

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

INSURANCE (AGENTS AND BROKERS) BILL 1983  
EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon P.J. Keating MP)

## Insurance (Agents and Brokers) Bill 1983

### GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The Bill contains provisions designed to regulate the activities of life and general insurance brokers and, to an extent, life and general insurance agents and is largely based on recommendations made in the Report of the Law Reform Commission entitled "Insurance Agents and Brokers" issued on 25 January 1980 and tabled in Parliament on 16 September 1980.

The Bill is aimed at regulating this area of the insurance industry with a view to strengthening the financial stability of the industry overall; protecting the insuring public against the negligence or misconduct of an agent or broker; the minimisation of practices harmful to the insuring public; and the maintenance of standards of conduct of, and quality of advice offered by, agents and brokers.

The main provisions of the Bill will:

- establish the responsibilities of insurers for the conduct of their intermediaries;
- determine the arrangements concerning the discharge of financial obligations between an insured and intermediaries;

- deal with questions of misrepresentation by insurance intermediaries;
- require annual registration of brokers and permit suspension or cancellation of registration;
- establish financial controls and requirements for insurance indemnifying brokers in respect of liabilities arising out of or in the course of their business operations;
- establish measures to minimise the risk of compromise of a broker's impartiality; and
- provide for a number of limits or checks on brokers holding clients' moneys to speed up their remittance to insurers and to ensure that moneys held by brokers and due to insureds are paid expeditiously.

The registration requirements of the Bill and related provisions are to be administered by the Insurance Commissioner with respect to general insurance brokers and the Life Insurance Commissioner with respect to life insurance brokers.

EXPLANATORY NOTES ON INSURANCE (AGENTS AND BROKERS) BILL

PART I - PRELIMINARY

CLAUSE 1 SHORT TITLE

Self explanatory.

CLAUSE 2 COMMENCEMENT

This clause provides for most of the provisions of the Bill to come into operation on Royal Assent and for those provisions related to the registration of insurance brokers to come into operation by Proclamation.

CLAUSE 3 REPORT TO BE AN AID TO INTERPRETATION

This clause allows regard to be had, in interpreting the provisions of the legislation, to the Australian Law Reform Commission's Report on this subject but does not prevent regard being had to other matters.

CLAUSE 4 CROWN TO BE BOUND

Self explanatory.

CLAUSE 5 EXTENSION TO EXTERNAL TERRITORIES

Self explanatory.

## CLAUSE 6 EFFECT OF ACT ON OTHER LAWS

This clause provides that the Bill is not intended to affect the operation of any other law except where the Bill either expressly or necessarily provides otherwise.

## CLAUSE 7 APPLICATION OF ACT

Subject to clauses 8 and 9, the legislation extends to all insurance contracts and proposed insurance contracts and conduct connected therewith where the proper law of which is the law of a State or Territory to which this Bill will apply including where the contract, or a related contract, specifies that the proper law is some foreign law.

## CLAUSE 8 EXCEPTIONS TO APPLICATION OF ACT

The legislation is not to apply to contracts and proposed contracts of reinsurance (which do not directly affect the relationship between the insured, the intermediary and the insurer) and of health insurance offered by those funds subject to the provisions of the National Health Act.

## CLAUSE 9 STATE INSURANCE

This clause provides for the legislation not to apply to State insurance or to co-insurance involving a State insurer.

## CLAUSE 10 INTERPRETATION

This clause sets out definitions of a number of words and expressions for the purposes of the Bill.

## PART II - GENERAL

## CLAUSE 11 LIABILITY OF INSURER FOR AGENTS AND EMPLOYEES

This clause provides that:

- . an insurer is responsible for conduct of its agents or employees which is relied on reasonably and in good faith by an insured or intending insured, even if the agent or employee acts outside the scope of his authority or employment;
- . an insurer is responsible for loss or damage resulting from such conduct, although the agent or employee remains liable to the insured or intending insured;

- . an agreement seeking to limit this responsibility is ineffective and it is an offence to make or offer to make such an agreement.

CLAUSE 12 CERTAIN INSURANCE INTERMEDIARIES TO BE AGENTS OF  
INSURERS

This clause provides that insurance intermediaries are agents of the insurer, not the insured. The only exceptions are insurance intermediaries registered under this Act as brokers in connection with the classes of insurance in respect of which they are registered.

CLAUSE 13 REPRESENTATIONS, &C., BY INTERMEDIARIES

This clause provides that it is an offence for an insurance intermediary, or for an agent or employee of an intermediary, wilfully and with intent to deceive to:

- . make false statements intended to be acted upon as to the amount payable under, or the provisions of, a contract or proposed contract of insurance;
- . misrecord or fail to disclose information that is material, or advise an intending insured to misrecord or fail to disclose information that is material, on a proposal form submitted to an insurer or otherwise to the insurer in relation to a proposed contract of insurance;

- . misrecord or fail to disclose information that is material, or advise an insured to misrecord or fail to disclose information that is material, on a claim form submitted to an insurer or otherwise to the insurer in relation to a claim under a contract of insurance.

#### CLAUSE 14 EFFECT OF PAYMENTS TO INTERMEDIARIES

Sub-clauses 14(1) and (2) provide that an insurer is responsible for moneys payable to the insurer which are received from an insured, or intending insured, by an insurance intermediary.

Sub-clause 14(3) provides that an insurer remains liable to an insured for any moneys payable to the insured by the insurer which were paid to an insurance intermediary.

Sub-clauses 14(4) and (5) provide that an agreement purporting to limit such responsibility or liability is void except to the extent that it enables an intermediary to set off against moneys payable to the insured moneys payable by the insured to the intermediary in respect of premiums.



## CLAUSE 15 LIABILITY IN RELATION TO BINDERS

This clause provides that where an insurance intermediary deals with an insurance contract or claim under a binder, the intermediary shall be deemed to be an agent of the insurer (who becomes responsible for his conduct under sub-clause 11(1)) not of the insured.

CLAUSE 16 DISCLOSURE BY PERSONS ACTING UNDER BINDERS IN  
RESPECT OF INSURANCE CONTRACTS

This clause provides that an insurance intermediary shall not act under a binder in respect of an insurance contract unless he has first informed the intending insured that he will be acting under an agreement with the insurer and will be effecting the contract as agent of the insurer, not of the insured. Contracts entered into without such information having been given are voidable at the option of the insured subject to certain rights and principles.

CLAUSE 17 DISCLOSURE BY PERSONS ACTING UNDER BINDERS IN  
RESPECT OF CLAIMS

Similarly, this clause provides that an insurance intermediary shall not act under a binder in respect of an insurance claim unless he has first informed the insured that he will be acting under an agreement with the insurer and will be settling the claim as agent of the insurer not of the insured.

PART III - REGISTRATION OF INSURANCE BROKERS

CLAUSE 18 INTERPRETATION

This clause provides that if the Bill is to apply to an external Territory, the commencement of this Part in relation to that Territory shall be interpreted as being the date on which the Act applies to that Territory or the commencement of this Part whichever is the later.

CLAUSE 19 BROKERS NOT TO CARRY ON BUSINESS UNLESS REGISTERED

This clause provides that a person shall not, after the expiration of 6 months after this Part commences, carry on business as an insurance broker in relation to life insurance business or general insurance business unless he is registered in respect of that class of insurance business or both classes and unless indemnity insurance in respect of any liabilities prescribed is in force.

Sub-clause (3) provides that persons who arrange or effect contracts of insurance as an incidence of their main business or profession do not need to be registered. (Such persons are deemed by clause 12 to be agents of the insurer if they are not registered).

## CLAUSE 20 APPLICATIONS FOR REGISTRATION

This clause specifies how an application for registration should be made and provides penalties for false or misleading information submitted in connection with an application.

## CLAUSE 21 REGISTRATION OF BROKERS

This clause provides that the Insurance Commissioner or the Life Insurance Commissioner shall register an applicant for one year provided specified indemnity insurance is in force, satisfactory audited accounts, where appropriate, have been provided and the appropriate fee has been paid. Sub-clause (2) provides, however, that an applicant shall not be registered if the Commissioner is aware that the applicant or one of its directors, employees or agents has been convicted of an offence referred to in sub-clause 22(1).

Sub-clause (4) provides that registration shall be cancelled upon application by the registered broker.

## CLAUSE 22 SUSPENSION OR CANCELLATION OF REGISTRATION

This clause provides that the relevant Commissioner may suspend, for an appropriate period, or cancel registration if the person, or one of its directors, employees or agents is convicted of an offence against any law of any country in respect of conduct of insurance or in respect of dishonest conduct, which offence, in the Commissioner's opinion, renders the person unfit to carry on insurance broking business.

## CLAUSE 23 INSURANCE BROKING ACCOUNTS

This clause provides that a registered insurance broker shall pay into an "insurance broking account" maintained with a bank all moneys received from an insured or intending insured for an insurer, or from an insurer for an insured or intending insured. Sub-clause (3) limits the purposes for which moneys may be withdrawn from that account. Sub-clause (4) provides for the investment in specified securities of funds received from an insured or intending insured for general (but not for life) insurance contracts.

Sub-clauses (6) to (8) provide for the broker to make up any loss, and to retain any profit, resulting when such investments are realised and to retain any interest, dividend or other income earned from those investments or from his insurance broking account. Sub-clauses (9) and (10) provide that moneys in the broking account and the securities in which those funds have been invested may not be attached, except by the persons on whose behalf they were received but had not been paid.

#### CLAUSE 24 DUTIES OF BROKER IN RELATION TO PREMIUMS, &C.

This clause provides for a number of limits or checks on a broker holding clients' moneys in relation to the placement of insurance business and generally makes a broker more accountable for timely payment of those moneys to those entitled to receive them.

Sub-clause (1) provides for the broker, where he has received premium moneys, to pay over those moneys to the insurer, where the related contract has been accepted, within 30 days or as soon as practicable thereafter from the date the amount of the premium is known.

Sub-clause (2) reinforces sub-clause (1) by taking into account the situation where the contract is accepted by another intermediary on behalf of an insurer. In such cases sub-clause (2) allows for the premium to be paid to that other intermediary.

Sub-clause (3) makes it clear that an insurer may receive the premium at a time earlier than that referred to in sub-clause (1).

Sub-clause (4) provides that where a broker has received premium moneys and the related contract has been accepted on behalf of an insurer but the broker does not know the amount of the premium to be paid he must inform the insurer of this within 10 days of the contract being accepted.

Sub-clause (5) reinforces sub-clause (4) by taking into account the situation where the contract is accepted by another intermediary on behalf of an insurer. In such cases the information required under sub-clause (4) may be furnished to that other intermediary.

Sub-clause (6) provides that where a broker has received moneys from his client and a related contract has not been accepted within 30 days of the broker receiving those moneys, the broker has 7 days within which to inform his client of that fact.

Sub-clause (7) provides that where a broker receives moneys from an insurer, eg claims moneys, for an insured the broker must pay them to, or on behalf of, the insured within 7 days of their receipt or as soon as practicable thereafter.

Sub-clause (8) makes it clear than an insured may receive moneys referred to in sub-clause (7) at a time earlier than that referred to in that sub-clause.

Sub-clause (9) prevents an insurer, insured or intending insured from consenting to an arrangement with a broker which would undermine the requirements of clause 24.

#### CLAUSE 25 DISTRIBUTION OF INSURANCE BROKING ACCOUNT MONEYS ON INSOLVENCY, &C.

This clause sets out how moneys in insurance broking accounts and securities in which those moneys have been invested are to be distributed if a registered insurance broker becomes insolvent.

#### CLAUSE 26 BROKERS NOT BOUND BY CERTAIN AGREEMENTS, &C.

This clause provides that a registered insurance broker is not bound by any agreement which would prevent him placing his business with any insurer he wishes (except when he is effecting a contract under a binder given by an insurer); and that it is an offence to enter into any such agreement.

#### CLAUSE 27 MISDESCRIPTION OF BUSINESS

This clause provides that a registered insurance broker shall not describe himself or his business in such a way as to lead persons to consider he is a registered broker in a class of insurance in which he is not registered or that he is an insurer.

## CLAUSE 28 BROKERS TO DISCLOSE AGENCY

This clause provides that an insurance broker registered in either life or general insurance must disclose to an intending insured, when acting in respect of the other class of insurance, that he is acting as agent of the insurer in respect of the other class.

## PART IV - MISCELLANEOUS

## CLAUSE 29 BROKERS TO GIVE CERTAIN INFORMATION

This clause provides that an insurance broker must disclose to the insured and to the insurer any remuneration or other benefit received or receivable by the broker from, or on behalf of, the insurer or the insured in relation to any contract, other than one effected under a binder where the broker has advised the insured accordingly.

Brokers are also required to inform the insured of the name and place of business of the insurer.



CLAUSE 30 RESTRICTIONS AS TO RECEIPT AND PAYMENT OF  
REMUNERATION

This clause provides that an insurance broker may not receive from, or on behalf of, an insurer remuneration other than that related to particular contracts or settling particular claims or to business not connected with insurance contracts. It also provides that an insurer shall not pay and a broker shall not receive remuneration at a rate that varies in accordance with the level of business placed by the broker with that insurer. These provisions do not apply where the broker is acting under a binder and where he has advised the insured accordingly.

CLAUSE 31 INSURANCE CLAIMS MONEYS

This clause provides that in the event of bankruptcy funds paid to any broker under his indemnity insurance policy in respect of any liability to an insurer, an insured or intending insured must be paid to the person to whom the broker is liable under the policy and may not be distributed to other creditors.

## CLAUSE 32 CERTAIN MONEYS TO BE TRUST MONEYS

This clause provides that moneys received by persons (other than registered brokers) as agent of an insurer in relation to a contract of insurance are to be subject to a trust in favour of that insurer and are to be paid over as soon as is reasonably practicable. Such moneys are not subject to attachment, execution or set off.

## CLAUSE 33 BROKERS NOT TO BE DIRECTORS, &amp;C.

This clause forbids cross-directorships and cross-employment between insurance brokers and insurers and includes a holding company or a subsidiary of the insurer or broker.

## CLAUSE 34 MISDESCRIPTION BY INSURANCE INTERMEDIARIES

This clause provides that an insurance intermediary shall not misdescribe himself or his business in terms which would lead a person to believe that the intermediary is a broker (where he is not a registered insurance broker) or an insurer.

CLAUSE 35 LIABILITY OF DIRECTORS AND EMPLOYEES

Self explanatory.

CLAUSE 36 HEARING BEFORE MAKING ADVERSE DECISION

This clause provides for a person likely to be adversely affected by a decision of a Commissioner to be given an opportunity to present evidence before such a decision is made and to appeal to the Administrative Appeals Tribunal against any such decision.

CLAUSE 37 APPLICATION FOR REVIEW

This clause provides for appeals to be made to the Administrative Appeals Tribunal against any decision of a Commissioner except a decision to delegate a power under clause 42. Decisions made under a delegation would, of course, be reviewable.

CLAUSE 38 STATEMENT TO ACCOMPANY NOTICE OF DECISIONS

This clause provides for notification of appeal rights to persons affected by a decision of a Commissioner.

CLAUSE 39 ACCOUNTS AND AUDIT

Self explanatory.

CLAUSE 40 CERTAIN PARTICULARS TO BE INCLUDED IN REPORTS

This clause provides for the Insurance Commissioner and the Life Insurance Commissioner to include in their respective annual reports to the Treasurer references to the workings of this Act in so far as it concerns their administrative functions.

CLAUSE 41 PROSECUTIONS

This clause specifies which offences are indictable, how such offences may be dealt with by a court of summary jurisdiction and how non-indictable offences may be prosecuted.

CLAUSE 42 DELEGATION

This clause enables a Commissioner to delegate his powers under the Act except for the proviso that he cannot delegate his power to delegate.

CLAUSE 43 Regulations

Self explanatory.







