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Life Insurance (Conduct and Disclosure) Bill 1998

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LIFE INSURANCE (CONDUCT AND DISCLOSURE) BILL 1998

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Treasurer, Senator the Hon Rod Kemp)

LIFE INSURANCE (CONDUCT AND DISCLOSURE) BILL 1998

GENERAL OUTLINE

This Bill will introduce a range of consumer protection initiatives for the life insurance industry.

The measures are designed to improve information flows between life insurance companies and consumers. The measures will improve efficiency in the market by enabling consumers to better negotiate and compare alternative complex financial products. The measures will, inter alia, more closely align the regulation of life insurance advisers with comparable provisions relating to the regulation of securities dealers and their representatives in the Corporations Law, increase the accountability of life insurance companies to consumers and provide for a more extensive range of civil remedies for consumers.

This Bill will impose product disclosure requirements and provisions relating to the conduct of life insurance advisers comparable where appropriate to those of the Corporations Law. Life companies will be subject to a general requirement to disclose all material information that a consumer could reasonably expect to need in order to make an informed purchasing decision. Life insurance advisers will be required, when advising a client, to disclose the capacity in which they act (that is, by whom they're authorised and the extent of their authority) and any benefit or advantage that they may receive in the advising or selling process. The Bill will ensure greater avenues of redress for consumers who suffer loss as a result of inappropriate advice provided by life insurance advisers. Those affected by a contravention of the provisions, in addition to the Australian Securities and Investments Commission, may apply to the Court for an injunction.

Civil and criminal sanctions will apply for misleading and deceptive statements or breach of requirements by a life insurance company, broker or adviser relating to the advising or selling process. Consumers will also benefit from the introduction of the 'rebuttable presumption' provision in the Bill which will encourage life companies to keep adequate records of advice provided to their customers.

Currently, conduct within the life insurance industry is regulated to a large extent by non-legislative instruments such as a Code of Practice and Circulars on such matters as product disclosure rules by the Insurance and Superannuation Commission. The Bill will enable these guidelines to be given statutory backing through subordinate legislation. This reserve power will operate as a strong deterrent against non-compliance by life companies.

FINANCIAL IMPACT STATEMENT

There is no financial impact as a result of these measures.

REGULATION IMPACT STATEMENT

Problem Identification

The problems addressed by this Act are:

- a. serious information problems faced by consumers purchasing life insurance products which generally involve long-term contractual obligations;
- b. shortcomings in written and oral life insurance information/advice, including sales material; and
- c. marked disparities in knowledge and information between insurance suppliers and consumers which place consumers in a weak bargaining position.

Specification Of Regulatory Objectives

The objectives of the proposed regulatory measures are to enhance life insurance consumer protection through increased life company accountability, statutory remedies and sanctions, disclosure and other requirements to improve the quality of information disclosure to consumers and to enable them to make informed decisions when purchasing or maintaining life insurance products.

Identification Of Alternatives

Alternative regulatory mechanisms for consumer protection

Option 1: No specific action

Under this option no measures would be introduced, and ASIC and the life insurance industry would continue to operate under current prudential requirements, supplemented by non legislative guidelines.

Option 2: Information strategy

The option would involve a comprehensive Government information campaign aimed at enhancing consumer awareness of life insurance.

Option 3: Life Insurance (Conduct And Disclosure) Bill 1998

This option would involve introducing *the Life Insurance (Conduct and Disclosure) Bill 1998* to principally address information asymmetries and consumer bargaining imbalances in the life insurance market.

Impact Analysis

Impact Group Identification

Groups likely to be affected by the proposed consumer protection measures

include life insurance companies, life insurance and investment advisers, life brokers, consumers and policy owners.

Assessment of Costs and Benefits

An assessment of the costs and benefits of Options 1, 2 and 3 above is outlined below.

Option 1: No specific action

Any benefits from this option in terms of savings in administrative costs by not introducing the *Life Insurance (Conduct and Disclosure) Bill 1998* and associated legislation would be offset by the continuance of market failures; viz, some shortcomings in the quality of written and oral life insurance information provided for consumers in the market, and the weak bargaining position of consumers when attempting to research and negotiate life insurance purchases. Such market failures have been responsible at times for industry instability through bad publicity and relatively high rates of policy cancellations. As life insurance often serves as retirement income streams, industry instability has implications for the Government's retirement incomes policy of encouraging people to save adequately for their retirement.

Option 2: Information strategy

The advantage of this alternative is the long term benefits that could be achieved through an information campaign aimed at educating consumers about life insurance products and their advantages for retirement income arrangements. The disadvantage is that the Government would need to commit itself to a long-term and costly information campaign to achieve any lasting benefits.

Option 3: Life Insurance (Conduct and Disclosure) Bill 1998

The advantage of this option is that it will lift the standard and quality of life insurance service and advice, improve transparency and ensure that appropriate remedies and sanctions are made available to consumers. The option will also enable statutory backing to be given to various information disclosure requirements and a Code of Practice, that currently exist as non-enforceable guidelines. A disadvantage is that a minority of life insurance advisers may argue that the proposed measures are too intrusive for life insurance selling practices. However, the majority of the industry sees considerable benefits with the proposed measures in rehabilitating the image of the industry, raising industry standards and reinforcing consumer respect and trust. As the industry is generally already complying with many of the standards required by the consumer protection measures, industry compliance costs will be minimal.

Other Requirements

Consultation

A wide ranging consultative process has been undertaken with industry bodies, consumer groups, professional bodies and others on the proposed measures and there is general acceptance of the measures from these stakeholders. The bodies consulted include the Investment and Financial Services Association, the National Insurance Brokers Association, the Association of Superannuation Funds of Australia, the Association of Financial Advisers, the Consumers' Federation of Australia, the Australian Consumers Association, Attorney-General's, Department of Industry, Science and Tourism (Federal Bureau of Consumer Affairs), the Australian Competition and Consumer Commission, Treasury and the Australian Securities Commission.

Review

It is anticipated that the operation of this Act will be reviewed in conjunction with proposals to implement the Corporations Law Economic Reform Program.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

OUTLINE OF THE PART

1. The object of this Part is to prescribe the scope and timing of the application of the Act and to provide definitions for the terms used.

Clause 1 Short title

2. This clause provides for the Act to be cited as the *Life Insurance (Conduct and Disclosure) Act 1998*.

Clause 2 Commencement

3. This clause provides for the commencement of the Act. In a number of instances the commencement date is linked to the commencement of other Acts and contains transitional provisions to take account of changing administrative arrangements.

4. Clauses 1, 2 and 15 of the Act come into operation on the day the Act receives the Royal Assent.

5. Schedule 1 of the Act provides for the Australian Securities and Investments Commission (ASIC) to have general administration of the Act. Schedule 1 is to commence at the same time as clause 3 if ASIC has been made operational by the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*. If ASIC is not operational at the time clause 3 commences, then Schedule 1 will commence immediately after ASIC is made operational by the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*.

6. The remaining provisions and Schedule 2 will commence on a day to be fixed by Proclamation or if no Proclamation is made within six months after the Act receives Royal Assent, the first day after the end of that six month period.

7. Schedule 2 contains transitional provisions which provide for the Insurance and Superannuation Commissioner to administer the Act if ASIC has not been established when the Act commences. Schedule 2 does not commence unless it does so before Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* which will establish ASIC.

Clause 3 Object of the Act

8. This clause sets out the object of the Act which is to ensure, as far as possible, that current and prospective life insurance policy owners, beneficiaries and prospective beneficiaries receive all information that they would reasonably require to enable them to make an informed choice about deciding whether to enter into, vary continue or discontinue a life policy.

9. These aims are achieved by establishing obligations that require life companies, life brokers and their respective advisers to be accountable for their conduct and to provide consumers with adequate information and advice, including in relation to the capacity in which they act, the basis of their recommendations and any interests that may influence the advisers recommendations.

Clause 4 Definitions

10. This clause defines the expressions and terms used in this Act unless a contrary intention appears.

Clause 5 Agents

11. The term *agent* is taken to mean a person who has a written or oral agency agreement with another person. A person may be a body corporate or a natural person.

Clause 6 Issuing promotional material

12. This clause defines the means by which promotional material will be deemed to have been distributed. This includes broadcasting by electronic means, including the internet, as well as more traditional printed information.

13. A life company, or a person acting on its behalf, issues promotional material if it publishes or transmits the material to another person by any means for the purpose of inviting or encouraging the person to engage in a life insurance activity (see clause 7).

Clause 7 Engaging in a life insurance activity

14. The expression '*engaging in a life insurance activity*' is defined as referring to when a person enters into, varies, continues or discontinues a