Date Introduced: 7 December 1983
House: Senate
Presented by: Senator Gareth Evans, Attorney-General

Short Digest of Bill

Purpose

To regulate insurance agents and brokers, largely as recommended by the Law Reform Commission in its Report tabled in 1980, in both the general insurance and life assurance industries.

Background

The most practical aspect of an agency relationship is the ability of the agent to contractually bind his principal to the terms of a contract. An insurance agent is a person working as agent for the insurer. An "insurance broker" on the other hand is in a continuing business on his own account and is defined in clause 10 as a person carrying on the business of arranging insurance contracts, as agent for intending insureds. Persons wishing to effect insurance frequently retain a broker, and thereby cloak him with sufficient authority to choose and negotiate with an insurer. This has led to a number of abuses. For example, the broker may delay in forwarding the premium to the insurer. If an intervening loss is sustained the insurer may repudiate the claim.

The term "insurance intermediary" is defined in the Bill to comprise both insurance agents and brokers, agents for the insurer and insured respectively.

Insurance law reform and regulation of insurance intermediaries was referred to the Australian Law Reform Commission resulting in a Report in 1980 including draft legislation[1]. The reference included examination of differences between States, in areas of law which touch insurance business. Although brokers technically act as agent for the insured, many brokers are agents of one or more insurers under "binder" arrangements which permit brokers to accept specified types of risks on the insurer's behalf, forwarding details to the insurer only at monthly or
similar intervals. Section 12 of Queensland's Insurance Act 1960 forbids a licenced general insurance broker from acting as agent of an insurer. The Queensland Act also requires professional indemnity insurance for brokers[2]. The Law Reform Commission reported that nearly 30 per cent of Australian insurance broking houses did not have professional indemnity cover.

Since a broker insolvency may even put insurance houses in difficulty, to the consternation of the insurer's policyholders, the Law Reform Commission considered occupational regulation for brokers, including the imposition of standards of financial probity, "amply justified"[3]. The provision of audited accounts by registered brokers would be required by sub-clause 21(1) of the Bill.

The Law Reform Commission favoured compulsory registration of insurance agents. It also considered excluding from the need for registration persons such as bankers and solicitors involved in a transaction to which insurance is ancillary and therefore acting unwittingly as insurance agents[4].

Main Provisions

Under section 51(xiv) of the Constitution the Commonwealth has power to legislate with respect to insurance, other than intra-State State insurance. The scope of the Bill is set out in clauses 6 to 9. The Bill applies in the States and Territories to contracts of insurance governed by the law of those States and Territories. The Act does not apply to contracts of reinsurance or health insurance, to State insurance or to contracts where the State is a joint insurer with another.

Clause 3 permits regard to be had to the Law Reform Commission Report in the interpretation of the Bill. The provision marks an exception to the general rule that ancillary materials should not be used as an aid of statutory interpretation.

Part III (clauses 18 to 28) provides for registration of insurance brokers, defined as persons carrying on business as agent for intending insureds. In the case of general insurance business, registration is administered by the Insurance Commissioner appointed under the Insurance Act 1973; in the case of life insurance business, the Life Insurance Commissioner appointed under the Life Insurance Act 1945 is responsible. Penalties are prescribed for carrying on business without registration, six months after Part III, by Proclamation, commences.
Registration involves lodgment of audited accounts of insurance business. Registration may be suspended or cancelled following dishonest conduct or commission of certain offences.

Clause 23 requires registered insurance brokers to operate an insurance broking account, through which all premium moneys etc. are to pass. The securities in which amounts in the account may be invested are to be prescribed. The disposition of funds in the account following bankruptcy or, in the case of a company receivership of the broker is regulated by clause 25, which specifies a priority for the settlement of outstanding liabilities. In particular insureds under contracts arranged by the broker are to be paid the amounts to which they are entitled.

Clause 24 provides time limits, to ensure expeditious payment of sums owing to the insured or to the insurer by the broker. A 30 day limit applies for forwarding on of the premium to the insurer.

Clause 11, in Part II, renders the insurer responsible for conduct of the insurer's agents and employees, on which the intending insured could reasonably be expected to rely and did in fact rely. Clause 12 further provides that all insurance intermediaries, other than registered insurance brokers, are deemed to be agents of the insurer.

Conduct of insurance intermediaries is regulated in some detail by clause 13 in relation to both proposals and claims. A penalty is prescribed for deliberate misrepresentation or for writing on a form false or misleading statements or omitting material information with intent to deceive.

By clause 14 payment to an insurance intermediary is deemed to discharge any liability to the insurer. This will protect the insured in cases where the intermediary does not forward the premium and an insured would otherwise be without cover or where a second premium is demanded.

Other provisions in Part IV require disclosure to insureds of any remuneration to the broker other than under a binder previously disclosed to the insured. Review, of decisions made under the Bill, by the Administrative Appeals
Tribunal, and an annual report from the Insurance and Life Insurance Commissioners within their respective responsibilities are also provided for.

For further information, if required, contact:

20 December 1983

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References

2. op.cit., p.56.
3. op.cit., p.67.
4. op.cit., p.76.