



New South Wales

# **Australian Mutual Provident Society (Demutualisation and Reconstruction) Bill 1997**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

- 1 The objects of this Bill are:
    - (a) to provide a mechanism for the Australian Mutual Provident Society (*AMP*) to be demutualised and reconstructed as a company limited by shares, and
    - (b) to limit entitlements to shares in AMP's holding company.
  - 2 AMP was originally established under legislation enacted in 1844, and was constituted a body corporate by legislation in 1857. Its status as a body corporate is preserved by the *Australian Mutual Provident Society's Act 1910*. It is not a company, but provisions of the *Companies (New South Wales) Code* are applied to it by the *Australian Mutual Provident Society Act 1988*.
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- 3 At present, AMP consists of its members, with membership being, under the 1988 Act, determined in accordance with AMP's By-laws. The By-laws provide that AMP policy holders are the members of AMP. However, the members do not have rights in the nature of shares.
- 4 The mechanism provided by the Bill for demutualising AMP involves:
  - changing the status of AMP to a company limited by shares, which will be wholly owned by a holding company
  - changing the status of eligible existing members of AMP to that of shareholders in AMP's holding company.
- 5 Initially, the company to which AMP is being converted is not a "company" within the *Corporations Law*, though its holding company will be such a "company". Hence the shares issued to policy holders will be shares within the *Corporations Law*.
- 6 For a limited period after the conversion, there will be shareholding limitations in AMP's holding company, so that no one person will generally be able to hold more than 5% of the shares. This limitation will operate from the date of the conversion until 12 months after the shares in the holding company are first listed, but can be extended by regulation.
- 7 The Bill provides that, after the creation of AMP as a "non-*Corporations Law*" company, AMP is authorised to transfer to being a "full" company within the *Corporations Law*, and is required to do so if the member or members of AMP approve the transfer.
- 8 Provision is made for the repeal of special legislation applying to AMP after it becomes a "full" company within the *Corporations Law*.
- 9 The change of AMP's status into a company limited by shares necessarily involves the extinguishment of the rights of members. The rights extinguished include those of the members who do not support the resolution required to effect the change of status and thus may be seen to involve an element of expropriation of vested rights (even though it is contemplated that these will be replaced by new rights arising from the issue of shares upon the change of status). An expropriation will occur by virtue of proposed section 11 upon the

change of status taking effect. Expropriation occurs by virtue of legislation and a statutory procedure, rather than simply by virtue of the action of members in changing AMP's constitution. Accordingly, the principles set out in *Gambotto and another v W.C.P. Limited and another* [1994–1995] 182 CLR 432 have no application to this mechanism. Further, the Bill does not remove or purport to remove the right of members to take proceedings under the “oppression” provisions of general company legislation.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day to be appointed by proclamation of the Governor.

**Clause 3** contains various definitions used in the proposed Act.

### Part 2 Demutualisation and reconstruction of AMP

#### Division 1 Conversion resolutions

**Clause 4** defines a “conversion resolution” for the purposes of the proposed Act. Such a resolution is the starting point of the process leading to demutualisation and reconstruction. It is a resolution that AMP be converted to a company limited by shares, and has a number of features, including the following:

- the resolution has to be passed at a general meeting of AMP
- written notice of the resolution has to be posted to AMP members, giving details of the resolution and voting rights
- an explanatory statement about the resolution has to be posted to AMP members
- an independent financial expert's report relating to the resolution to convert has to be posted to AMP members
- a voting paper has to be posted to AMP members
- the resolution has to be passed by a majority of at least three-quarters of the votes cast.

The clause also makes it clear that such a resolution, although called a conversion resolution, is still a special resolution for legal and other purposes.

**Clause 5** cures certain irregularities that might occur in the conversion resolution process referred to in clause 4.

## **Division 2      Conversion process**

**Clause 6** states that AMP may convert to a company limited by shares in accordance with the Part.

**Clause 7** provides for AMP to apply to the Attorney General to convert to a company limited by shares. The clause lists the detailed matters that must be included in the application.

**Clause 8** provides that, if the Attorney General is satisfied that the application complies with the requirements of clause 7 and that creditors will not be materially prejudiced, the Attorney General is to publish a notice that the Attorney General intends to issue a certificate of conversion for AMP. After a month after the notice has been given, and if a court has not ordered to the contrary, the Attorney General must issue a certificate of conversion.

**Clause 9** provides that the issue of the certificate of conversion has the effect of converting AMP to a company limited by shares.

**Clause 10** provides that the company to which AMP is converted has the general attributes that companies have (that is, a corporate nature, with the liability of members being limited to any amount unpaid on their shares). However, the company to which AMP is converted by the proposed Act is not a "company" within the *Corporations Law*. This will facilitate the ultimate registration of AMP as such a company. See paragraph (a) of the definition of "non-company" in section 9 of the *Corporations Law*, which is relevant for the registration of non-companies as companies under the *Corporations Law*.

**Clause 11** states the effect of the conversion of AMP. In brief, AMP is demutualised and reconstructed, and existing members of AMP cease to be members unless they become shareholders.

**Clause 12** requires AMP to change its name within one month after the conversion, so that it includes "Limited" or "Ltd" at the end of its name.

**Clause 13** provides that if all of AMP's shares are held by AMP's holding company or holding companies, shares in the ultimate holding company must be issued to former members of AMP.

**Clause 14** authorises the Attorney General to be advised in connection with the Attorney General's functions under the proposed Act by the Australian Securities Commission under an agency agreement or arrangement. Section 67 (1) of the *Corporations (New South Wales) Act 1990* contemplates that the Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement for the performance of functions or the exercise of powers by the Commission as an agent of the State; a corresponding provision is found in section 11 (8) of the *Australian Securities Commission Act 1989* of the Commonwealth. The agreement or arrangement contemplated in clause 14 would be with the Commission as agent of the Attorney General's Department of New South Wales, which is an emanation of the State, and would reflect the understanding that Ministers receive advice from their Departments (in this case, advice of the Commission as agent of the Department).

**Clause 15** empowers AMP directors to cut off membership rights as at 5 pm on 11 December 1996. However, provision is made for special and anomalous cases.

**Clause 16** authorises the Supreme Court, on application made to it, to cure various irregularities, subject to certain safeguards.

### **Part 3      Limitation on share entitlement**

**Clauses 17** and **18** contain various definitions and interpretative provisions for the purposes of the Part. One definition is that of *restriction period*, which is defined as the period from the date of issue of the certificate of conversion to the end of one year after shares in the holding company are first listed. The period can be extended by regulation for a maximum of one year.

**Clause 19** prevents a person from holding more than 5% of shares in the holding company during the restriction period.

**Clause 20** contains various exceptions to the rule in clause 19.

**Clause 21** allows shares to be allotted during the restriction period to a nominee where the rule in clause 19 would be breached, on condition that the nominee disposes of them for the benefit of the person who would have been entitled to them.

**Clause 22** automatically suspends voting, dividend and winding up rights on shares that breach the rule in clause 19.

**Clause 23** empowers the directors of the holding company to require a shareholder to dispose of excess shares that breach the rule in clause 19.

**Clause 24** provides that a breach of the Part is not an offence, but the Supreme Court can grant injunctions.

#### **Part 4 Registration of AMP as a company**

**Clause 25** empowers AMP to be registered as a company under the *Corporations Law*, if its members approve of the transfer of incorporation. As mentioned above, the company to which AMP is converted under Part 2 of the proposed Act is not an entity under the *Corporations Law*, though it has the attributes of one.

**Clause 26** provides for the repeal of the two major Acts regulating AMP, once it has been converted to a "full" company under the *Corporations Law*.

#### **Part 5 Rights and remedies**

**Clause 27** provides that persons have, as nearly as possible, the same rights and remedies in connection with the proposed Act as persons have in connection with the *Corporations Law*.

**Clause 28** provides that the Supreme Court has, as nearly as possible, the same jurisdiction, powers and functions in connection with the proposed Act as the Federal Court of Australia and the Administrative Appeals Tribunal of the Commonwealth have in connection with the *Corporations Law*.

**Clause 29** applies the provisions of certain Commonwealth Acts for the purposes of the Part. Those provisions already apply in connection with the *Corporations Law*.

**Clause 30** makes it clear that the rights and remedies provided by the Part do not override time limits and other restrictions imposed by other provisions of the proposed Act.

**Clause 31** authorises rules of court to be made for the Supreme Court for the purposes of the Part.

**Clause 32** makes it clear that the Part does not supplant other rights and remedies.

## **Part 6      Miscellaneous**

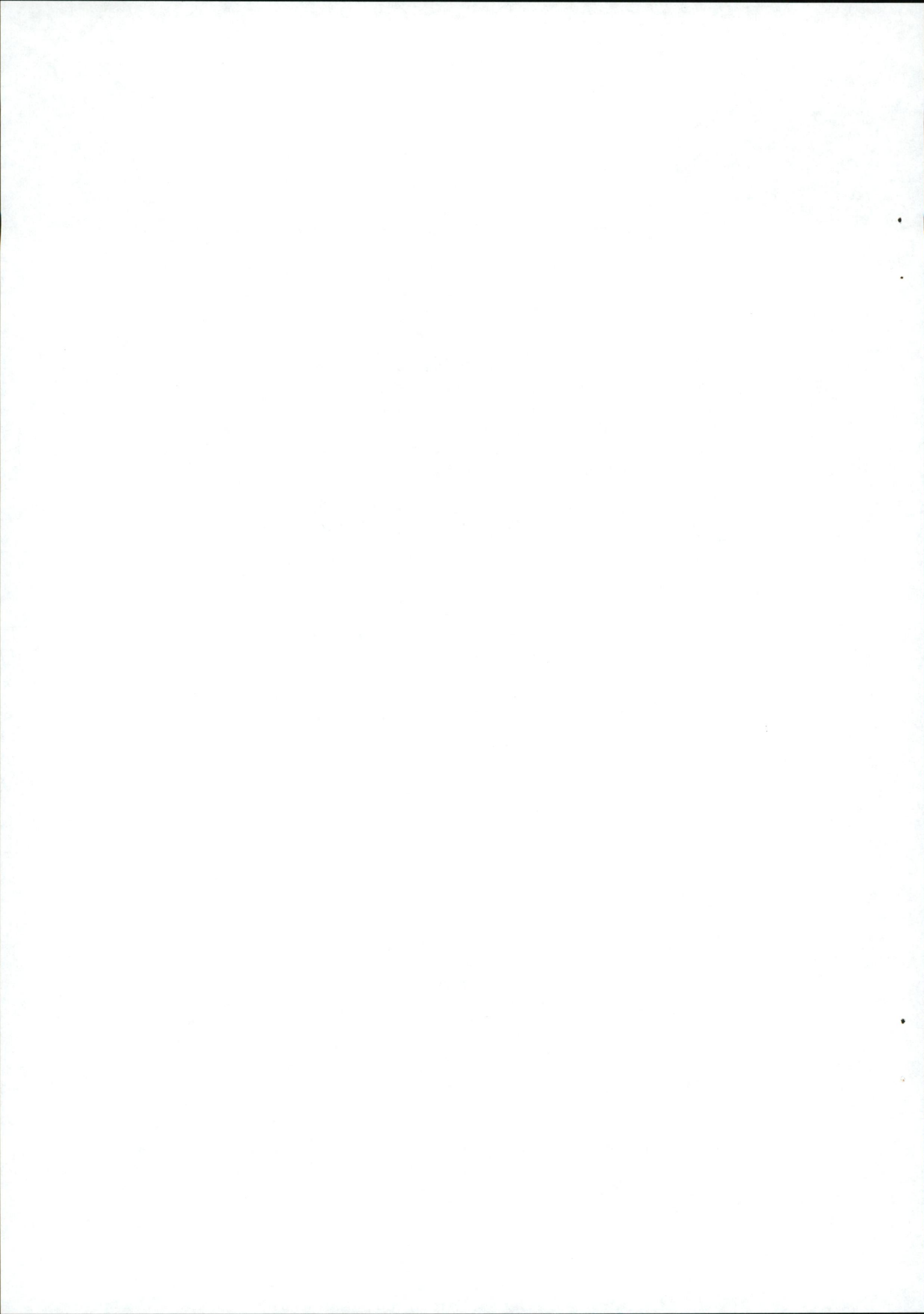
**Clause 33** makes it clear that the proposed Act is to be construed as operating to the full extent of the legislative power of the State and that, in the event of a provision being held to be invalid, the remaining provisions of the proposed Act are to continue to operate, thus negating an argument that partial invalidity renders the whole Act invalid. These provisions reinforce section 31 of the *Interpretation Act 1987*.

**Clause 34** is a formal provision giving effect to the Schedule of amendments to the *Australian Mutual Provident Society Act 1988*.

**Clause 35** authorises regulations to be made for the purposes of the proposed Act.

## **Schedule 1      Amendment of Australian Mutual Provident Society Act 1988**

The amendments ensure that the provisions and effect of the proposed Act take precedence over the provisions of the 1988 Act.





First print



New South Wales

# Australian Mutual Provident Society (Demutualisation and Reconstruction) Bill 1997

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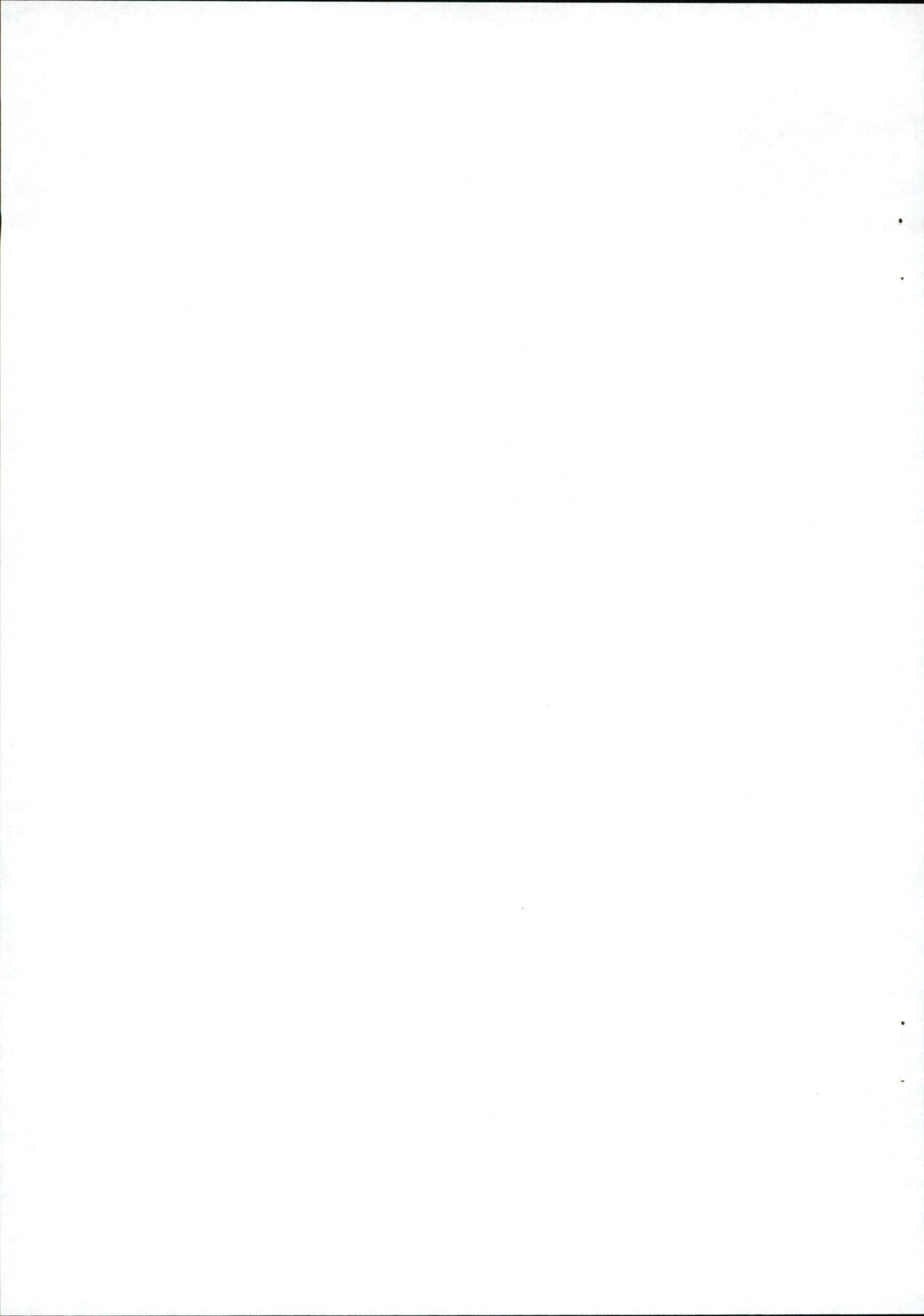
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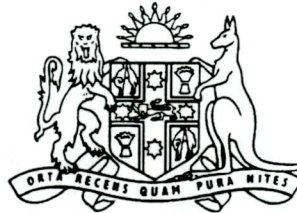
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New South Wales

# **Australian Mutual Provident Society (Demutualisation and Reconstruction) Bill 1997**

No , 1997

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## **A Bill for**

An Act to permit the Australian Mutual Provident Society to be demutualised and reconstructed as a company limited by shares; to provide for the issue of shares in the Society's holding company to policy holders; to limit entitlements to shares in the holding company; to amend the *Australian Mutual Provident Society Act 1988* and to provide for the later repeal of that and other legislation applying to the Society on its registration as a company under the *Corporations Law*; and for other purposes.

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Clause 1 Australian Mutual Provident Society (Demutualisation and Reconstruction) Bill 1997

Part 1 Preliminary

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*. 5

### 2 Commencement

This Act commences on a day to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**AMP** means Australian Mutual Provident Society continued as a body corporate by the *Australian Mutual Provident Society's Act 1910* (whether or not its name changes). 10

**AMP shareholder** means a person identified, in AMP's application, under section 7 (2) (f) (iii) as a person who will be a shareholder of AMP when AMP converts to a company limited by shares. 15

**Note.** This definition refers to AMP's shareholders, rather than the members of AMP. The members will become shareholders of NHL rather than AMP when the demutualisation takes effect.

**Attorney General** means the Attorney General for New South Wales. 20

**By-laws** means the By-laws of AMP.

**certificate of conversion** means a certificate of conversion issued by the Attorney General under this Act.

**Companies Code** means: 25

- (a) the *Companies (New South Wales) Code*, and
- (b) the provisions applying as regulations made under that Code because of section 7 of the *Companies (Application of Laws) Act 1981*.

***company limited by shares*** means a body corporate, whose principle or one of whose principles is that the liability of its member or members is limited by its constitution to the amount (if any) unpaid on the shares respectively held by the member or members.

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***conversion resolution*** means a conversion resolution referred to in section 4.

***NHL*** means the company that is or will become AMP's ultimate holding company when AMP's conversion to a company limited by shares takes effect.

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- (2) Words and expressions used in this Act have the same meanings as in the *Corporations Law*, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (3) Notes in this Act do not form part of this Act.

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## Part 2 Demutualisation and reconstruction of AMP

### Division 1 Conversion resolutions

#### 4 Conversion resolutions

- (1) For the purposes of this Part, a resolution of members of AMP is a conversion resolution of AMP if: 5
- (a) it is a resolution that AMP be converted to a company limited by shares (whether or not the resolution includes or refers to any other matter), or is a resolution passed at the meeting at which that resolution is passed, and 10
  - (b) the resolution is passed at a general meeting of AMP, and
  - (c) at least 21 days' written notice of the meeting has been given by post to members of AMP who are entitled to receive notice of a meeting, specifying the intention to propose the resolution as a conversion resolution and explaining the eligibility of members of AMP to vote on a conversion resolution, and 15
  - (d) at least 21 days before the meeting the following documents have been sent by post to members of AMP who are entitled to receive notice of a meeting: 20
    - (i) an explanatory statement that provides members of AMP with the information that a reasonable person in the position of a member would in the circumstances applicable to AMP at the relevant time require and expect to be given before making a decision on the proposal to which the conversion resolution relates, 25
    - (ii) in the case of the conversion resolution that AMP be converted to a company limited by shares—an independent financial expert's report expressing the opinion of the expert as to whether the proposal to which the conversion resolution relates is in the best interests of AMP's members as a whole, and setting out the reasons for forming that opinion, and 30



- (e) the written notice of the meeting is accompanied by a voting paper that will permit a member who is eligible to vote under the By-laws to vote on the resolution by post, whether or not the member is enrolled on the roll of postal voters of AMP, and 5
- (f) the resolution is passed by a majority of at least three-quarters of the votes cast on the resolution by such members of AMP as, being entitled to vote:
  - (i) vote under the By-laws at the meeting in person or by proxy, or 10
  - (ii) vote by post under this section (votes by post being treated for the purposes of the By-laws as if they were postal votes by members enrolled on the roll of postal voters of AMP and as if they were made or lodged under or in accordance with By-law 14.5). 15
- (2) A member who is eligible to vote under the By-laws may vote by post on a resolution referred to in subsection (1), whether or not the member is enrolled on the roll of postal voters of AMP.
- (3) The By-laws apply to a resolution referred to in subsection (1) in the same way as they apply to a resolution for the amendment of the By-laws as referred to in By-law 14.5. Accordingly, the resolution is taken, for the purposes of By-law 14.5, to be such a resolution for the amendment of the By-laws. 20
- (4) A conversion resolution is a special resolution for the purposes of any law and the By-laws. 25

#### **5 Irregularities concerning conversion resolutions**

- (1) A conversion resolution is not invalidated because of an accidental omission to comply with, or the non-receipt by any member or members of any documents referred to in, section 4 (1) (c), (d) or (e). 30
- (2) A conversion resolution is not invalidated because of any procedural irregularity unless, on application made under this section, the Supreme Court is of the opinion:
  - (a) that the irregularity was not, or was not the result of, an accidental omission or non-receipt referred to in subsection (1), and 35

- (b) that the irregularity has caused or may cause substantial injustice that could not be remedied by any order of the Court under section 16,
- and by order declares the conversion resolution to be invalid.
- (3) The Attorney General or no fewer than 200 persons who were members of AMP eligible to vote at the meeting at which the conversion resolution was passed may make an application to the Supreme Court in accordance with this section for such an order. 5
- (4) Such an application cannot be made to the Supreme Court after the expiry of one month commencing with the date of the passing of the conversion resolution. 10
- (5) In this section:
- (a) a reference to a procedural irregularity includes a reference to:
- (i) any defect, irregularity or deficiency of notice or time, and 15
- (ii) any non-compliance with section 4 (1) (c), (d) or (e), and
- (iii) any miscalculation of voting entitlements, and
- (b) a reference to a conversion resolution includes a reference to a purported conversion resolution. 20

## **Division 2 Conversion process**

### **6 Authority for AMP to convert to company limited by shares**

AMP may convert to a company limited by shares in accordance with this Part. 25

### **7 Application for conversion**

- (1) For AMP to convert to a company limited by shares in accordance with this Part, it must lodge an application for that purpose with the Attorney General.

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- (2) The application must be accompanied by each of the following:
- (a) a copy of:
    - (i) a conversion resolution that AMP be converted to a company limited by shares, and
    - (ii) a conversion resolution dealing with the issue of shares by NHL in accordance with section 13 (which may be the same conversion resolution as is referred to in subparagraph (i)), and 5
    - (iii) any other conversion resolution passed at the meeting at which the resolution referred to in subparagraph (i) was passed, 10
  - (b) a statement signed under the authority of a resolution of the directors of AMP that, in the opinion of the directors, AMP's creditors are not likely to be materially prejudiced by the conversion and that sets out their reasons for that opinion, 15
  - (c) a consolidated copy of the By-laws as at the date of lodgment of the application,
  - (d) a copy of the memorandum and articles of association of NHL as at the date of lodgment of the application, together with a statement signed by the shareholders of NHL agreeing to supply to the Attorney General any amendment to the memorandum and articles made before the application is dealt with, 20
  - (e) a copy of each other document or resolution (if any) that is necessary to ascertain the rights attached to issued or unissued shares of AMP, NHL or any other proposed holding company of AMP, 25
  - (f) a statement signed under the authority of a resolution of the directors of AMP setting out: 30
    - (i) the amount of share capital with which AMP proposes to be registered and the division of that share capital into shares of fixed amounts, and
    - (ii) the number and classes of shares that will comprise AMP's issued share capital when it converts to a company limited by shares, and 35

- (iii) the name and address of each person who will be a shareholder in AMP when AMP converts to a company limited by shares (being NHL or a subsidiary of NHL), and
- (iv) the number of shares, or the method of determining the number of shares, that will be held by each AMP shareholder, and 5
- (v) if NHL is not the sole AMP shareholder—particulars sufficient to show that NHL will be the ultimate holding company of AMP after AMP converts to a company limited by shares, and 10
- (vi) the consideration (if any) to be provided by each AMP shareholder for AMP shares, and
- (vii) the amount (if any) that will be unpaid on any of the shares of AMP, 15
- (g) a statement signed under the authority of a resolution of the directors of NHL:
  - (i) stating their intention that NHL will issue shares on the same day as AMP converts to a company limited by shares, and 20
  - (ii) referring to records of AMP that, in accordance with the conversion resolution referred to in paragraph (a) (ii), identify or provide the method of identifying the persons to whom those shares are to be issued and the number of shares to be issued to each person, and 25
  - (iii) setting out (by reference to matters including share capital and any share premium account, retained profit and revaluation reserve) how the issue of shares will be accounted for in the accounts and accounting records of NHL, 30
- (h) written consent to the application by each AMP shareholder.
- (3) The application must be in the form approved by the Attorney General. 35
- (4) AMP may amend the application with the consent of the Attorney General at any time before the issue of the certificate of conversion.

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**8 Certificate of conversion**

- (1) If the Attorney General is satisfied that:
- (a) AMP's application complies with section 7, and
  - (b) AMP's creditors are not likely to be materially prejudiced by the conversion, 5
- then, unless subsection (2) applies, the Attorney General must give notice under subsection (4) that the Attorney General intends to issue a certificate of conversion.
- (2) The Attorney General must not give notice under subsection (4) that the Attorney General intends to issue a certificate of conversion, if the Attorney General is satisfied that: 10
- (a) the manner of accounting for the issue of the shares by NHL is inappropriate, having regard to the applicable requirements of Part 3.6 of the *Corporations Law* and the statement required by section 7 (2) (g), or 15
  - (b) the obligations that would be attached to the shares are unreasonable.
- (3) Before making a decision in relation to subsection (1) (b), the Attorney General may direct AMP in writing:
- (a) to notify some or all of its creditors of the proposed conversion in the way that the Attorney General specifies, and 20
  - (b) to invite those creditors to make submissions to the Attorney General within a period not exceeding two weeks from a date specified in AMP's notification. 25
- (4) The notice must be published in the Gazette and must state:
- (a) that the Attorney General will issue the certificate of conversion one month after the notice has been published in the Gazette unless prevented by an order of a court from doing so, and 30
  - (b) the effect of the issue of the certificate of conversion.
- (5) Subject to an order of a court, the Attorney General must issue a certificate of conversion as soon as practicable after the period of one month has ended.
- (6) A copy of the certificate must be published in the Gazette as soon as practicable. 35

## 9 Effect of certificate of conversion

- (1) AMP is converted to a company limited by shares by the operation of this section and by virtue of the issue of the certificate of conversion.
- (2) Subject to section 11 (3), the conversion of AMP to a company limited by shares, and any conversion resolution, take effect at the time and on the day specified in the certificate of conversion, or if no time and day are specified, at midday on the day on which the certificate is issued. 5
- (3) Different times or different days may be specified for the conversion to have effect, but in no case can a time or day be specified that is earlier than midday on the day on which the certificate is issued. 10
- (4) In any proceeding, the certificate of conversion is conclusive evidence that: 15
- (a) all requirements of this Part have been complied with, and
  - (b) AMP is a company limited by shares as at the time and day on which the conversion takes effect.
- (5) If the Attorney General issues the certificate of conversion, no court or tribunal is to make an order reversing the issue of the certificate or the conversion of AMP to a company limited by shares. 20

## 10 Nature of company

- (1) The company limited by shares to which AMP is converted under this Part is a company by virtue of this Act, but: 25
- (a) it is not a company incorporated, or deemed or taken to be incorporated, under the *Companies Code* or the *Corporations Law*, and
  - (b) it is not a company for the purposes of the *Companies Code* or the *Corporations Law*, 30
- until it is in fact registered as a company under Division 3 of Part 2.2 of the *Corporations Law*.

- (2) However, nothing in this Act affects the operation of the *Australian Mutual Provident Society Act 1988* (as amended by this Act), by or under which provisions of the *Companies Code* apply to AMP and the members and officers of AMP.

**11 Effect of conversion** 5

- (1) The conversion of AMP to a company limited by shares under this Part does not:
- (a) create a new legal entity, or
  - (b) affect AMP's existing property, rights or obligations (except as against the members of AMP in their capacity as members), or 10
  - (c) render defective any legal proceedings by or against AMP or its members.
- (2) Subject to this section, AMP is demutualised and reconstructed at the conversion time, and at that time: 15
- (a) the members of AMP other than AMP shareholders cease to be members of AMP, and
  - (b) each AMP shareholder becomes a member of AMP if not already a member, and
  - (c) each AMP shareholder is taken to hold the shares specified or determined for that person under section 7 (2) (f) (iv), and 20
  - (d) the shareholders of AMP have such liability as members of AMP to contribute to the property of AMP as is provided by this Act or the *Australian Mutual Provident Society Act 1988*, and 25
  - (e) the By-laws are taken to be amended in Part 1 by:
    - (i) omitting clause II and inserting instead the statement made in that application in compliance with section 7 (2) (f) (i), and 30
    - (ii) omitting clause III and inserting instead the statement that the liability of the members of AMP is limited, and

- (f) the By-laws are taken to be amended by omitting Part 2 and inserting instead the provisions of Table A of Schedule 1 to the *Corporations Law*.
- (3) If the certificate of conversion states, with AMP's consent, a shareholding time that is earlier than the conversion time: 5
  - (a) AMP will be taken to have the authorised share capital referred to in section 7 (2) (f) (i) and the AMP shareholders will be taken to hold the shares specified or determined under section 7 (2) (f) (iv) as from that time, and 10
  - (b) until the conversion time:
    - (i) the rights attaching to those shares (excluding the right to participate in a distribution of surplus assets on the winding up of AMP) are the rights that will attach to the shares immediately after the conversion time, and 15
    - (ii) the directors of AMP are taken to have the power to declare and pay a dividend out of profits (including retained profits) of AMP to the AMP shareholders, provided the AMP shareholders are each policy holders of AMP, and 20
    - (iii) the AMP shareholders may not deal with or create any interest with respect to any of those shares, and
    - (iv) if an AMP shareholder is a body corporate, the body corporate may not make any distribution to its members, but an AMP shareholder that is a wholly owned subsidiary may make a distribution if the full value of the distribution passes to and remains with its ultimate holding company, and 25
    - (v) subject to this section, the rights of members of AMP other than the AMP shareholders are not affected. 30
- (4) If:
  - (a) a person identified as an AMP shareholder in AMP's application for conversion is a member of AMP at the time when the application is made, and 35



- 
- (b) with AMP's consent, the certificate of conversion states that the person's membership of AMP will be converted to a shareholding in AMP at the conversion time or the shareholding time (as specified in the certificate),
- then: 5
- (c) the person remains a member of AMP despite AMP's conversion to a company limited by shares, and
- (d) the person's membership is converted, as from the time specified in the certificate of conversion, into a shareholding of the number of shares specified or determined under section 7 (2) (f) (iv) and the person consequently becomes an AMP shareholder as from that time. 10
- (5) Nothing in this section affects the power of AMP to amend the By-laws or to issue new shares after the conversion takes effect. 15
- (6) In this section:
- conversion time* means the time at which the conversion of AMP to a company limited by shares takes effect.
- shareholding time* means the time at which AMP shareholders are taken to hold shares in AMP. 20

## 12 Name of AMP

- (1) AMP must, with the approval of the Attorney General, not later than one month after the conversion takes effect, change its name so that it has the word "Limited" or the abbreviation "Ltd." or "Ltd" as part of and at the end of its name. 25
- (2) AMP may, with the approval of the Attorney General, afterwards change its name from time to time. That approval is not needed after AMP is registered as a company under Division 3 of Part 2.2 of the *Corporations Law*.
- (3) A change of name by AMP under this section does not: 30
- (a) create a new legal entity, or
- (b) prejudice or affect the identity of the body corporate constituted by AMP or its continuity as a body corporate, or

- (c) affect the property, or the rights or obligations, of AMP, or
  - (d) render defective any legal proceedings by or against AMP,
- and any legal proceedings that could have been continued or begun by or against AMP by its former name may be continued or begun by or against it by its new name. 5

### 13 Issue of shares by NHL

- (1) If:
  - (a) AMP is converted to a company limited by shares under this Part, and
  - (b) on the conversion: 10
    - (i) NHL beneficially owns all of the shares in AMP, or
    - (ii) if one or more holding companies are interposed between AMP and NHL, no person other than NHL or a holding company of AMP is the beneficial owner of any shares in AMP or in any such interposed holding company, 15

then:

  - (c) NHL must give effect to the demutualisation and reconstruction of AMP by issuing fully paid shares in NHL to the persons identified by a method referred to under section 7 (2) (g) (ii) in the manner stated under section 7 (2) (g) (iii), and 20
  - (d) each person to whom NHL issues shares is taken to have agreed (immediately before the issue of the shares) to become a member of NHL. 25
- (2) For the avoidance of doubt, and despite any provision of the *Companies Code* or the *Corporations Law*, nothing in the Code or Law requires NHL to transfer any amount to a share premium account otherwise than as set out in the statement given in accordance with section 7 (2) (g) (iii). 30
- (3) If shares are issued according to this section, no court or tribunal is to make an order reversing the issue of the shares.

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#### 14 Advice of Australian Securities Commission

- (1) When exercising or performing powers, authorities, duties or functions under this Part, the Attorney General is, as far as practicable, to seek and take the advice of the Australian Securities Commission (whether generally or in any particular cases or classes of cases) given as an agent of the Attorney General's Department of New South Wales under an agreement or arrangement referred to in section 67 of the *Corporations (New South Wales) Act 1990*. 5
- (2) However, a failure to seek or take, or to receive, such advice does not invalidate anything done or omitted to be done under this Part. 10

#### 15 Directors' powers with respect to AMP membership

- (1) Subject to subsection (3), the directors of AMP may, for the purposes of or in connection with a proposal to convert AMP to a company limited by shares, by resolution: 15
- (a) determine that, after a time not earlier than 5 pm on 11 December 1996, no new memberships of AMP will be taken to have arisen, and that any memberships of AMP that have arisen after that time are extinguished, and 20
- (b) determine to vary or revoke a determination under paragraph (a), and
- (c) make one or more further determinations under paragraph (a) or (b).
- (2) A determination under subsection (1) is valid and effective for all purposes as from the time when the resolution was passed, despite any provision in the By-laws. 25
- (3) The directors of AMP may, for the purpose of or in connection with a proposal to convert AMP to a company limited by shares, by resolution: 30
- (a) make rules dealing with:
- (i) circumstances in which membership of AMP will continue or will arise despite a determination under subsection (1), and

- (ii) exceptions to a determination under subsection (1), and
  - (iii) circumstances in which membership of AMP will continue despite the happening of some event that would or might otherwise terminate membership, whether the event occurs before or after the making of the rule, and 5
- (b) authorise officers of AMP to make decisions applying any such rules to particular cases or classes of cases, and
- (c) add to, vary, repeal or substitute any such rules. 10
- (4) A decision made by an officer of AMP in accordance with rules applying under subsection (3) is valid and effective for all purposes, despite any provision in the By-laws.
- (5) The directors of AMP must ensure that a copy of a resolution made by them under subsection (1) or (3): 15
  - (a) is promptly published by newspaper advertisement in the manner required under the By-laws for publication of notice of a general meeting, and
  - (b) is promptly provided to a member or former member who makes a written request for it to the Secretary of AMP, 20but any failure to comply with these requirements does not affect the validity of the resolution or anything done pursuant to it.
- (6) If AMP does not convert to a company limited by shares on or before the termination date (as referred to in subsection (7)):
  - (a) all determinations under subsection (1) are revoked, and 25
  - (b) all rules under subsection (3) are rescinded, and
  - (c) any person who would have continued or become a member of AMP but for the determination or rule is a member of AMP with effect from the time when membership of AMP would have commenced, 30but nothing in this subsection affects the validity of anything done by AMP (including any resolution of members) before the termination date.
- (7) For the purposes of this section, the termination date is 30 June 1998 or such later date as may be prescribed by the regulations. 35

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## 16 Irregularities

- (1) Subject to this section but without limiting the generality of any other power that the Supreme Court may have, the Court may, on application by AMP, NHL or any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes: 5
- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Part is not invalid by reason of any contravention of or failure to comply with this Part, or any other law, or a provision of the constitution of any corporation including AMP or by reason of any lack of power or authority of AMP or NHL, 10
  - (b) an order directing the rectification of any register kept by AMP, 15
  - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a),
  - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Part or in relation to AMP or NHL (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding, 20 25
- and may make such consequential or ancillary orders as the Court thinks fit.
- (2) An order may be made under subsection (1) (a) or (c) even though the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence. 30
- (3) The Court is not to make an order under this section unless it is satisfied:
- (a) in the case of an order referred to in subsection (1) (a):
    - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature, or 35

- (ii) that the person or persons concerned in or party to the contravention or failure acted honestly, or
  - (iii) that it is in the interests of the members of AMP as a whole (including persons who would be members but for resolutions of directors) that the order be made, and 5
- (b) in the case of an order referred to in subsection (1) (c)—that the person subject to the civil liability concerned acted honestly, and
- (c) in every case—that no substantial injustice has been or is likely to be caused to any person. 10

---

## Part 3 Limitation on share entitlement

### 17 Definitions

In this Part:

*acquire* and *entitled* have the same meanings as those expressions have when used in Chapter 6 of the *Corporations Law*. 5

*default share* has the meaning given by section 19, and a default share is a share even if the voting rights attached to the share are suspended.

*directors* means the directors of NHL. 10

*dispose* has the same meaning as when used in Chapter 6 of the *Corporations Law*, and includes disposal of shares by means of a buy-back by NHL.

*restriction period* means the period beginning when the Attorney General issues a certificate of conversion or, if later, when the certificate of conversion takes effect, and ending at: 15

(a) the beginning of the day that is the first anniversary of the day (*quotation day*) on which shares of NHL are first admitted to official quotation by the Australian Stock Exchange Limited, or 20

(b) the beginning of such later day as may be prescribed by the regulations, but not later than the second anniversary of the quotation day.

*share* means a voting share in the capital of NHL.

*voting, dividend and winding up rights* means the rights of a shareholder of NHL under the memorandum and articles of association of NHL: 25

(a) to exercise a vote at any meeting of shareholders, and

(b) to receive dividends, and

(c) to receive a distribution out of the property of NHL, whether as a result of winding up or otherwise. 30

## **18 Determinations, opinions and powers of directors**

In this Part:

- (a) a reference to a determination or opinion of the directors is a reference to a determination or opinion, as the case may be, made or formed in accordance with the articles of association of NHL, and 5
- (b) the powers of the directors conferred by this Part may be exercised by them in their absolute discretion, and
- (c) the directors are not obliged to provide to any person any reason or grounds for a determination or opinion. 10

## **19 Limit on entitlement to NHL shares**

- (1) Except as provided in this Part, a person must not acquire shares in NHL during the restriction period if any person who:
  - (a) is not entitled to any shares in NHL, or
  - (b) is entitled to less than 5% of the shares in NHL, 15would, immediately after the acquisition, be entitled to 5% or more of the shares in NHL.
- (2) Except as provided in this Part, a person who is entitled at any time during the restriction period to 5% or more of the shares in NHL must immediately cause that entitlement to be reduced to less than 5%. 20
- (3) For the purposes of this Part, while a person is entitled, at any time during the restriction period, to 5% or more of the shares in NHL, each share to which the person is entitled is a default share.

## **20 Exceptions** 25

- (1) Section 19 does not apply to each of the following persons:
  - (a) NHL,
  - (b) the directors, in that capacity,
  - (c) a subsidiary of NHL.
- (2) The directors may nominate a person for the purposes of this section without stipulating a maximum percentage entitlement for that person. Section 19 does not apply to a person so nominated. 30



- 
- (3) The directors may nominate a person for the purposes of this section and stipulate a maximum percentage entitlement for that person. Section 19 applies to a person so nominated as if 5% were replaced by the maximum percentage entitlement stipulated by the directors. 5
- (4) The directors may at any time cause a notice to be given to a person nominated under subsection (2) or (3) revoking the nomination on the expiry of a period specified in the notice. Subject to another nomination under subsection (2) or (3) of this section, section 19 applies to the person as from the expiry of the notice as if the nomination had not been made. 10

## 21 Allotment and issue of new securities

- (1) If:
- (a) an allotment and issue of shares in NHL arises from the exercise, conversion or paying up of a quoted security or a quoted right, and 15
  - (b) the allotment might result in a contravention of section 19, NHL may allot and issue the shares to a nominee selected by it, on terms that require the nominee to arrange for the disposal of the shares for the benefit of the person to whom the shares would otherwise be issued. 20
- (2) Nothing in this Part affects the validity of an allotment or issue of shares that arises from the exercise, conversion or paying up of a quoted security or a quoted right.

## 22 Automatic suspension of rights 25

- (1) The voting, dividend and winding up rights attaching to each default share are automatically suspended while the share is a default share.
- (2) If it appears from:
- (a) a notice received by NHL under Part 6.7 of the *Corporations Law*, or 30
  - (b) a statement in response to a primary or secondary notice given in respect of NHL under Part 6.8 of the *Corporations Law*, or

- (c) information received by NHL from the Australian Securities Commission, whether under Part 6.8 of the *Corporations Law* or otherwise, or
- (d) a declaration or finding by any court or the Corporations and Securities Panel, 5

that a person is entitled to 5% or more of the shares in NHL, the shares to which the person is entitled are taken to be default shares, unless the contrary is proved or the directors otherwise determine.

- (3) If a primary or secondary notice is given in respect of NHL under Part 6.8 of the *Corporations Law* and the person to whom the notice is given does not adequately respond to it within the time prescribed by the *Corporations Law*, the shares to which the notice relates are taken to be default shares, unless the contrary is proved or the directors otherwise determine. 10  
15
- (4) Dividends or distributions otherwise payable in respect of a default share may be retained by NHL without any liability to pay interest. When the shares cease to be default shares, the amounts retained by NHL must be paid to the person to whom they would have been paid but for the suspension under this section. 20
- (5) If the voting, dividend and winding up rights attached to default shares have been suspended under this section, the directors must promptly cause a notice to be given to the registered holder of the default shares (or, if there are two or more registered holders, to each of them) advising that the suspension has occurred. 25
- (6) Failure to give, or delay in giving, notice under subsection (5) does not invalidate the suspension of voting, dividend and winding up rights under this section or the powers of disposal of default shares under this Part. 30

### 23 Disposal of surplus shares

- (1) The directors may at any time cause a notice to be given:
  - (a) to the registered holder of default shares, or
  - (b) if there are two or more registered holders of the default shares, to each of them, 35

- 
- requiring, within the period specified in the notice (being a period of not less than 14 days from the date of the notice), the disposal by the registered holder or holders of such number of default shares as, in the directors' opinion, is sufficient to ensure that, after the disposal of those shares, none of the remaining shares held by the registered holder or holders is a default share. 5
- (2) If the requirements of a notice under subsection (1) are not complied with, NHL may dispose of the default shares specified in the notice, or such lesser number of those shares as the directors may determine. 10
- (3) The following provisions apply if default shares are or are to be disposed of under subsection (2):
- (a) the directors may determine, in respect of a registered holder of shares, how many default shares are to be disposed of, 15
  - (b) the directors may select the method of disposal of the default shares, and may dispose of them in a number of parcels, over a period of time, and otherwise in such manner and on such terms as the directors may determine,
  - (c) for the purpose of determining the identity of the registered holders of shares and the number of shares required at any time to be disposed of, the directors may have regard to the latest notices given to NHL under Part 6.7 of the *Corporations Law* and need not have regard to any changes that may have occurred after the latest of such notices, 25
  - (d) each registered holder of default shares is taken to have appointed NHL and each of the directors jointly and severally as attorney as if by power of attorney in the registered holder's name and on the registered holder's behalf to execute any documents and implement any procedures that may be required to procure the disposal of the shares (by transfer or otherwise) on behalf of the registered holder, 30
  - (e) the title of the transferee of any shares disposed of under this section is not affected by any irregularity or invalidity in connection with the disposal of the shares to the transferee including, without limitation, the absence of any share certificate, 35
-

(f) NHL may receive and give a good discharge for any payment made for or in connection with the disposal of default shares, and must pay to the former registered holder of the default shares the amount received in respect of the default shares of the registered holder, after deducting the whole, or such part as the directors determine, of the costs and expenses of and incidental to the disposal of the default shares. 5

(4) Neither NHL nor the directors are bound to see to the application of an amount paid to a registered holder of shares under this section, and that amount may be paid by cheque posted to the registered holder at the address appearing in NHL's share register immediately before the disposal. 10

#### 24 Effect of contravention

(1) A person who contravenes a provision of this Part is not guilty of an offence. 15

(2) If a person has engaged, is engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of a provision of this Part, the Supreme Court may, on application of the Attorney General, NHL or a person whose interests have been, are or would be affected by the contravening conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the firstmentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing. 20 25

(3) If in the opinion of the Court it is appropriate to do so, the Court may grant an interim injunction pending determination of an application under subsection (2).

(4) The Court may discharge or vary an injunction granted under subsection (2) or (3). 30

(5) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may either in addition to or in substitution for the grant of the injunction, order that person to pay damages to the other person. 35

- (6) Nothing in this Part is taken to limit the right of NHL to exercise any other power or remedy that may be open to it where the directors are of the opinion that there is a contravention of section 19 or any other law.

## Part 4 Registration of AMP as a company

### 25 Registration as a company

- (1) AMP is authorised to be registered, and to take steps to be registered, as a company under Division 3 of Part 2.2 of the *Corporations Law*, and for that purpose the transfer of its incorporation is authorised, but only if the member or members of AMP approve the transfer of incorporation by special resolution. 5
- (2) If AMP converts to a company limited by shares under this Act, and the member or members of AMP approve the transfer of incorporation as referred to in subsection (1), AMP must apply to be registered as a company under Division 3 of Part 2.2 of the *Corporations Law* within one month after the passing of the special resolution referred to in that subsection. 10

### 26 Repeal 15

After AMP has been registered as a company under Division 3 of Part 2.2 of the *Corporations Law*, the Governor may, by one or more proclamations, repeal all or any specified provisions of either or both of the following Acts:

- (a) *Australian Mutual Provident Society's Act 1910*, 20  
(b) *Australian Mutual Provident Society Act 1988*.

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## Part 5 Rights and remedies

### 27 Rights and remedies

- (1) Subject to this Act, persons have, as nearly as possible, the same rights and remedies in relation to acts, matters and things done, omitted or suffered under or in connection with this Act as persons have in relation to acts, matters and things done, omitted or suffered under or in connection with the *Corporations Law* in corresponding circumstances. 5
- (2) The rights and remedies conferred by this section apply with such adaptations and modifications as are necessary or as are prescribed by the regulations. 10

### 28 Jurisdiction, powers and functions of Supreme Court

- (1) Subject to this Act, the Supreme Court has, as nearly as possible, the same jurisdiction, powers and functions in relation to acts, matters and things done, omitted or suffered under or in connection with this Act as the Federal Court of Australia or the Administrative Appeals Tribunal of the Commonwealth or both have in relation to acts, matters and things done, omitted or suffered under or in connection with the *Corporations Law* in corresponding circumstances. 15  
20
- (2) The jurisdiction, powers and functions of the Supreme Court conferred by this section apply with such adaptations and modifications as are necessary or as are prescribed by the regulations or by rules of court.

### 29 Application of Commonwealth laws

- (1) Without limiting other provisions of this Part, the provisions of the *Administrative Appeals Tribunal Act 1975* and the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth apply as laws of the State for the purposes of this Part, as nearly as possible, to the same extent as they apply as laws of the State for the purposes of the *Corporations Law*. 25  
30
- (2) The provisions applied by this section so apply with such adaptations and modifications as are necessary or as are prescribed by the regulations or by rules of court.
- (3) In particular, references in those provisions to the Administrative Appeals Tribunal are to be read as references to the Supreme Court. 35

**30 Time limits not affected**

The provisions of this Part are subject to any time limits or other restrictions imposed under section 5 or 9 (or any other provision of this Act) on:

- (a) the making of applications to the Supreme Court, or 5
- (b) the power of any court or tribunal to make orders.

**31 Rules of court**

Rules of court (not inconsistent with this Act or the regulations) may be made under the *Supreme Court Act 1970* for the purposes of this Part. This section does not limit the rule-making powers conferred by the *Supreme Court Act 1970*. 10

**32 Other rights and remedies**

Nothing in this Part affects:

- (a) any rights and remedies, or
  - (b) any jurisdiction, powers and other functions, 15
- that exist apart from this Act.



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## Part 6 Miscellaneous

### 33 Construction of Act

- (1) This Act is to be construed as operating to the full extent of, but not so as to exceed, the legislative power of Parliament.
- (2) If any provision of this Act, or the application of this Act to any person, subject-matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of Parliament:
  - (a) it is a valid provision to the extent to which it is not in excess of that power, and
  - (b) the remainder of this Act, and the application of the provision to other persons, subject-matters or circumstances, is not affected.
- (3) This section is in addition to and does not limit the operation of section 31 of the *Interpretation Act 1987*.

### 34 Amendment of Australian Mutual Provident Society Act 1988 No 47

The *Australian Mutual Provident Society Act 1988* is amended as set out in Schedule 1.

### 35 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Schedule 1 Amendment of Australian Mutual Provident Society Act 1988**

(Section 34)

**[1] Section 2 Commencement**

Insert "Subject to section 11 (2) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*," before "AMP's" in section 2 (4). 5

**[2] Section 10 By-laws**

Insert "(including the by-laws as taken to be amended under section 11 (2) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*)" after "by-laws" in section 10 (3). 10

**[3] Section 11 Membership criteria**

Omit "Membership".  
Insert instead "Subject to section 11 (2) and (3) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*, membership". 15

**[4] Section 12 Members' liability**

Omit "If" from section 12 (1).  
Insert instead "Subject to subsection (3), if".

**[5] Section 12 (3)**

Insert after section 12 (2):

- (3) Section 360 of the Code applies to every present and past member of AMP who holds or has held shares in AMP.





New South Wales

# Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997 No 56

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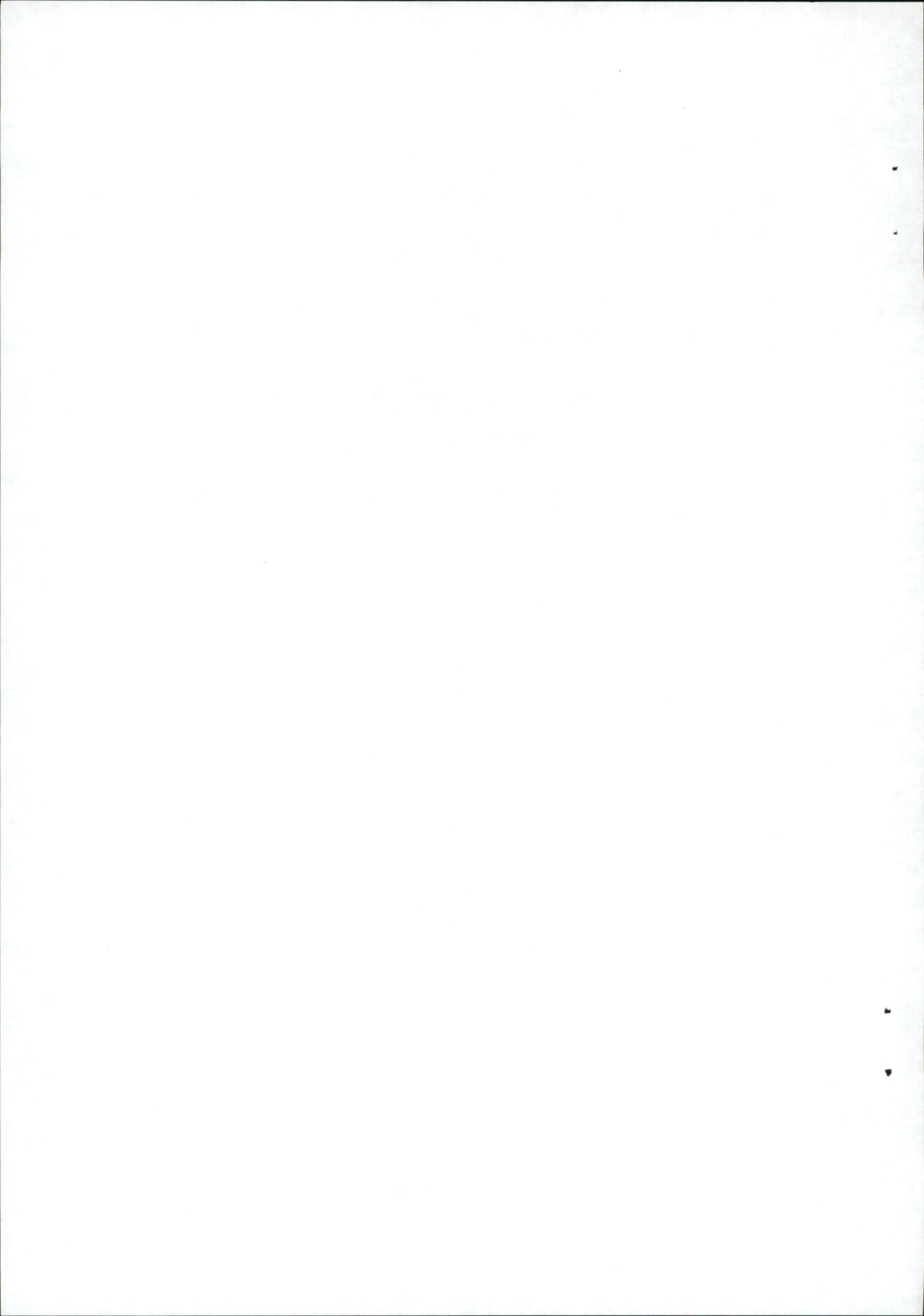
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**Part 6 Miscellaneous**

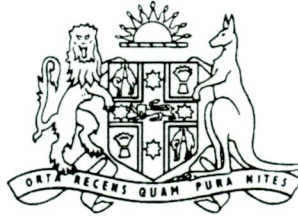
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New South Wales

# **Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997 No 56**

Act No 56, 1997

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An Act to permit the Australian Mutual Provident Society to be demutualised and reconstructed as a company limited by shares; to provide for the issue of shares in the Society's holding company to policy holders; to limit entitlements to shares in the holding company; to amend the *Australian Mutual Provident Society Act 1988* and to provide for the later repeal of that and other legislation applying to the Society on its registration as a company under the *Corporations Law*; and for other purposes. [Assented to 2 July 1997]

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*.

### 2 Commencement

This Act commences on a day to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**AMP** means Australian Mutual Provident Society continued as a body corporate by the *Australian Mutual Provident Society's Act 1910* (whether or not its name changes).

**AMP shareholder** means a person identified, in AMP's application, under section 7 (2) (f) (iii) as a person who will be a shareholder of AMP when AMP converts to a company limited by shares.

**Note.** This definition refers to AMP's shareholders, rather than the members of AMP. The members will become shareholders of NHL rather than AMP when the demutualisation takes effect.

**Attorney General** means the Attorney General for New South Wales.

**By-laws** means the By-laws of AMP.

**certificate of conversion** means a certificate of conversion issued by the Attorney General under this Act.

**Companies Code** means:

- (a) the *Companies (New South Wales) Code*, and
- (b) the provisions applying as regulations made under that Code because of section 7 of the *Companies (Application of Laws) Act 1981*.

***company limited by shares*** means a body corporate, whose principle or one of whose principles is that the liability of its member or members is limited by its constitution to the amount (if any) unpaid on the shares respectively held by the member or members.

***conversion resolution*** means a conversion resolution referred to in section 4.

***NHL*** means the company that is or will become AMP's ultimate holding company when AMP's conversion to a company limited by shares takes effect.

- (2) Words and expressions used in this Act have the same meanings as in the *Corporations Law*, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.
- (3) Notes in this Act do not form part of this Act.

## **Part 2      Demutualisation and reconstruction of AMP**

### **Division 1   Conversion resolutions**

#### **4   Conversion resolutions**

- (1) For the purposes of this Part, a resolution of members of AMP is a conversion resolution of AMP if:
- (a) it is a resolution that AMP be converted to a company limited by shares (whether or not the resolution includes or refers to any other matter), or is a resolution passed at the meeting at which that resolution is passed, and
  - (b) the resolution is passed at a general meeting of AMP, and
  - (c) at least 21 days' written notice of the meeting has been given by post to members of AMP who are entitled to receive notice of a meeting, specifying the intention to propose the resolution as a conversion resolution and explaining the eligibility of members of AMP to vote on a conversion resolution, and
  - (d) at least 21 days before the meeting the following documents have been sent by post to members of AMP who are entitled to receive notice of a meeting:
    - (i) an explanatory statement that provides members of AMP with the information that a reasonable person in the position of a member would in the circumstances applicable to AMP at the relevant time require and expect to be given before making a decision on the proposal to which the conversion resolution relates,
    - (ii) in the case of the conversion resolution that AMP be converted to a company limited by shares—an independent financial expert's report expressing the opinion of the expert as to whether the proposal to which the conversion resolution relates is in the best interests of AMP's members as a whole, and setting out the reasons for forming that opinion, and

- (e) the written notice of the meeting is accompanied by a voting paper that will permit a member who is eligible to vote under the By-laws to vote on the resolution by post, whether or not the member is enrolled on the roll of postal voters of AMP, and
- (f) the resolution is passed by a majority of at least three-quarters of the votes cast on the resolution by such members of AMP as, being entitled to vote:
  - (i) vote under the By-laws at the meeting in person or by proxy, or
  - (ii) vote by post under this section (votes by post being treated for the purposes of the By-laws as if they were postal votes by members enrolled on the roll of postal voters of AMP and as if they were made or lodged under or in accordance with By-law 14.5).
- (2) A member who is eligible to vote under the By-laws may vote by post on a resolution referred to in subsection (1), whether or not the member is enrolled on the roll of postal voters of AMP.
- (3) The By-laws apply to a resolution referred to in subsection (1) in the same way as they apply to a resolution for the amendment of the By-laws as referred to in By-law 14.5. Accordingly, the resolution is taken, for the purposes of By-law 14.5, to be such a resolution for the amendment of the By-laws.
- (4) A conversion resolution is a special resolution for the purposes of any law and the By-laws.

## **5 Irregularities concerning conversion resolutions**

- (1) A conversion resolution is not invalidated because of an accidental omission to comply with, or the non-receipt by any member or members of any documents referred to in, section 4 (1) (c), (d) or (e).
- (2) A conversion resolution is not invalidated because of any procedural irregularity unless, on application made under this section, the Supreme Court is of the opinion:
  - (a) that the irregularity was not, or was not the result of, an accidental omission or non-receipt referred to in subsection (1), and

(b) that the irregularity has caused or may cause substantial injustice that could not be remedied by any order of the Court under section 16,

and by order declares the conversion resolution to be invalid.

- (3) The Attorney General or no fewer than 200 persons who were members of AMP eligible to vote at the meeting at which the conversion resolution was passed may make an application to the Supreme Court in accordance with this section for such an order.
- (4) Such an application cannot be made to the Supreme Court after the expiry of one month commencing with the date of the passing of the conversion resolution.
- (5) In this section:
- (a) a reference to a procedural irregularity includes a reference to:
- (i) any defect, irregularity or deficiency of notice or time, and
  - (ii) any non-compliance with section 4 (1) (c), (d) or (e), and
  - (iii) any miscalculation of voting entitlements, and
- (b) a reference to a conversion resolution includes a reference to a purported conversion resolution.

## **Division 2 Conversion process**

### **6 Authority for AMP to convert to company limited by shares**

AMP may convert to a company limited by shares in accordance with this Part.

### **7 Application for conversion**

- (1) For AMP to convert to a company limited by shares in accordance with this Part, it must lodge an application for that purpose with the Attorney General.

- (2) The application must be accompanied by each of the following:
- (a) a copy of:
    - (i) a conversion resolution that AMP be converted to a company limited by shares, and
    - (ii) a conversion resolution dealing with the issue of shares by NHL in accordance with section 13 (which may be the same conversion resolution as is referred to in subparagraph (i)), and
    - (iii) any other conversion resolution passed at the meeting at which the resolution referred to in subparagraph (i) was passed,
  - (b) a statement signed under the authority of a resolution of the directors of AMP that, in the opinion of the directors, AMP's creditors are not likely to be materially prejudiced by the conversion and that sets out their reasons for that opinion,
  - (c) a consolidated copy of the By-laws as at the date of lodgment of the application,
  - (d) a copy of the memorandum and articles of association of NHL as at the date of lodgment of the application, together with a statement signed by the shareholders of NHL agreeing to supply to the Attorney General any amendment to the memorandum and articles made before the application is dealt with,
  - (e) a copy of each other document or resolution (if any) that is necessary to ascertain the rights attached to issued or unissued shares of AMP, NHL or any other proposed holding company of AMP,
  - (f) a statement signed under the authority of a resolution of the directors of AMP setting out:
    - (i) the amount of share capital with which AMP proposes to be registered and the division of that share capital into shares of fixed amounts, and
    - (ii) the number and classes of shares that will comprise AMP's issued share capital when it converts to a company limited by shares, and

- (iii) the name and address of each person who will be a shareholder in AMP when AMP converts to a company limited by shares (being NHL or a subsidiary of NHL), and
  - (iv) the number of shares, or the method of determining the number of shares, that will be held by each AMP shareholder, and
  - (v) if NHL is not the sole AMP shareholder—particulars sufficient to show that NHL will be the ultimate holding company of AMP after AMP converts to a company limited by shares, and
  - (vi) the consideration (if any) to be provided by each AMP shareholder for AMP shares, and
  - (vii) the amount (if any) that will be unpaid on any of the shares of AMP,
- (g) a statement signed under the authority of a resolution of the directors of NHL:
- (i) stating their intention that NHL will issue shares on the same day as AMP converts to a company limited by shares, and
  - (ii) referring to records of AMP that, in accordance with the conversion resolution referred to in paragraph (a) (ii), identify or provide the method of identifying the persons to whom those shares are to be issued and the number of shares to be issued to each person, and
  - (iii) setting out (by reference to matters including share capital and any share premium account, retained profit and revaluation reserve) how the issue of shares will be accounted for in the accounts and accounting records of NHL,
- (h) written consent to the application by each AMP shareholder.
- (3) The application must be in the form approved by the Attorney General.
- (4) AMP may amend the application with the consent of the Attorney General at any time before the issue of the certificate of conversion.



## 8 Certificate of conversion

- (1) If the Attorney General is satisfied that:
  - (a) AMP's application complies with section 7, and
  - (b) AMP's creditors are not likely to be materially prejudiced by the conversion,then, unless subsection (2) applies, the Attorney General must give notice under subsection (4) that the Attorney General intends to issue a certificate of conversion.
- (2) The Attorney General must not give notice under subsection (4) that the Attorney General intends to issue a certificate of conversion, if the Attorney General is satisfied that:
  - (a) the manner of accounting for the issue of the shares by NHL is inappropriate, having regard to the applicable requirements of Part 3.6 of the *Corporations Law* and the statement required by section 7 (2) (g), or
  - (b) the obligations that would be attached to the shares are unreasonable.
- (3) Before making a decision in relation to subsection (1) (b), the Attorney General may direct AMP in writing:
  - (a) to notify some or all of its creditors of the proposed conversion in the way that the Attorney General specifies, and
  - (b) to invite those creditors to make submissions to the Attorney General within a period not exceeding two weeks from a date specified in AMP's notification.
- (4) The notice must be published in the Gazette and must state:
  - (a) that the Attorney General will issue the certificate of conversion one month after the notice has been published in the Gazette unless prevented by an order of a court from doing so, and
  - (b) the effect of the issue of the certificate of conversion.
- (5) Subject to an order of a court, the Attorney General must issue a certificate of conversion as soon as practicable after the period of one month has ended.
- (6) A copy of the certificate must be published in the Gazette as soon as practicable.

## 9 Effect of certificate of conversion

- (1) AMP is converted to a company limited by shares by the operation of this section and by virtue of the issue of the certificate of conversion.
- (2) Subject to section 11 (3), the conversion of AMP to a company limited by shares, and any conversion resolution, take effect at the time and on the day specified in the certificate of conversion, or if no time and day are specified, at midday on the day on which the certificate is issued.
- (3) Different times or different days may be specified for the conversion to have effect, but in no case can a time or day be specified that is earlier than midday on the day on which the certificate is issued.
- (4) In any proceeding, the certificate of conversion is conclusive evidence that:
  - (a) all requirements of this Part have been complied with, and
  - (b) AMP is a company limited by shares as at the time and day on which the conversion takes effect.
- (5) If the Attorney General issues the certificate of conversion, no court or tribunal is to make an order reversing the issue of the certificate or the conversion of AMP to a company limited by shares.

## 10 Nature of company

- (1) The company limited by shares to which AMP is converted under this Part is a company by virtue of this Act, but:
  - (a) it is not a company incorporated, or deemed or taken to be incorporated, under the *Companies Code* or the *Corporations Law*, and
  - (b) it is not a company for the purposes of the *Companies Code* or the *Corporations Law*,

until it is in fact registered as a company under Division 3 of Part 2.2 of the *Corporations Law*.

- (2) However, nothing in this Act affects the operation of the *Australian Mutual Provident Society Act 1988* (as amended by this Act), by or under which provisions of the *Companies Code* apply to AMP and the members and officers of AMP.

## 11 Effect of conversion

- (1) The conversion of AMP to a company limited by shares under this Part does not:
- (a) create a new legal entity, or
  - (b) affect AMP's existing property, rights or obligations (except as against the members of AMP in their capacity as members), or
  - (c) render defective any legal proceedings by or against AMP or its members.
- (2) Subject to this section, AMP is demutualised and reconstructed at the conversion time, and at that time:
- (a) the members of AMP other than AMP shareholders cease to be members of AMP, and
  - (b) each AMP shareholder becomes a member of AMP if not already a member, and
  - (c) each AMP shareholder is taken to hold the shares specified or determined for that person under section 7 (2) (f) (iv), and
  - (d) the shareholders of AMP have such liability as members of AMP to contribute to the property of AMP as is provided by this Act or the *Australian Mutual Provident Society Act 1988*, and
  - (e) the By-laws are taken to be amended in Part 1 by:
    - (i) omitting clause II and inserting instead the statement made in that application in compliance with section 7 (2) (f) (i), and
    - (ii) omitting clause III and inserting instead the statement that the liability of the members of AMP is limited, and

- (f) the By-laws are taken to be amended by omitting Part 2 and inserting instead the provisions of Table A of Schedule 1 to the *Corporations Law*.
- (3) If the certificate of conversion states, with AMP's consent, a shareholding time that is earlier than the conversion time:
- (a) AMP will be taken to have the authorised share capital referred to in section 7 (2) (f) (i) and the AMP shareholders will be taken to hold the shares specified or determined under section 7 (2) (f) (iv) as from that time, and
- (b) until the conversion time:
- (i) the rights attaching to those shares (excluding the right to participate in a distribution of surplus assets on the winding up of AMP) are the rights that will attach to the shares immediately after the conversion time, and
- (ii) the directors of AMP are taken to have the power to declare and pay a dividend out of profits (including retained profits) of AMP to the AMP shareholders, provided the AMP shareholders are each policy holders of AMP, and
- (iii) the AMP shareholders may not deal with or create any interest with respect to any of those shares, and
- (iv) if an AMP shareholder is a body corporate, the body corporate may not make any distribution to its members, but an AMP shareholder that is a wholly owned subsidiary may make a distribution if the full value of the distribution passes to and remains with its ultimate holding company, and
- (v) subject to this section, the rights of members of AMP other than the AMP shareholders are not affected.
- (4) If:
- (a) a person identified as an AMP shareholder in AMP's application for conversion is a member of AMP at the time when the application is made, and

- (b) with AMP's consent, the certificate of conversion states that the person's membership of AMP will be converted to a shareholding in AMP at the conversion time or the shareholding time (as specified in the certificate),

then:

- (c) the person remains a member of AMP despite AMP's conversion to a company limited by shares, and
- (d) the person's membership is converted, as from the time specified in the certificate of conversion, into a shareholding of the number of shares specified or determined under section 7 (2) (f) (iv) and the person consequently becomes an AMP shareholder as from that time.
- (5) Nothing in this section affects the power of AMP to amend the By-laws or to issue new shares after the conversion takes effect.
- (6) In this section:

**conversion time** means the time at which the conversion of AMP to a company limited by shares takes effect.

**shareholding time** means the time at which AMP shareholders are taken to hold shares in AMP.

## 12 Name of AMP

- (1) AMP must, with the approval of the Attorney General, not later than one month after the conversion takes effect, change its name so that it has the word "Limited" or the abbreviation "Ltd." or "Ltd" as part of and at the end of its name.
- (2) AMP may, with the approval of the Attorney General, afterwards change its name from time to time. That approval is not needed after AMP is registered as a company under Division 3 of Part 2.2 of the *Corporations Law*.
- (3) A change of name by AMP under this section does not:
- (a) create a new legal entity, or
- (b) prejudice or affect the identity of the body corporate constituted by AMP or its continuity as a body corporate, or

- (c) affect the property, or the rights or obligations, of AMP, or
  - (d) render defective any legal proceedings by or against AMP,
- and any legal proceedings that could have been continued or begun by or against AMP by its former name may be continued or begun by or against it by its new name.

### 13 Issue of shares by NHL

- (1) If:
  - (a) AMP is converted to a company limited by shares under this Part, and
  - (b) on the conversion:
    - (i) NHL beneficially owns all of the shares in AMP, or
    - (ii) if one or more holding companies are interposed between AMP and NHL, no person other than NHL or a holding company of AMP is the beneficial owner of any shares in AMP or in any such interposed holding company,

then:

- (c) NHL must give effect to the demutualisation and reconstruction of AMP by issuing fully paid shares in NHL to the persons identified by a method referred to under section 7 (2) (g) (ii) in the manner stated under section 7 (2) (g) (iii), and
  - (d) each person to whom NHL issues shares is taken to have agreed (immediately before the issue of the shares) to become a member of NHL.
- (2) For the avoidance of doubt, and despite any provision of the *Companies Code* or the *Corporations Law*, nothing in the Code or Law requires NHL to transfer any amount to a share premium account otherwise than as set out in the statement given in accordance with section 7 (2) (g) (iii).
  - (3) If shares are issued according to this section, no court or tribunal is to make an order reversing the issue of the shares.

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**14 Advice of Australian Securities Commission**

- (1) When exercising or performing powers, authorities, duties or functions under this Part, the Attorney General is, as far as practicable, to seek and take the advice of the Australian Securities Commission (whether generally or in any particular cases or classes of cases) given as an agent of the Attorney General's Department of New South Wales under an agreement or arrangement referred to in section 67 of the *Corporations (New South Wales) Act 1990*.
- (2) However, a failure to seek or take, or to receive, such advice does not invalidate anything done or omitted to be done under this Part.

**15 Directors' powers with respect to AMP membership**

- (1) Subject to subsection (3), the directors of AMP may, for the purposes of or in connection with a proposal to convert AMP to a company limited by shares, by resolution:
  - (a) determine that, after a time not earlier than 5 pm on 11 December 1996, no new memberships of AMP will be taken to have arisen, and that any memberships of AMP that have arisen after that time are extinguished, and
  - (b) determine to vary or revoke a determination under paragraph (a), and
  - (c) make one or more further determinations under paragraph (a) or (b).
- (2) A determination under subsection (1) is valid and effective for all purposes as from the time when the resolution was passed, despite any provision in the By-laws.
- (3) The directors of AMP may, for the purpose of or in connection with a proposal to convert AMP to a company limited by shares, by resolution:
  - (a) make rules dealing with:
    - (i) circumstances in which membership of AMP will continue or will arise despite a determination under subsection (1), and

- (ii) exceptions to a determination under subsection (1), and
    - (iii) circumstances in which membership of AMP will continue despite the happening of some event that would or might otherwise terminate membership, whether the event occurs before or after the making of the rule, and
  - (b) authorise officers of AMP to make decisions applying any such rules to particular cases or classes of cases, and
  - (c) add to, vary, repeal or substitute any such rules.
- (4) A decision made by an officer of AMP in accordance with rules applying under subsection (3) is valid and effective for all purposes, despite any provision in the By-laws.
- (5) The directors of AMP must ensure that a copy of a resolution made by them under subsection (1) or (3):
- (a) is promptly published by newspaper advertisement in the manner required under the By-laws for publication of notice of a general meeting, and
  - (b) is promptly provided to a member or former member who makes a written request for it to the Secretary of AMP,
- but any failure to comply with these requirements does not affect the validity of the resolution or anything done pursuant to it.
- (6) If AMP does not convert to a company limited by shares on or before the termination date (as referred to in subsection (7)):
- (a) all determinations under subsection (1) are revoked, and
  - (b) all rules under subsection (3) are rescinded, and
  - (c) any person who would have continued or become a member of AMP but for the determination or rule is a member of AMP with effect from the time when membership of AMP would have commenced,
- but nothing in this subsection affects the validity of anything done by AMP (including any resolution of members) before the termination date.
- (7) For the purposes of this section, the termination date is 30 June 1998 or such later date as may be prescribed by the regulations.



## 16 Irregularities

- (1) Subject to this section but without limiting the generality of any other power that the Supreme Court may have, the Court may, on application by AMP, NHL or any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:
  - (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Part is not invalid by reason of any contravention of or failure to comply with this Part, or any other law, or a provision of the constitution of any corporation including AMP or by reason of any lack of power or authority of AMP or NHL,
  - (b) an order directing the rectification of any register kept by AMP,
  - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a),
  - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Part or in relation to AMP or NHL (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,and may make such consequential or ancillary orders as the Court thinks fit.
- (2) An order may be made under subsection (1) (a) or (c) even though the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.
- (3) The Court is not to make an order under this section unless it is satisfied:
  - (a) in the case of an order referred to in subsection (1) (a):
    - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature, or

- (ii) that the person or persons concerned in or party to the contravention or failure acted honestly, or
  - (iii) that it is in the interests of the members of AMP as a whole (including persons who would be members but for resolutions of directors) that the order be made, and
- (b) in the case of an order referred to in subsection (1) (c)—that the person subject to the civil liability concerned acted honestly, and
- (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

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## Part 3 Limitation on share entitlement

### 17 Definitions

In this Part:

*acquire* and *entitled* have the same meanings as those expressions have when used in Chapter 6 of the *Corporations Law*.

*default share* has the meaning given by section 19, and a default share is a share even if the voting rights attached to the share are suspended.

*directors* means the directors of NHL.

*dispose* has the same meaning as when used in Chapter 6 of the *Corporations Law*, and includes disposal of shares by means of a buy-back by NHL.

*restriction period* means the period beginning when the Attorney General issues a certificate of conversion or, if later, when the certificate of conversion takes effect, and ending at:

- (a) the beginning of the day that is the first anniversary of the day (*quotation day*) on which shares of NHL are first admitted to official quotation by the Australian Stock Exchange Limited, or
- (b) the beginning of such later day as may be prescribed by the regulations, but not later than the second anniversary of the quotation day.

*share* means a voting share in the capital of NHL.

*voting, dividend and winding up rights* means the rights of a shareholder of NHL under the memorandum and articles of association of NHL:

- (a) to exercise a vote at any meeting of shareholders, and
- (b) to receive dividends, and
- (c) to receive a distribution out of the property of NHL, whether as a result of winding up or otherwise.

## 18 Determinations, opinions and powers of directors

In this Part:

- (a) a reference to a determination or opinion of the directors is a reference to a determination or opinion, as the case may be, made or formed in accordance with the articles of association of NHL, and
- (b) the powers of the directors conferred by this Part may be exercised by them in their absolute discretion, and
- (c) the directors are not obliged to provide to any person any reason or grounds for a determination or opinion.

## 19 Limit on entitlement to NHL shares

- (1) Except as provided in this Part, a person must not acquire shares in NHL during the restriction period if any person who:
  - (a) is not entitled to any shares in NHL, or
  - (b) is entitled to less than 5% of the shares in NHL,would, immediately after the acquisition, be entitled to 5% or more of the shares in NHL.
- (2) Except as provided in this Part, a person who is entitled at any time during the restriction period to 5% or more of the shares in NHL must immediately cause that entitlement to be reduced to less than 5%.
- (3) For the purposes of this Part, while a person is entitled, at any time during the restriction period, to 5% or more of the shares in NHL, each share to which the person is entitled is a default share.

## 20 Exceptions

- (1) Section 19 does not apply to each of the following persons:
  - (a) NHL,
  - (b) the directors, in that capacity,
  - (c) a subsidiary of NHL.
- (2) The directors may nominate a person for the purposes of this section without stipulating a maximum percentage entitlement for that person. Section 19 does not apply to a person so nominated.

- (3) The directors may nominate a person for the purposes of this section and stipulate a maximum percentage entitlement for that person. Section 19 applies to a person so nominated as if 5% were replaced by the maximum percentage entitlement stipulated by the directors.
- (4) The directors may at any time cause a notice to be given to a person nominated under subsection (2) or (3) revoking the nomination on the expiry of a period specified in the notice. Subject to another nomination under subsection (2) or (3) of this section, section 19 applies to the person as from the expiry of the notice as if the nomination had not been made.

## **21 Allotment and issue of new securities**

- (1) If:
  - (a) an allotment and issue of shares in NHL arises from the exercise, conversion or paying up of a quoted security or a quoted right, and
  - (b) the allotment might result in a contravention of section 19,NHL may allot and issue the shares to a nominee selected by it, on terms that require the nominee to arrange for the disposal of the shares for the benefit of the person to whom the shares would otherwise be issued.
- (2) Nothing in this Part affects the validity of an allotment or issue of shares that arises from the exercise, conversion or paying up of a quoted security or a quoted right.

## **22 Automatic suspension of rights**

- (1) The voting, dividend and winding up rights attaching to each default share are automatically suspended while the share is a default share.
- (2) If it appears from:
  - (a) a notice received by NHL under Part 6.7 of the *Corporations Law*, or
  - (b) a statement in response to a primary or secondary notice given in respect of NHL under Part 6.8 of the *Corporations Law*, or

- (c) information received by NHL from the Australian Securities Commission, whether under Part 6.8 of the *Corporations Law* or otherwise, or
- (d) a declaration or finding by any court or the Corporations and Securities Panel,

that a person is entitled to 5% or more of the shares in NHL, the shares to which the person is entitled are taken to be default shares, unless the contrary is proved or the directors otherwise determine.

- (3) If a primary or secondary notice is given in respect of NHL under Part 6.8 of the *Corporations Law* and the person to whom the notice is given does not adequately respond to it within the time prescribed by the *Corporations Law*, the shares to which the notice relates are taken to be default shares, unless the contrary is proved or the directors otherwise determine.
- (4) Dividends or distributions otherwise payable in respect of a default share may be retained by NHL without any liability to pay interest. When the shares cease to be default shares, the amounts retained by NHL must be paid to the person to whom they would have been paid but for the suspension under this section.
- (5) If the voting, dividend and winding up rights attached to default shares have been suspended under this section, the directors must promptly cause a notice to be given to the registered holder of the default shares (or, if there are two or more registered holders, to each of them) advising that the suspension has occurred.
- (6) Failure to give, or delay in giving, notice under subsection (5) does not invalidate the suspension of voting, dividend and winding up rights under this section or the powers of disposal of default shares under this Part.

### **23 Disposal of surplus shares**

- (1) The directors may at any time cause a notice to be given:
  - (a) to the registered holder of default shares, or
  - (b) if there are two or more registered holders of the default shares, to each of them,

requiring, within the period specified in the notice (being a period of not less than 14 days from the date of the notice), the disposal by the registered holder or holders of such number of default shares as, in the directors' opinion, is sufficient to ensure that, after the disposal of those shares, none of the remaining shares held by the registered holder or holders is a default share.

- (2) If the requirements of a notice under subsection (1) are not complied with, NHL may dispose of the default shares specified in the notice, or such lesser number of those shares as the directors may determine.
- (3) The following provisions apply if default shares are or are to be disposed of under subsection (2):
  - (a) the directors may determine, in respect of a registered holder of shares, how many default shares are to be disposed of,
  - (b) the directors may select the method of disposal of the default shares, and may dispose of them in a number of parcels, over a period of time, and otherwise in such manner and on such terms as the directors may determine,
  - (c) for the purpose of determining the identity of the registered holders of shares and the number of shares required at any time to be disposed of, the directors may have regard to the latest notices given to NHL under Part 6.7 of the *Corporations Law* and need not have regard to any changes that may have occurred after the latest of such notices,
  - (d) each registered holder of default shares is taken to have appointed NHL and each of the directors jointly and severally as attorney as if by power of attorney in the registered holder's name and on the registered holder's behalf to execute any documents and implement any procedures that may be required to procure the disposal of the shares (by transfer or otherwise) on behalf of the registered holder,
  - (e) the title of the transferee of any shares disposed of under this section is not affected by any irregularity or invalidity in connection with the disposal of the shares to the transferee including, without limitation, the absence of any share certificate,

- (f) NHL may receive and give a good discharge for any payment made for or in connection with the disposal of default shares, and must pay to the former registered holder of the default shares the amount received in respect of the default shares of the registered holder, after deducting the whole, or such part as the directors determine, of the costs and expenses of and incidental to the disposal of the default shares.
- (4) Neither NHL nor the directors are bound to see to the application of an amount paid to a registered holder of shares under this section, and that amount may be paid by cheque posted to the registered holder at the address appearing in NHL's share register immediately before the disposal.

## **24 Effect of contravention**

- (1) A person who contravenes a provision of this Part is not guilty of an offence.
- (2) If a person has engaged, is engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of a provision of this Part, the Supreme Court may, on application of the Attorney General, NHL or a person whose interests have been, are or would be affected by the contravening conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the firstmentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (3) If in the opinion of the Court it is appropriate to do so, the Court may grant an interim injunction pending determination of an application under subsection (2).
- (4) The Court may discharge or vary an injunction granted under subsection (2) or (3).
- (5) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may either in addition to or in substitution for the grant of the injunction, order that person to pay damages to the other person.



- (6) Nothing in this Part is taken to limit the right of NHL to exercise any other power or remedy that may be open to it where the directors are of the opinion that there is a contravention of section 19 or any other law.

## Part 4 Registration of AMP as a company

### 25 Registration as a company

- (1) AMP is authorised to be registered, and to take steps to be registered, as a company under Division 3 of Part 2.2 of the *Corporations Law*, and for that purpose the transfer of its incorporation is authorised, but only if the member or members of AMP approve the transfer of incorporation by special resolution.
- (2) If AMP converts to a company limited by shares under this Act, and the member or members of AMP approve the transfer of incorporation as referred to in subsection (1), AMP must apply to be registered as a company under Division 3 of Part 2.2 of the *Corporations Law* within one month after the passing of the special resolution referred to in that subsection.

### 26 Repeal

After AMP has been registered as a company under Division 3 of Part 2.2 of the *Corporations Law*, the Governor may, by one or more proclamations, repeal all or any specified provisions of either or both of the following Acts:

- (a) *Australian Mutual Provident Society's Act 1910*,
- (b) *Australian Mutual Provident Society Act 1988*.

## **Part 5 Rights and remedies**

### **27 Rights and remedies**

- (1) Subject to this Act, persons have, as nearly as possible, the same rights and remedies in relation to acts, matters and things done, omitted or suffered under or in connection with this Act as persons have in relation to acts, matters and things done, omitted or suffered under or in connection with the *Corporations Law* in corresponding circumstances.
- (2) The rights and remedies conferred by this section apply with such adaptations and modifications as are necessary or as are prescribed by the regulations.

### **28 Jurisdiction, powers and functions of Supreme Court**

- (1) Subject to this Act, the Supreme Court has, as nearly as possible, the same jurisdiction, powers and functions in relation to acts, matters and things done, omitted or suffered under or in connection with this Act as the Federal Court of Australia or the Administrative Appeals Tribunal of the Commonwealth or both have in relation to acts, matters and things done, omitted or suffered under or in connection with the *Corporations Law* in corresponding circumstances.
- (2) The jurisdiction, powers and functions of the Supreme Court conferred by this section apply with such adaptations and modifications as are necessary or as are prescribed by the regulations or by rules of court.

### **29 Application of Commonwealth laws**

- (1) Without limiting other provisions of this Part, the provisions of the *Administrative Appeals Tribunal Act 1975* and the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth apply as laws of the State for the purposes of this Part, as nearly as possible, to the same extent as they apply as laws of the State for the purposes of the *Corporations Law*.
- (2) The provisions applied by this section so apply with such adaptations and modifications as are necessary or as are prescribed by the regulations or by rules of court.
- (3) In particular, references in those provisions to the Administrative Appeals Tribunal are to be read as references to the Supreme Court.

### **30 Time limits not affected**

The provisions of this Part are subject to any time limits or other restrictions imposed under section 5 or 9 (or any other provision of this Act) on:

- (a) the making of applications to the Supreme Court, or
- (b) the power of any court or tribunal to make orders.

### **31 Rules of court**

Rules of court (not inconsistent with this Act or the regulations) may be made under the *Supreme Court Act 1970* for the purposes of this Part. This section does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

### **32 Other rights and remedies**

Nothing in this Part affects:

- (a) any rights and remedies, or
- (b) any jurisdiction, powers and other functions,

that exist apart from this Act.

## **Part 6      Miscellaneous**

### **33    Construction of Act**

- (1) This Act is to be construed as operating to the full extent of, but not so as to exceed, the legislative power of Parliament.
- (2) If any provision of this Act, or the application of this Act to any person, subject-matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of Parliament:
  - (a) it is a valid provision to the extent to which it is not in excess of that power, and
  - (b) the remainder of this Act, and the application of the provision to other persons, subject-matters or circumstances, is not affected.
- (3) This section is in addition to and does not limit the operation of section 31 of the *Interpretation Act 1987*.

### **34    Amendment of Australian Mutual Provident Society Act 1988 No 47**

The *Australian Mutual Provident Society Act 1988* is amended as set out in Schedule 1.

### **35    Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule 1 Amendment of Australian Mutual Provident Society Act 1988**

(Section 34)

### **[1] Section 2 Commencement**

Insert "Subject to section 11 (2) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*," before "AMP's" in section 2 (4).

### **[2] Section 10 By-laws**

Insert "(including the by-laws as taken to be amended under section 11 (2) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*)" after "by-laws" in section 10 (3).

### **[3] Section 11 Membership criteria**

Omit "Membership".

Insert instead "Subject to section 11 (2) and (3) of the *Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997*, membership".

### **[4] Section 12 Members' liability**

Omit "If" from section 12 (1).

Insert instead "Subject to subsection (3), if".

**[5] Section 12 (3)**

Insert after section 12 (2):

- (3) Section 360 of the Code applies to every present and past member of AMP who holds or has held shares in AMP.

[Minister's second reading speech made in—  
Legislative Assembly on 17 June 1997  
Legislative Council on 26 June 1997]

BY AUTHORITY

