replacement policy document:

- (a) must, as far as possible:
 (i) be a copy of the original policy document; and
 (ii) contain a copy of every endorsement on the original policy document;
 and
 (b) must state the reason why the replacement policy document was issued.

Notice before issuing replacement policy document

“223.(1) This section applies if the amount of the net claim value of a policy at the date the replacement policy document is issued is more than \$25,000 or such other amount as is prescribed.

“(2) For the purposes of subsection (1), the net claim value of a policy at a particular time is the amount calculated according to the regulations.

“(3) At least 10 days before issuing the replacement policy document, the company must give notice of its intention to do so:

- (a) in a newspaper circulating in the district in which the owner of the policy resides; or
- (b) if a person claiming the benefit of section 211, 212, or 213 applies for the replacement policy document—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or
- (c) in a newspaper circulating in the district in which the company considers the original policy document to have been lost or destroyed.

“(4) The applicant for a replacement policy document must meet all the expenses of the advertisement and of the issue of the replacement policy document. The expenses must be paid at the time the person asks the company to issue the replacement policy document.

“(5) After a replacement policy document has been issued, the company must arrange for the following details to be entered in the appropriate register kept under Division 8:

- (a) the fact that a replacement policy document has been issued;
- (b) the reason for the issue of the replacement policy document.

Claim under policy where policy document lost or destroyed

“224.(1) If:

- (a) a person claiming to be the owner of a policy or claiming the benefit of section 211, 212 or 213 in respect of a policy:
 - (i) claims that the original policy document is lost or has been destroyed; and
 - (ii) gives to the company evidence of the loss or destruction that the company considers sufficient; and
 - (iii) makes a claim under the policy or makes any other request or claim in respect of it that would result in the termination of the policy; and
- (b) the company liable under the policy:
 - (i) has given at least 10 days' notice of its intention to satisfy the claim or comply with the request; and
 - (ii) after giving notice, satisfies the claim or complies with the request; and
 - (iii) records details of its action in the appropriate register kept under Division 8;

the company is discharged from all liability to any person under the policy.

“(2) A notice under subparagraph (1)(b)(i) is to be given:

- (a) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims to be the owner of the policy—in a newspaper circulating in the district in which the person resides; or
- (b) if the person who made the claim or request referred to in subparagraph (1)(a)(iii) claims the benefit of section 211, 212 or 213 in respect of the policy—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or
- (c) in a newspaper circulating in a district in which the company considers the original policy to have been lost or destroyed.

“(3) The expenses of the advertisement are to be paid by the person who made the claim or the request referred to in subparagraph (1)(a)(iii).

Application of sections 221, 222, 223 and 224 to replacement policy document

“225. If the owner of a policy or a person claiming the benefit of section 211, 212 or 213 in respect of a policy claims that a replacement policy document is lost or has been destroyed, sections 221, 222, 223 and 224 apply to the replacement policy document as if it were an original policy document.

“Division 8—General**Registers**

“226.(1) A life company must have a register of life policies for each State and Territory in which it carries on life insurance business.

“(2) A life company may have such other registers as it thinks fit.

Registration of life policies

“227.(1) A life company must register each life policy issued by the company in Australia:

- (a) in the register for the State or Territory in which the policy owner lives; or
- (b) if there is no such register or the policy owner has requested that the policy be registered in some other register—in the register chosen by the policy owner.

“(2) A life company must register each life policy issued by the company outside Australia in a register for policies issued outside Australia.

“(3) The owner of a life policy issued in Australia may, in writing, ask the company that issued the policy to transfer the policy from a register to another register.

“(4) The company must comply with a request under subsection (3).

“(5) A policy may be transferred:

- (a) from a register for policies issued outside Australia to any other register; or
- (b) to a register for policies issued outside Australia from any other register:

if the policy owner makes a written request for the transfer and the life company concerned agrees to the transfer.

“(6) The owner of a policy is liable to pay to a life company an amount equal to the total of the expenses incurred by the company in connection with a transfer of the policy under subsection (3) or (4).

Effect of suicide on policy

“228. A life company may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide if the policy expressly excludes liability in case of suicide.

Condition as to war risk void

“229.(1) Subject to subsection (2), any term or condition of a life policy is void if it limits, to an amount less than the total of the sum insured and bonuses, the amount payable under the policy if the life insured by the policy dies on war service.

“(2) Subsection (1) does not apply if there is written on the policy document an acknowledgment signed by the person to whom the policy was issued that the policy is subject to the term or condition.

Policies not invalidated by contraventions of the Act

“230. A life company’s failure to comply with this Act does not invalidate any life policy issued by the company.

“PART 11—MISCELLANEOUS**Annual report**

“231.(1) The Commissioner must, as soon as practicable after the end of each financial year, give the Treasurer a written report on the operation of this Act during that financial year.

“(2) The Treasurer must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.

Delegation

“232.(1) The Commissioner may, in writing, delegate any power or function of the Commissioner under this Act to a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*.

“(2) In the exercise of a delegated power, or the performance of a delegated function, a delegate is subject to the directions of the Commissioner.

Operation of State and Territory laws

“233.(1) Except as provided by subsections (2) and (3), it is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

“(2) Subject to subsection (3), the Parliament intends that, in relation to life insurance business (including State life insurance extending beyond the limits of the State concerned), this Act is to apply to the exclusion of:

- (a) a superseded State Act; and
- (b) any State Act amending a superseded State Act; and
- (c) any State Act enacted in substitution for a superseded State Act.

“(3) Nothing in this section is intended to affect prejudicially the rights, powers or privileges of the owner, or a person entitled to the benefit, of a policy issued before 20 June 1946 (the date of commencement of the *Life Insurance Act 1945*).

“(4) In this section, ‘superseded State Act’ means a State Act referred to in subsection 8(1) of the *Life Insurance Act 1945*, as in force immediately before the commencement of this Act, that is still in operation.

Prohibition of mixed insurance business

“234.(1) A life company must not intentionally carry on any insurance business other than life insurance business.

Penalty: 300 penalty units.

“(2) Subsection (1) does not prohibit an existing life company from carrying on general insurance business if the company was carrying on general insurance business immediately before the commencement of this Act.

Injunctions

“235.(1) If a life company has engaged, is engaging, or proposes to engage, in any conduct in contravention of this Act, of a direction given under this Act or of a condition imposed on the registration of the company, the Court may grant an injunction:

- (a) restraining the company from engaging in the conduct; or
- (b) if the Court thinks it desirable to do so, requiring the company to do a particular act.

“(2) If a life company has refused or failed, or is proposing to refuse or fail, to do an act that the company is required by this Act to do, the Court may grant an injunction requiring the company to do the act.

“(3) An injunction under subsection (1) or (2) may only be granted on the application of the Commissioner.

“(4) The Court may grant an interim injunction pending the determination of an application.

“(5) The Court may discharge or vary an injunction granted under subsection (1) or (2).

“(6) The Commissioner cannot be required, as a condition of the grant of an interim injunction, to give an undertaking as to damages.

“(7) The power of the Court to grant an injunction restraining a life company from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the company intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the company has previously engaged in conduct of that kind.

“(8) The power of the Court to grant an injunction requiring a person to do an act may be exercised whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.

“(9) The powers conferred on the Court by this section are in addition to, and not in derogation of, any other powers of the Court.

Review of certain decisions

“236.(1) In this section:

‘**person affected by a reviewable decision**’, in relation to a reviewable decision, means:

- (a) in the case of a refusal under section 85 to approve a person for the purposes of Part 6 or a revocation of an approval given in respect of a person under that section—that person; or
- (b) in the case of a refusal under subsection 93(6) to approve a person or a declaration under subsection 94(3) in respect of a person—that person; or
- (c) in any other case—the company in relation to which the decision was made;

‘**reviewable decision**’ means any of the following decisions:

- (a) a declaration under subsection 12(2);
- (b) a declaration under subsection 14(5);
- (c) a declaration under subsection 15(4);
- (d) a decision under subsection 22(1);
- (e) a decision to vary a direction under subsection 22(3) or (4);
- (f) a refusal to revoke or vary a direction under subsection 22(4);
- (g) a decision to cancel registration under subsection 26(2);
- (h) a refusal to give an approval under paragraph 31(c);
- (i) a decision under subsection 49(1);
- (j) a decision under subsection 49(4);
- (k) a refusal to give an approval under subsection 52(4);
- (l) a refusal to give an approval under subsection 53(4);
- (m) a refusal to give an approval under subsection 62(4);

- (n) a refusal to give an approval under subsection 63(2);
- (o) a direction under subsection 68(1);
- (p) a decision to vary a direction under subsection 68(5) or (6);
- (q) a refusal to revoke or vary a direction under subsection 68(6);
- (r) a direction under subsection 73(1);
- (s) a decision to vary a direction under subsection 73(6) or (7);
- (t) a refusal to revoke or vary a direction under subsection 73(7);
- (u) a refusal to give an approval under subsection 77(6);
- (v) a refusal to give an approval under subsection 85(1);
- (w) a revocation, under subsection 86(1), of an approval under subsection 85(1);
- (x) a refusal to give an approval under subsection 91(2);
- (y) a refusal to give an approval under subsection 93(6);
- (z) a declaration under subsection 94(3);
- (za) a requirement under subsection 115(3);
- (zb) a decision under subsection 118(5);
- (zc) a decision under subsection 119(2);
- (zd) a direction under subsection 121(3);
- (ze) a decision to vary a direction under subsection 121(6) or (7);
- (zf) a refusal to revoke or vary a direction under subsection 121(7);
- (zg) a refusal to give an approval under subsection 125(2);
- (zh) a requirement under subsection 131(1);
- (zi) a requirement under subsection 132(1);
- (zj) a direction under subsection 134(1);
- (zk) a direction under subsection 150(1);
- (zl) a decision to vary a direction under subsection 150(5) or (6);
- (zm) a refusal to revoke or vary a direction under subsection 150(6);
- (zn) a direction under subsection 198(3);
- (zo) a decision under subsection 216(10).

“(2) A person affected by a reviewable decision may request the Commissioner to reconsider the decision.

“(3) The request must be made by written notice given to the Commissioner 21 days after the person first receives notice of the decision, or within such further period as the Commissioner allows.

“(4) The request must set out the reasons for making the request.

“(5) On receipt of the request, the Commissioner must reconsider the decision and may, subject to subsection (6), confirm or revoke the decision or vary the decision in such manner as the Commissioner thinks fit.

“(6) If the Commissioner does not confirm, revoke or vary a decision within 60 days after the Commissioner received the request under subsection (2) to reconsider the decision, the Commissioner is taken to have confirmed the decision under subsection (5) on the last day of that period.

“(7) If the Commissioner confirms, revokes or varies a decision before the end of the period referred to in subsection (6), the Commissioner must give written notice to the person telling the person:

- (a) the result of the reconsideration of the decision; and
- (b) the reasons for confirming, revoking or varying the decision, as the case may be.

“(8) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner that has been confirmed or varied under subsection (5).

“(9) If a decision is taken to be confirmed because of subsection (6), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

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

Constitution and procedure of Tribunal

“237.(1) Subject to subsections 21(1A) and 23(1) of the *Administrative Appeals Tribunal Act 1975*, the Administrative Appeals Tribunal is to be constituted by a presidential member and 2 non-presidential members for the purposes of a review of a reviewable decision.

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

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

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

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

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

Prospectus to be given to Commissioner

“238. If a life company lodges with the Australian Securities Commission under Part 7.12 of the Corporations Law of a State or an internal Territory a prospectus relating to securities of the company, the company must give a copy of the prospectus to the Commissioner.

Documents relating to takeover schemes

“239.(1) This section applies if a life company or the holding company of a life company:

- (a) lodges a document, or a copy of a document, with the Australian Securities Commission; or
- (b) is given a document, or a copy of a document;

for the purposes of Part 6.3 of the Corporations Law of a State or an internal Territory.

“(2) The company must give to the Commissioner a copy of a document referred to in paragraph (1)(a) or (b) within 7 days after the document is lodged or received, as the case may be.

Register of Life Companies

“240.(1) The Commissioner must keep a register to be known as the Register of Life Companies.

“(2) Subject to this section and the regulations, the Register is to be kept in such form and manner as the Commissioner determines.

“(3) The Register must contain the prescribed information in relation to each company that is registered under this Act.

“(4) The Register may be kept by means of a computer.

Inspection of Register etc.

“241.(1) The Commissioner must ensure that the Register is available for inspection by any person during normal business hours.

“(2) A person who has paid the prescribed fee is entitled to inspect the Register.

“(3) If the Register is kept wholly or partly by means of a computer, subsection (1) is taken to be complied with, so far as the Register is kept in that way, by giving persons access to computer terminals that they can use to inspect the Register, either by viewing a screen display or by obtaining a computer print-out.

Non-shareholder members of life company—voting by post

“242.(1) This section applies to any life company that is not a company limited only by shares.

“(2) Within one year after it is registered under this Act, a life company to which this section applies must make arrangements for:

- (a) the establishment of a postal voters' roll in relation to:
 - (i) voting in contested elections of directors of the company; and
 - (ii) voting on questions relating to the alteration of the company's articles of association;
- (b) the enrolment on the postal voters' roll of any member of the company who is not a shareholder, who applies to be enrolled and who is entitled to vote:
 - (i) in elections referred to in subparagraph (a)(i); or
 - (ii) on questions referred to in subparagraph (a)(ii); and
- (c) the voting by post in such elections or on such questions by members so enrolled; and
- (d) the inspection of the postal voters' roll, and the taking of copies of, or extracts from, the roll, after the close of nominations and before the close of the voting in any election of a director of the company by any candidate in the election.

“(3) All regular votes cast under any arrangements referred to in subsection (1) are valid for all purposes.

“(4) If a member of a life company who is enrolled on the postal voters' roll does not exercise his or her right to vote by post on 3 consecutive occasions when he or she is entitled to vote, the company may remove his or her name from the roll. However, he or she is eligible to be re-enrolled on his or her request.

Inspection of documents

“243.(1) The Commissioner must ensure that any document given to the Commissioner under subsection 118(2) is available for inspection by any member of the public at an office of the Commissioner during normal business hours.

“(2) A person may:

- (a) inspect a document referred to in subsection (1); and
- (b) make a copy of, or extract from, the document;

if the person pays the fee (if any) prescribed by the regulations.

Commissioner’s power to obtain statistics etc.

“244.(1) The Commissioner must collect such statistics as are prescribed by Commissioner’s rules.

“(2) The statistics must be collected as at such time and in such manner as prescribed by Commissioner’s rules.

“(3) Life companies must give to the Commissioner such information as the Commissioner reasonably requires to enable the statistics to be collected.

“(4) A life company must comply with a request.

“(5) The Commissioner may publish, in such form as he or she thinks appropriate, any statistics collected under subsection (1).

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

“245.(1) For the purposes of this section, a person is a disqualified person if, at any time:

- (a) the person has been convicted of an offence against this Act or the *Life Insurance Act 1945*; or
- (b) the person has been convicted of an offence against any other law of the Commonwealth or a law of a State, a Territory or a foreign country, being an offence in respect of:
 - (i) conduct relating to insurance; or
 - (ii) dishonest conduct; or
- (c) the person has:
 - (i) become bankrupt; or
 - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with his or her creditors.

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

“(3) A person must not intentionally or recklessly contravene subsection (2).

Penalty: Imprisonment for 2 years.

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

Penalty: 600 penalty units.

“(5) It is a defence to a prosecution under subsection (4) if the defendant proves that:

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

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

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

Principal executive officer

“246.(1) Subject to subsection (3), the principal executive officer of a life company, for the purposes of this Act, is the person nominated under subsection 20(4) or under subsection (2) of this section.

“(2) An existing life company must give the Commissioner written notice specifying the person who is to be the principal executive officer of the life company for the purposes of this Act.

“(3) Notice under subsection (2) must be given within 3 months after the commencement of this Act.

“(4) A life company may, at any time, give the Commissioner written notice specifying a person who is to be the principal executive officer of the life company for the purposes of this Act.

“(5) On the giving by a life company of a notice under subsection (4), the person specified in the notice becomes the principal executive officer of the life company for the purposes of this Act.

Protection of person who discloses information etc. under compulsion

“247. A person who:

- (a) discloses information; or
- (b) produces records;

in accordance with a requirement or direction of a person apparently acting under this Act is not liable to anyone else in respect of the disclosure or production, regardless of whether the requirement or direction was lawfully made or given.

Offences

“248.(1) No proceedings for an offence against this Act may be instituted after the end of the period of 3 years after the commission of the offence.

“(2) The institution of proceedings against a company for an offence against this Act does not prevent the institution of proceedings for:

- (a) the judicial management; or
- (b) the winding-up;

of the company, or of part of the business of the company, on a ground that relates to the matter that constitutes the offence.

False or misleading documents

“249. A person who, in a document required by or under this Act to be signed by the person:

- (a) makes any statement that to the person’s knowledge is false or misleading in a material particular; or

- (b) omits a material particular without which the document is, to the person's knowledge, false or misleading in a material respect;

is guilty of an offence.

Penalty: Imprisonment for 12 months.

Conduct by directors, servants and agents

“**250.(1)** If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

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

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

“(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

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

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

“(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 (b) the person's reasons for the intention, opinion, belief or purpose.

“(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or a Territory.

“(7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

“(8) A reference in this section to an offence against this Act includes a reference to an offence created by section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*, being an offence that relates to this Act.

Secrecy

“**251.(1)** In this section:

‘**compliance officer**’ means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or

- (b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;
 other than a member or officer of, or a person employed or engaged by:
 - (iii) a financial sector supervisory agency; or
 - (iv) a law enforcement agency;

'court' includes a tribunal, authority or person having the power to require the production of documents or the answering of questions;

'financial sector supervisory agency' means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section;

'law enforcement agency' means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section;

'protected document' means a document given or produced under, or for the purposes of, this Act and containing information relating to the affairs of a life company;

'protected information' means information disclosed or obtained under, or for the purposes of this Act and relating to the affairs of a life company.

"(2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act, directly or indirectly:

- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or
- (b) produce to any person, or to a court, a protected document.

"(3) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, relating to the affairs of a life company if the life company agrees in writing to the disclosure of the information or the production of the document, as the case may be.

"(4) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, to:

- (a) the Treasurer, the Secretary of the Department or an officer of the Department authorised by the Secretary of the Department for the purposes of this section; or
- (b) a court for the purposes of this Act; or
- (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
- (d) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person.

"(5) Subsection (2) does not prohibit a compliance officer from disclosing protected information, or producing a protected document, to:

- (a) a law enforcement agency; or
- (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) a person engaged under subsection 13(3) of that Act.

“(6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.

“(7) A compliance officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner’s functions, or the exercise of the Commissioner’s powers, under a law of the Commonwealth.

“(8) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court any protected document, except when it is necessary to do so for the purposes of this Act.

“(9) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary of the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

“(10) A document that:

- (a) is a protected document; or
- (b) contains protected information;

is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

Commissioner’s rules

“252.(1) The Commissioner may, in writing, make rules prescribing all matters required or permitted by this Act to be prescribed by Commissioner’s rules.

“(2) Rules made by the Commissioner are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Regulations

“253.(1) The Governor-General may make regulations:

- (a) prescribing matters required or permitted by this Act to be prescribed, other than matters required or permitted to be prescribed by Commissioner’s rules or actuarial standards; or
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

“(2) Without limiting subsection (1), the regulations may:

- (a) prescribe the time within which any appeal to the Court provided for by this Act will lie; and
- (b) prescribe penalties not exceeding 10 penalty units for any contravention of the regulations.

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

Companies registered under *Life Insurance Act 1945*

“254.(1) An existing life company is taken, for the purposes of this or any other Act, to be registered under this Act.

“(2) An existing life company that is incorporated outside Australia is taken, for the purposes of this Act, to be a company within the meaning of this Act.

“(3) If, immediately before this Act commenced, an existing life company was subject to a condition imposed under section 20 of the *Life Insurance Act 1945*, the condition has effect as if it were a condition imposed under section 22 of this Act.

“(4) Section 25 of this Act applies to an existing life company as if:

- (a) the reference in that section to the registration of a company under this Act was a reference to the registration of the existing life company under the *Life Insurance Act 1945*; and
- (b) the reference in that section to the application for registration were a reference to the application for registration by the existing life company under the *Life Insurance Act 1945*.

“(5) Section 26 of this Act applies to an existing life company as if the period of 12 months referred to in paragraph (1)(a) of that section began on the day on which the company was registered under the *Life Insurance Act 1945*.

“(6) A certificate of registration given, under section 22 of the *Life Insurance Act 1945*, to an existing life company has the same status, and this Act has effect, as if the certificate had been issued under subsection 21(5) of this Act.

“(7) The following provisions of this Act do not apply to an existing life company that is incorporated outside Australia:

- (a) subsections 23(1) and (4);
- (b) section 242;
- (c) section 245.

“(8) This Act does not apply in relation to life insurance business carried on outside Australia by an existing life company that is incorporated outside Australia.

“(9) Subsection 23(3) applies in relation to an existing life company that is incorporated outside Australia as if:

- (a) the words ‘that is limited both by shares and by guarantee or that does not have any share capital’ were omitted; and
- (b) the reference in that subsection to eligible assets were a reference to eligible assets in Australia.

Continuing capital requirements

“255.(1) Section 47 of the *Insurance Laws Amendment Act 1991* (the ‘Amendment Act’) has effect after the commencement of this Act as follows:

- (a) the reference to a company registered under the *Life Insurance Act 1945* is to be read as a reference to an existing life company;
- (b) the reference in subsection (2) to section 19A of the *Life Insurance Act 1945* is to be read as a reference to section 23 of this Act.

“(2) If regulations are made for the purposes of subsection 23(1), (3) or (4), the regulations may make provision modifying the operation of section 47 of the *Insurance Laws Amendment Act 1991*.

Approved auditor

“256. A person who held an approval by the Commissioner under section 47 of the *Life Insurance Act 1945* immediately before the commencement of this Act is taken to be a person approved by the Commissioner under section 85 of this Act.

Approved actuary

“257. A person who held an approval by the Commissioner under subsection 47A(4) of the *Life Insurance Act 1945* in relation to a life company immediately before the commencement of this Act is taken to be a person approved by the Commissioner under subsection 93(6) of this Act in relation to that company.

Documents required to be lodged

“258. If:

- (a) immediately before the commencement of this Act, a company was required to lodge a document under section 52 of the *Life Insurance Act 1945*; and
- (b) the company had not lodged that document before that commencement (whether or not the time within which the document was required to be lodged had expired);

the *Life Insurance Act 1945*, as in force immediately before that commencement, continues in force in relation to the obligation to lodge the document and any failure to lodge the document in accordance with section 52.

Reinsurance between statutory funds

“259.(1) After the commencement of this Act, a life company does not contravene Part 4 by engaging in the practice of reinsurance between statutory funds in relation to a particular policy if:

- (a) the policy was issued before the commencement of this Act; and
- (b) immediately before that commencement, the company was engaging in the practice in relation to the policy; and
- (c) in a report of his or her investigation of the company’s financial condition as at the end of the last financial year that ended before the commencement of this Act, the appointed actuary stated that the continuance of the practice in relation to the policy did not adversely affect the financial condition of the company, or unfairly affect the interests of the owners of other policies, during that financial year.

“(2) The reference in paragraph (1)(c) to an investigation of a company’s financial condition is a reference to an investigation made under:

- (a) section 48 of the *Life Insurance Act 1945*; or
- (b) section 113 of this Act.

“(3) This section has effect in spite of section 39.

Scheme for transfer or amalgamation

“260. If a copy of a scheme was lodged with the Commissioner under section 75 of the *Life Insurance Act 1945* before the commencement of this Act:

- (a) Division 9 of Part III of that Act, as in force immediately before the commencement of this Act, continues to apply in relation to the scheme and the life insurance business to which the scheme relates; and
- (b) Part 9 of this Act does not apply in relation to that scheme.

Modification of operation of Divisions 5 and 6 of Part 4

“261.(1) The regulations may make provision modifying the operation of Division 5 or 6 of Part 4 in relation to existing life companies.

“(2) If regulations made for the purposes of subsection (1) modify the operation of Division 5 of Part 4:

- (a) the operation of that Division in relation to existing life companies is modified in accordance with the regulations; and
- (b) the modifications apply to an existing life company in relation to the allocation of profits or losses disclosed by, or capital payments identified in, accounts or financial statements given by the company to the Commissioner under this Act or the *Life Insurance Act 1945* and relating to a period that commences before 1 January 1996.

“(3) If regulations made for the purposes of subsection (1) modify the operation of Division 6 of Part 4:

- (a) the operation of that Division is modified in relation to existing life companies in accordance with the regulations; and
- (b) the modifications apply to an existing life company until the end of the last period commencing before 1 January 1996 in relation to which financial statements are given by the company to the Commissioner under section 82.

Existing benefit society business

“262.(1) If:

- (a) immediately before the commencement of this Act, a society was registered under a law of a State or Territory relating to the registration of benefit societies; and
- (b) because of that registration, business carried on by the society was not life insurance business within the meaning of the *Life Insurance Act 1945*;

business carried on by the society after the commencement of this Act, to the extent that it is the same as business referred to in paragraph (b), is not life insurance business for the purposes of this Act.

“(2) Subsection (1) ceases to apply to business carried on by a society if the society, for whatever reason, ceases to be a society registered under a law of a State or Territory relating to the registration of benefit societies.

“(3) This section ceases to have effect at the end of the period of 2 years beginning at the commencement of this Act.

Judicial management and winding-up

“263.(1) If a company, or part of the business of a company, was under judicial management, or being wound up, under the *Life Insurance Act 1945* immediately before the commencement of this Act:

- (a) the *Life Insurance Act 1945* as in force immediately before the commencement of this Act continues to apply in relation to the company; and
- (b) Parts 8 and 9 of this Act do not apply in relation to the company.

“(2) Subsection (1) ceases to apply to a company if:

- (a) the company was under judicial management under the *Life Insurance Act 1945* immediately before the commencement of this Act; and
- (b) the Court has cancelled the order for judicial management under the *Life Insurance Act 1945*, as continued in force by subsection (1); and
- (c) no order for the winding-up of the company or part of the business of the company has been made by the Court under that Act (as so continued in force) before, or at the time of, the cancellation of the order for judicial management.

Saving provision: sections 83, 84 and 94 of the *Life Insurance Act 1945*

“264. In spite of section 6 of the *Life Insurance (Consequential Amendments and Repeals) Act 1994*, sections 83, 84 and 94 of the *Life Insurance Act 1945*, as in force immediately before the commencement of this Act, continue to apply to policies to which those sections applied immediately before the commencement of this Act as if the *Life Insurance Act 1945* had not been repealed.

**“SCHEDULE
DICTIONARY**

Section 8

‘annual actuarial investigation’ means an investigation carried out for the purposes of section 113;

‘appointed actuary’, in relation to a life company or anything done, or to be done, by a life company, means the person holding an appointment by the company under section 93;

‘approved auditor’ means a person in respect of whom an approval under subsection 85(1) is in force;

‘articles of association’, in relation to a company, includes:

- (a) the documents by which the company is constituted; and
- (b) any other document governing activities or conduct of the company or its members;

‘Australian fund’ has the meaning given by section 74;

‘Australian/overseas fund’ has the meaning given by section 74;

‘Australian participating business’ has the meaning given by section 56;

‘Australian policy’ means a policy issued in Australia;

‘Australian policy owners’ retained profits’ has the meaning given by section 61;

‘Board’ means the Life Insurance Actuarial Standards Board;

‘business of a statutory fund’ has the meaning given by section 13;

‘class of life insurance business’ has the meaning given by section 12;

‘Commissioner’ means the Insurance and Superannuation Commissioner under the *Insurance and Superannuation Commissioner Act 1987*;

‘company’ means:

- (a) a company incorporated under the Corporations Law of a State or an internal Territory; or
- (b) a body corporate incorporated, or continued in existence, by or under any other law of a State or Territory;

‘continuous disability policy’ means a contract of insurance:

- (a) that is, by its terms, to be of more than 3 years’ duration; and
- (b) under which a benefit is payable in the event of:
 - (i) the death, by accident or by some other cause specified in the contract, of the person whose life is insured (**‘the insured’**); or
 - (ii) injury to, or disability of, the insured as a result of accident or sickness; or
 - (iii) the insured being found to have a specified condition or disease; and
- (c) the terms of which do not permit for alteration, at the instance of the life company concerned, of both the benefits provided for by the contract or the premiums payable under the contract;

but does not include a contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984*;

‘Court’ means the Federal Court of Australia;

'eligible assets', in relation to a company, means the assets of the company that, according to the regulations, are eligible assets of the company;

'executive officer', in relation to a company, means a person, whatever his or her title and whether or not a director of the company, who is concerned, or takes part, in the day-to-day management of the company;

'existing life company' means a body corporate that, immediately before the commencement of this Act, was registered under the *Life Insurance Act 1945*;

'financial condition report' means a report of an investigation carried out for the purposes of section 113 or 115;

'friendly society' means a society registered under a law of a State or Territory providing for the registration of friendly societies;

'investment account benefits' has the meaning given by section 14;

'investment account contract' has the meaning given by section 14;

'investment-linked benefits' has the meaning given by section 14;

'investment-linked contract' has the meaning given by section 14;

'issue', in relation to a policy, has the meaning given by section 10;

'life business' means business that consists of:

- (a) the issuing of life policies or the undertaking of liability under life policies; or
- (b) any business that relates to business referred to in paragraph (a);

'life company' means a company that is carrying on life insurance business in Australia;

'life insurance business' has the meaning given by section 11;

'life policy' has the meaning given by section 9;

'non-participating business' means life insurance business that consists of the provision of non-participating benefits under policies;

'official liquidator' has the same meaning as in the Corporations Law of a State or internal Territory;

'ordinary business' means life insurance business other than superannuation business;

'ordinary policy' means a policy other than a superannuation policy;

'overseas fund' has the meaning given by section 74;

'overseas participating business' has the meaning given by section 56;

'overseas policy' means a policy issued outside Australia;

'overseas policy owners' retained profits' has the meaning given by section 61;

'participating business' means life insurance business that consists of the provision of participating benefits under policies;

'person affected by a reviewable decision' has the meaning given by section 236;

'policy' means a life policy or a sinking fund policy;

'policy document' means a document that sets out, or the documents that together set out, the terms of a contract that is a life policy or a sinking fund policy, and includes an endorsement on such a document;

'policy liability', in relation to a life company, means:

- (a) a liability that has arisen under a policy; or
- (b) a liability that, subject to the terms and conditions of a policy, will arise on the happening of an event, or at a time, specified in the policy;

'premium' includes an instalment of premium;

'Register' means the Register of Life Companies kept under section 240;

'related company':

- (a) in Part 7—has the meaning given by section 129; and
- (b) otherwise—has the meaning given by section 16;

'reviewable decision' has the meaning given by section 236;

'securities exchange' means a body that is a securities exchange for the purposes of Chapter 6 of the Corporations Law of a State or internal Territory;

'share premium account' has the same meaning as in the Corporations Law;

'shareholders' capital' has the meaning given by section 61;

'shareholders' retained profits (Australian participating)' has the meaning given by section 61;

'shareholders' retained profits (overseas and non-participating)' has the meaning given by section 61;

'sinking fund business' means business that consists of:

- (a) the issuing of sinking fund policies or the undertaking of liability under sinking fund policies; or
- (b) any business that relates to business referred to in paragraph (a);

'sinking fund policy' means a contract that has the following features:

- (a) the company issuing the policy undertakes to pay money on one or more specified dates;
- (b) neither the payment of that money nor the payment of premiums is dependent on the death or survival of the person to whom the policy is issued or of any other person;

'spouse', in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person;

'starting amount' has the meaning given by section 61;

'superannuation business' means life insurance business that consists of:

- (a) the issuing of superannuation policies or the undertaking of liability under superannuation policies; or
- (b) any business that relates to business referred to in paragraph (a);

'superannuation policy' means:

- (a) a life policy that is maintained for the purposes of a superannuation or retirement scheme and is owned by the trustee under the scheme; or
- (b) a life policy included in a class of policies declared by the regulations to be superannuation policies for the purposes of this Act;

'this Act' includes the regulations, actuarial standards in force under Division 4 of Part 6 and Commissioner's rules;

‘**trade union**’ means an association registered under a law of a State or Territory providing for the registration of trade unions;

‘**value**’, in relation to an asset, means the market value of the asset less the costs likely to be incurred in realising the asset.”

Paper: Mr Elliott presented a supplementary explanatory memorandum to the Bill.

Bill, as amended, agreed to.

Consideration in detail concluded.

Ordered—That the Bill be reported to the House with amendments.

6 LIFE INSURANCE (CONSEQUENTIAL AMENDMENTS AND REPEALS) BILL 1994

The order of the day having been read for the second reading—Mr Elliott (Parliamentary Secretary to the Treasurer) moved—That the Bill be now read a second time.

Question—put and passed—Bill read a second time.

Message from the Governor-General: Message No. 210, dated 6 June 1994, from His Excellency the Governor-General was announced recommending an appropriation for the purposes of the Bill.

Consideration in detail

Clauses 1 to 3, by leave, taken together, and agreed to.

Clause 4 negatived.

Clause 5—

On the motion of Mr Elliott, the following amendment was made: Page 2, subclause (1), omit the subclause.

Clause, as amended, agreed to.

Clause 6—

On the motion of Mr Elliott, the following amendment was made: Page 2, before paragraph (a), insert the following paragraph:

“(aa) the *Life Insurance Act 1945*.”

Clause, as amended, agreed to.

Schedule—

On the motion of Mr Elliott, by leave, the following amendments were made together:

Part 1, omit the Part.

Part 2—

Omit the heading, substitute: “**AMENDMENTS OF ACTS**”.

Item 30, omit “, the *Life Insurance Act 1945*”.

Item 42, omit “a continuous disability policy”, substitute “a contract that is a continuous disability policy”.

After item 43, insert the following items under the heading “*Insurance Contracts Act 1984*”:

“**43A. Subsection 16(2):**

Omit the subsection.

“**43B. Division 2 of Part III:**

Omit the Division, substitute:

*'Division 2—other contracts of insurance***Insurable interest not required**

'18.(1) This section applies to:

- (a) a contract of life insurance; or
- (b) a contract that provides for the payment of money on the death of a person by sickness or accident.

'(2) A contract to which this section applies is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject-matter of the contract.'

"43C. Subsections 48(4) and (5):

Omit the subsections.

"43D. After section 48:

Insert:

Life policy for the benefit of another person

'48A.(1) This section applies to a contract of life insurance effected on the life of a person but expressed to be for the benefit of another person specified in the contract (the "third party").

'(2) The following provisions have effect in relation to a contract to which this section applies:

- (a) any money that becomes payable under the contract is payable to the third party, even though he or she is not a party to the contract;
- (b) money paid under the contract does not form part of the estate of the person whose life is insured.

'(3) Nothing in this section restricts the capacity of a person to exercise any right or power under a contract of life insurance to which the person is a party. In particular, nothing in this section restricts the capacity of a person:

- (a) to surrender a contract of life insurance to which the person is a party; or
- (b) to borrow money on the security of a contract of life insurance; or
- (c) to obtain a variation of a contract of life insurance, including a variation having the result that the contract ceases to be a contract to which this section applies.'

"43E. Subsection 59(3):

Omit the subsection, substitute:

'(3) This section does not apply to a contract of life insurance if the life policy that is constituted by the contract may be forfeited in accordance with subsection 210(5) of the *Life Insurance Act 1994*.'

"43F. Subsection 64(2):

Omit 'Where', substitute 'Subject to subsection (6) and section 64B, where'.

"43G. Subsection 64(3):

Omit the subsection, substitute:

'(3) A reference in this section to a policy document does not include a reference to a replacement policy document issued as mentioned in subsection 221(3) of the *Life Insurance Act 1994*.'

"43H. Section 64:

Add at the end:

'(6) If:

- (a) tax of any kind has been paid, or is payable, by the insurer because of the making of the cancelled contract; and
- (b) either:
 - (i) in a case in which the tax has been paid—the insurer is unable to obtain a refund of the tax; or
 - (ii) in a case in which the tax has not been paid—the tax does not cease to be payable as a result of the cancellation of the contract;

the amount that would otherwise be payable under subsection (2) is reduced by the amount of the tax.'

"43I. After section 64A:

Insert in Part VII:

Special provision regarding investment-linked contracts

'64B.(1) In this section:

"allocation price", in relation to an investment-linked contract, means the amount that represents the value of an investment unit for the purposes of the issue of the contract;

"investment-linked contract" has the same meaning as in the *Life Insurance Act 1994*;

"investment unit", in relation to an investment-linked contract, means a unit by reference to the value of which benefits under the contract are to be calculated.

'(2) If, on the day on which an investment-linked contract is cancelled, the amount that would have been the allocation price if the contract had been entered into on that day is less than the allocation price on the day on which the contract was entered into, the amount otherwise payable under subsection 64(2) is reduced by the adjustment amount.

'(3) If, on the day on which an investment linked contract is cancelled, the amount that would have been the allocation price if the contract had been entered into on that day is greater than the allocation price on the day on which the contract was entered into, the amount otherwise payable under subsection 64(2) is increased by the adjustment amount.

'(4) The adjustment amount is worked out as follows:

- (a) work out the difference between the allocation price on the day on which the contract was entered into and the allocation price on the day on which the contract is cancelled;
- (b) multiply the difference by the number of investment units to which the contract relates;
- (c) the result is the adjustment amount.'

Item 64, omit "*Life Insurance Act 1994*", substitute "*Life Insurance Act 1945* as in force immediately before the commencement of the *Life Insurance Act 1994*".

Schedule, as amended, agreed to.

Title—

On the motion of Mr Elliott, the title was amended by inserting "**and to repeal**" after "**amend**".

Title, as amended, agreed to.

Bill, as amended, agreed to, with an amended title.

Paper: Mr Elliott presented a supplementary explanatory memorandum to the Bill.

Consideration in detail concluded.

Ordered—That the Bill be reported to the House with amendments and an amended title.

7 LAW AND JUSTICE LEGISLATION AMENDMENT BILL (NO. 2) 1994

The order of the day having been read for the second reading—Mr Duncan (Parliamentary Secretary to the Attorney-General) moved—That the Bill be now read a second time.

Debate ensued.

Question—put and passed—Bill read a second time.

Leave granted for the motion for the Bill to be reported to be moved forthwith.

On the motion of Mr Duncan, Bill to be reported to the House without amendment.

8 ENVIRONMENT, RECREATION AND THE ARTS—STANDING COMMITTEE—REPORT ON ENVIRONMENTAL POLICIES WHICH STIMULATE EMPLOYMENT GROWTH—MOTION TO TAKE NOTE OF PAPER

The order of the day having been read for the resumption of the debate on the motion of Mr Langmore—That the House take note of the paper (*presented on 14 November 1994*), viz.:

Environment, Recreation and the Arts—Standing Committee—Report—Working with the environment: Opportunities for job growth, 14 November 1994—

Debate resumed.

Debate adjourned (Mr Sawford), and the resumption of the debate made an order of the day for the next sitting.

9 ADJOURNMENT

On the motion of Mr Sawford, the Main Committee adjourned at 2.29 p.m.

The Deputy Speaker fixed tomorrow at 10 a.m. for the next meeting of the Main Committee.

I. C. HARRIS

Clerk of the Main Committee