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Appropriation (HIH Assistance) Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 162 2000–01

Appropriation (HIH Assistance) Bill 2001

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Law and Bills Digest and Economics, Commerce and Industrial
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Appropriation (HIH Assistance) Bill 2001

Date Introduced: 7 June 2001

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent

Purpose

To appropriate money to the extent of \$640 million to provide financial assistance to HIH eligible persons under criteria proposed by the Commonwealth on 21 May 2001 and to administer the Scheme. An HIH eligible person is a policy holder, insured or beneficiary under an insurance policy issued by one of the following 7 authorised general insurers under the *Insurance Act 1973* and has suffered a financial loss as a result of the insolvency of these companies.

- CIC Insurance Limited
- FAI General Insurance Company Limited
- FAI Reinsurances Pty Limited
- FAI Traders Insurance Company Pty Limited
- HIH Casualty and General Insurance Limited
- HIH Underwriting and Insurance (Australia) Pty Limited, and
- World Marine & General Insurances Pty Limited.

The financial assistance does not extend to other persons who may have suffered financial loss caused by the insolvency of other companies in the HIH Group.

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Background

The Background to this Digest is an extract from an E- Brief prepared by the Parliamentary Library.¹

On Thursday, 15 March 2001, HIH received approval from the NSW Supreme Court to place the company into provisional liquidation. Tony McGrath of KPMG was appointed as provisional liquidator to HIH and 17 of its controlled entities. Provisional liquidation is a temporary form of administration that gives HIH time for the provisional liquidators to review HIH operations and assess the financial position.

HIH comprised several separate government-licensed insurance companies, including HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited (FAI), CIC Insurance Limited (CIC) and World Marine and General Insurances Limited (WMG).

According to the HIH 2000 Annual Report the company had gross premium revenue of \$2.8 billion, total assets of \$8.0 billion, total liabilities of \$7.1 billion, with net assets of \$900 million.

On 11 May 2001, [the New South Wales Treasurer, Mr. Michael Egan](#) announced an emergency \$50 million package to compensate motor accident victims and home owners affected by the collapse of HIH. This initial announcement was followed by an increase of the NSW Government commitment to \$600 million on 22 May 2001.²

On 14 May 2001, [the Prime Minister announced](#) its initial response to the collapse of HIH. The Commonwealth Government announced:

- it was to open negotiations with other insurance companies with a view to them taking over the bad policies or the bad underwriting books of HIH
- it's intention to write to the Premiers and Chief Ministers seeking their co-operation to undertake a thorough review of State and Territory regulation with a view to introducing single national insurance schemes in compulsory third party, workers' compensation and builders' warranty insurance, and
- it would fast-track legislative changes (announced on 2 November 2000 by the Minister for Financial Services and Regulation, the Hon. Joe Hockey, MP) to the general insurance industry to improve capital adequacy.

On 14 May 2001, the [Victorian Minister for Finance, Lynne Kosky](#) announced a \$35 million rescue package for home-owners affected by the HIH collapse.

On 15 May 2001, the Prime Minister, The Hon John Howard, MP, and the Minister for Financial Services and Regulation, the Hon. Joe Hockey, MP,

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(<http://www.pm.gov.au/news/interviews/2001/interview1060.htm>) announced the Federal Government's Response to the collapse of HIH. This announcement included:

- the Government's decision to hold a Royal Commission into all matters relating to the HIH collapse, and³
- a package worth more than \$500 million to assist those people in hardship as a result of the collapse of HIH. This package is funded from the Federal Government budget.

On 15 May 2001, the Minister for Financial Services & Regulation, the Hon. Joe Hockey, MP, announced the details of the change in timetable for reforms to the prudential regulation of general insurance (outlined above). The legislation is planned to be passed by both the House and the Senate by October 2001 and will take effect from 1 July next year. The proposed phased implementation will also be shorter than initially foreshadowed by three years - brought forward from 2007 to 1 July 2004.

On 17 May 2001, the Minister for Financial Services & Regulation, the Hon. Joe Hockey, MP, announced the formation of a new non-profit company called HCS (HIH Claims Support Pty Ltd) (<http://www.hihsupport.com.au/>) to process the Government support package for HIH policyholders in hardship.

On 18 May 2001, the Minister for Financial Services & Regulation, Joe Hockey, MP, offered the services of the newly created HIH Claims Support Pty Ltd (<http://www.hihsupport.com.au/>) to the State and Territory Governments so they can process any financial assistance they have for HIH policyholders.

On 21 May 2001, the Minister for Financial Services & Regulation, Joe Hockey, MP, announced the criteria (<http://www.hihsupport.com.au/policyholders.htm>) for Commonwealth Government relief for certain general insurance policyholders suffering financial hardship as a result of the HIH collapse.

On 18 June 2001 the Prime Minister announced terms of reference and that Western Australian Supreme Court Judge Neville Owen will be the Royal Commissioner, to report by the end of June 2002.

Other Developments in Brief

There have been numerous applications made to the Supreme Court of New South Wales in relation to arrangements for the management of HIH's liquidation.

On 17 May 2001 in a judgement relating to HIH, His Honour Judge Barrett stated⁴

...the winding up of each of the companies concerned will be of its nature a long and complicated process probably extending over years rather than months and involving a very large number of claims under policies and otherwise. That being so there is a

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community interest in having the administration of claims dealt with in an orderly way, and orderly arrangements made for the provision of replacement and renewal insurance to policy holders who are left, in effect, without insurance by the company's collapse.

The rescue package establishes a not-for-profit company HIH Claims Support Pty Ltd (HCS) to administer the scheme. The HCS is a subsidiary of the Insurance Council of Australia. It is intended that payments under the Scheme will be made from a trust fund to be set up by the Commonwealth, and of which HCS will be the Trustee.⁵

Assistance is to be restricted to Australian citizens or permanent residents, Australian small business proprietors, (with 50 employees or less), and Australian based not-for-profit organisations. The Government's HIH Assistance Scheme will not cover some insurance that is mandated by State and Territory governments such as compulsory third-party motor vehicle insurance, workers' compensation, builders' warranty, and compulsory indemnity insurance for legal practitioners.⁶ Details on eligibility or otherwise, including that eligibility will be subject to an income test are contained in the Explanatory Memorandum, not in the proposed law.

The measures contained in this Bill provide for the finance to meet the Government's 21 May 2001 response to the failure of the HIH Insurance Group.

Main Provisions

Clause 3 is a definition section defining the meaning of an HIH company to be any of the seven companies in the HIH Insurance Group referred to in the paragraph on the Purpose of the Bill in this Digest. It also defines an HIH eligible person to be a person who is a policy holder, insured or beneficiary under a policy of insurance issued by an HIH company and who has suffered financial loss as result of the insolvency of the HIH companies.

The limitations specified in the Minister's second reading speech are not provided for in the Bill. The Explanatory Memorandum sets out the criteria for eligibility for financial assistance and foreshadows an income test in some circumstances. It also envisages the establishment of an appeal mechanism to consider disputes in relation to the application of the eligibility criteria and cases involving anomalies in the application of the criteria. The Explanatory Memorandum in addition states that in order to qualify, the event which entitles a person to make a claim must have occurred before 11 June 2001.⁷

As the Bill does not provide for the making of regulations setting out the criteria for eligibility, Government amendments to the Bill to give effect to the eligibility criteria by measures in the Bill or in regulations may be expected.

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Clause 4 formally appropriates \$640 million for the purposes of providing financial assistance and for meeting the administrative costs associated with providing that financial assistance.

Concluding Comments

There are two types of appropriation Acts, standing appropriations and annual appropriations. In *Brown v West*⁸ the High Court explained the distinction between the two as follows:

Historically, the need of the Executive government to seek annual appropriations of the consolidated Revenue fund ‘for the service of the year’ or ‘in respect of the year’ has been the means, and it remains one of the critical means, by which the Parliament retains an ultimate control over the public purse strings, but the Parliament forgoes its annually-exercised power over expenditure by government when a law containing a standing appropriation is enacted.

This appropriation is a standing appropriation for a particular purpose that is stated in the Bill. The amount is stipulated and known. A future Parliament can revisit the appropriation but there is no on-going Parliamentary scrutiny of the rate and amount of expenditure appropriated from Consolidated Revenue as is the case for annual appropriations.

It is yet early days to know how far the \$640 million assistance package for persons who had suffered financial loss under policies issued by the 7 HIH companies will go to meet the actual losses. The AFR on 12 June 2001 reported that a large proportion of small business operators caught in the HIH debacle, claimed to be the biggest collapse in Australian corporate history, are going to fall through the financial safety nets set by the Commonwealth and State Governments for assistance. It also stated that the Council of Small Business of Australia (COSBOA) will make a submission to the Federal Government pointing out the difficulties facing small business.⁹

If the appropriation of \$640 million proves inadequate to meet claims a further appropriation will be required if the financial assistance scheme is not to end abruptly without meeting the financial losses of all persons for whom the measures in the Bill were intended to assist.

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Endnotes

- 1 Current Issues *HIH Insurance Collapse at*
http://www.aph.gov.au/library/intguide/econ/hih_insurance.htm
- 2 Collapse costs NSW \$600m, AFR 22 May 2001.
- 3 ABC News Online at C:\WINDOWS\TEMP\ABC News - WA judge to head HIH Royal Commission.htm
- 4 CIC; HIH Casualty & General; HIH Insurance [2001] NSWSC 438
- 5 The Hon Joe Hockey, Minister for Financial Services & Regulation, *Second Reading Speech*, 7 June 2001.
- 6 *ibid.*
- 7 Explanatory Memorandum to the Appropriation (HIH Assistance) Bill 2001, paragraphs 1.4 to 1.8.
- 8 *Brown v West* (1990) 169 CLR 195 at 207.
- 9 Small operators hit by HIH will miss safety net – Swamped by flow-on effect; AFR 12 June 2001.

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