

86/197

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AUSTRALIAN REINSURANCE MARKET BILL 1986

Date introduced: 5 December 1986  
House: Senate  
Presented by: Senator the Hon. David Vigor

DIGEST OF BILL

Purpose

To establish an Australian Reinsurance Authority to carry on the business of reinsurance in Australia.

Background (from 86/119)

Reinsurance is an arrangement where original or direct insurers, who have written direct business, can distribute their potential liability by placing part of their risks to another insurer (the reinsurer) with the object of reducing the amount of their possible losses. The legal principles applicable to an ordinary contract of insurance between an insurer and insured will apply equally to a contract of reinsurance. Insurance companies regularly enter into reinsurance agreements or "treaties" where they have accepted greater risks than they are prepared to bear on their own.

The Insurance Act 1973 provides that only Lloyds insurers and bodies corporate can carry on insurance business in Australia and they must be authorised to do so.[1] Insurance business is defined in the Act to include reinsurance business (sub-section 3(1)). However, most reinsurance treaties are negotiated with overseas reinsurers.[2]

A company wishing to enter the insurance business must first satisfy the Treasurer that it has adequate reinsurance arrangements (section 23(d)). The Insurance Commissioner must approve the reinsurance arrangements and, amongst other things, the Commissioner will have regard to who is offering the reinsurance (sub-section 34(3)(e)). It is sometimes difficult to assess the security offered by an

overseas reinsurer; information concerning the funds and liquidity of overseas companies is not always readily available.[3] There is no overall regulation of the international trade in insurance and often an innocent party cannot recover against an unscrupulous reinsurer.

Every year an estimated \$2 billion leaves Australia in insurance and reinsurance premiums.[4] Of this amount more than \$1.3 billion is reinsurance premiums from the private sector. In 1984-85, private sector business placed directly with Lloyds' syndicates in Australia amounted to \$110 million. The Western Australian Development Corporation is planning to open the first Australian International Insurance Exchange in Perth in 1987. The exchange in Perth hopes to service the South-East Asia and Pacific rim region along the lines of Lloyds of London and the North American exchanges.

The Australian Reinsurance Market Bill 1986, introduced on 13 June 1986, was discharged from the Notice Paper on 5 December 1986. The provisions of this Bill are substantially similar, with the exception of the provisions dealing with the capacity of people and companies to enter into reinsurance agreements.

### **Main Provisions**

Words and phrases used in the Bill are defined in clause 3.

An Australian Reinsurance Market Authority (the Authority) is established by clause 6. The Authority will carry on the business of reinsurance (clause 7) and its aims will be to attract the reinsurance business of Australian insurance companies (clause 8).

The Authority will have power to do all things necessary to carry out reinsurance business (clause 9). However, it will be restricted to dealing with contracts for reinsurance only (clause 10). The Authority will be able to enter into agreements with bodies outside Australia for the purpose of sharing a risk (clause 11).

Clauses 14 to 21 will prohibit certain companies and other persons from entering reinsurance and insurance agreements or contracts except under specified circumstances.

The Board of Management of the Authority (the Board) will be established by clause 22. The Board will control the authority and determine Authority policy (clause 22). Clauses 24 to 32 deal with the membership of the Board, delegation of its powers, members' remuneration, leave, resignation, termination of appointments, disclosure of interests, acting appointments and meetings.

There will be a Managing Director and Deputy Managing Director of the Authority (clause 33). The duties of the Managing Director and the Deputy Managing Director, their appointment, the prohibition against them taking other employment, their remuneration, leave, provision for resignation, termination of appointment, disclosure of interests and acting appointments are dealt with by clauses 34 to 42 of the Bill.

The Board will fix the charges at which the Authority will enter into contracts of reinsurance (clause 46). The financial policy of the Authority will be based on sound commercial principles (clause 47). The Commonwealth may lend the Authority its capital (clause 48). The Authority will be able to borrow money from the Commonwealth (clause 53) and to borrow elsewhere or otherwise raise money, with the approval of the Treasurer (clause 54). The Treasurer may guarantee such borrowings (clause 55). The Authority will be a public authority to which the Audit Act 1901 applies (clause 58) and will be subject to Commonwealth taxation, other than income tax (clause 59).

Clause 60 will require the Board to report to the Minister on the conduct of the Authority.

Non-compliance with a provision of the Bill will not invalidate a contract of reinsurance entered into by the Authority (clause 62). The Minister's powers under the Bill may be delegated (clause 63). It will be an offence for past and present members of the Board and officers and employees of the Authority to pass on information regarding any person who has dealt with the Authority for the purposes of the Bill (clause 64). Elections of Board members are to be conducted by the Australian Electoral Commission (clause 65). Applications may be made to the Administrative Appeals Tribunal for reviews of decisions by the Authority concerning reinsurance agreements (clause 66). When applying for a contract of reinsurance or claiming under such a contract, it will be an offence to wilfully make a false or misleading statement (clause 67). Every quarter, the Authority will have to supply the Minister with a return

stating the contracts of reinsurance which have been entered into and are in force (clause 68). The Governor-General will be able to make regulations not inconsistent with the Bill and in particular will be able to prescribe penalties not exceeding a fine of \$200 or imprisonment for six months (clause 69).

For further information, if required, contact the Economics and Commerce Group.

5 March 1987

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#### References

1. Sutton, K.C.T., Insurance Law in Australia and New Zealand, Law Book Company 1980, p.570.
2. Thomas, R.G., Guidebook to Insurance Law in Australia and New Zealand, CCH 1981, p.18.
3. Ibid., 2.
4. Tyndale, P., Australia to Have Its Own Insurance Exchange, Financial Review, 29 July 1986.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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