Insurance Legislation Amendment Bill 1989

Date Introduced: 2 March 1989
House: House of Representatives
Presented by: Hon. Peter Morris, M.P., Minister Assisting the Treasurer

Digest of Bill

Purpose
To tighten the supervisory provisions in various insurance legislation, particularly with regard to foreign insurance agents and actuaries.

Background
A similar Bill was introduced into the House of Representatives in November 1988 and passed the House in the same month. That Bill contained similar provisions in respect of the supervision of the industry and also imposed a supervisory fee on insurance companies. The decision to reintroduce the legislation, with the fees contained in separate Bills, results from the High Court decision in Air Caledonie International V. The Commonwealth\(^1\), which dealt with the $10 immigration fee for people entering Australia. The basis of the decision was that the fee was not a fee for service but was characterised as a tax. This was based on a number of reasons, such as the compulsory nature of the charge, that there was no identifiable service provided to the individual who had to pay the charge and the fact that the funds raised went to consolidated revenue to offset the general administrative costs of the Department. Based on the reasoning that the charge was in fact a tax, the provision imposing the charge was ruled to be invalid on the ground that it breached section 55 of the Constitution which provides that a law imposing tax is to deal only with the imposition of the tax and not with any other matter. Fearing that the supervisory charges may also be deemed a tax and so invalid if included in a law that dealt with other matters, the imposition of fees is dealt with in the General Insurance Supervisory Levy Bill 1989 and the Life Insurance Supervisory Levy Bill 1989.

The insurance industry is supervised by the Insurance and Superannuation Commission which was established by the Insurance and Superannuation Commissioner Act 1987. The Commission was established formally on 23 November 1987 and took over the work previously performed by the Offices of Insurance Commissioner and Life Insurance Commissioner. As well as supervising the industry, the Commission provides advice to the government and liaises with the industry. In the year ended 30 June 1988 the Commission investigated 75 complaints, mainly concerned with brokers.

Recent years have seen large increases in the turnover of life insurance companies. Annual premiums have increased by over 10% each year since 1984, with
a 14.8% increase in 1987.\textsuperscript{2} This has led to an increase in the workload of the Commission, which has been reflected in the resources allocated to the Commission. From a staffing level of 142 in 1987–88, it is estimated that the Commission’s staffing level in 1988–89 will be 185. This is reflected also in the cost of the Commission, which is estimated to increase from $6.6 million in 1987–88 to an estimated $7.8 million in 1988–89.\textsuperscript{3} (It should be noted that not all of these costs are associated with the insurance industry, as the Commission also deals with the superannuation industry.)

In the 1988–89 Budget, the Treasurer announced that an annual supervisory fee would be imposed on insurance companies to recover the costs of the Commission. The fee will be $19 000 per year for life insurance companies and $11 000 for general insurance companies. The explanatory memorandum to the Bill estimates that the fee will raise $2.9 million in a full year. The actual level of the fee will be determined by regulation.

As part of the program to tighten the supervision of the industry, it has been announced that people who act as agents for foreign insurers must be registered and hold an indemnity. This aims to bring such agents closer to the position of registered Australian insurers. Another measure to be implemented is the creation of the position of appointed actuary for each registered insurance company. This will allow the easy identification of the responsible actuary and ensure that the actuary has sufficient experience.

Main Provisions

Insurance (Agents and Brokers) Act 1984

Proposed section 25A will require people who have been a registered insurance broker at any time during a year to lodge an annual return. It will be an offence to fail to lodge a return, with maximum penalties of a $1000 fine for people and a $5000 fine for corporations (clause 12).

Clause 15 will insert a new Part IIIA, which deals with the registration of foreign insurance agents, into this Act. Proposed section 31B will make it an offence to carry on business as a foreign insurance agent after six months of the Bill coming into force unless the person is a registered insurance broker, or registered foreign insurance agent, and has indemnity to the extent prescribed. The maximum penalties for a breach of the provision will be a $5000 fine and/or two years imprisonment for people and a $25 000 fine for corporations. (However, proposed section 31G provides that where a person who operated as a foreign insurance agent has applied for registration within the six months and the application has not been determined within that period, it will not be an offence for that person to continue the business).

Proposed section 31C deals with applications for registration and makes it an offence, with the same penalties as outlined above, to make false or misleading statements or to provide false information in an application. The Commissioner is to register foreign insurance agents if satisfied that they have the appropriate indemnity, have paid the prescribed fee and have provided a copy
of each agreement that authorises the agent to arrange insurance contracts (proposed section 31D).

Suspension and cancellation of registration are dealt with in proposed section 31H. Basically, the Commissioner may suspend or cancel registration where the person is convicted of an offence against any insurance law or an offence involving dishonest conduct. The Commissioner also will be able to set conditions under which such people may continue to carry on business.

Registered foreign insurance agents are to provide annual returns (proposed section 31J) and to notify any foreign agency agreement they enter into (proposed section 31K).

Life Insurance Act 1945
A new Division, dealing with appointed actuaries, will be inserted into this Act by clause 27. A person may only be an appointed actuary of a company if they have been a Fellow of the Institute of Actuaries of Australia for at least five years or the Commissioner has, at the request of the company involved, approved the person (proposed section 47A). Proposed section 47B will require companies registered under this Act to appoint an appointed actuary within three months of this amendment coming into force. Where a person ceases to be the appointed actuary, another is to be appointed within six weeks.

References


For further information, if required, contact the Law and Government Group.

8 March 1989

Bills Digest Service
Legislative Research Service

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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