

TOWER CORPORATION BILL

EXPLANATORY NOTE

THIS Bill is a private Bill.

The purposes of this Bill are:

- (a) To apply to Tower Corporation (formerly the Government Life Insurance Corporation) many, but not all, of the provisions of the Companies Act 1955:
- (b) To convert the corporation from a corporation aggregate consisting of the Board of Directors to a corporation aggregate consisting of its members (present policyholders):
- (c) To provide for the Board to put before members at a future date a scheme for conversion of the corporation into a company limited by shares and to give the High Court jurisdiction to supervise and confirm such a scheme:
- (d) To provide for the legal consequences of such a conversion:
- (e) To repeal the Tower Corporation Act 1987 (formerly the Government Life Insurance Corporation Act 1987).

PART I

PRELIMINARY

Clause 1 relates to the Short Title and commencement. The operative provisions will commence on a date to be specified by Order in Council. No such Order in Council can be made unless bylaws approved by the Minister have been lodged with the Registrar of Companies.

Clause 2 defines various terms used in the Bill.

Clause 3 relates to the content of the bylaws. They are to be equivalent to a memorandum of association and articles of association of a company.

PART II

TOWER CORPORATION

Clause 4 provides for continuity of the Corporation as a corporation aggregate consisting of its members. The present Corporation is a corporation aggregate consisting of its directors.

Clause 5 provides for protection of the name "Tower Corporation".

Clause 6 provides that, as all guarantees by the Crown in respect of policies relating to life insurance or superannuation business have now lapsed, the Crown is under no liability for the debts or liabilities of the Corporation.

Clause 7 provides for the Corporation to continue to be subject to legislation affecting life insurance companies.

No. 10—1

Price
incl. GST \$2.20

Clause 8 contains a transitional provision dealing with employees of the Corporation who have continued as contributors to the Government Superannuation Fund.

PART III

APPLICATION OF COMPANIES ACT 1955 TO CORPORATION

Clause 9 deals with those provisions of the Companies Act 1955 that are to apply and those that are not to apply to the Corporation bearing in mind that it will have members but not shareholders until its conversion to a company limited by shares. The section makes it clear that, despite the application of many provisions of the Companies Act 1955 to the Corporation, the Corporation is not a company.

Clause 10 provides that a class of members (for the purposes of the Companies Act 1955) does not arise from holding a particular policy, annuity or contract issued by the Corporation.

Clause 11 deals with annual returns and accounts.

Clause 12 provides for bylaws of the Corporation and their legal effect.

Clause 13 provides that membership shall be as determined by the bylaws.

Clause 14 limits the liability of members of the Corporation to the assets of the Corporation.

PART IV

CONVERSION TO COMPANY

Clause 15 provides a procedure for a scheme for conversion of the Corporation into a company limited by shares. This is commenced by an application by the Corporation to the High Court for directions under *clause 16*. Under that clause the High Court is given wide powers to facilitate the scheme and to protect the interests of members and creditors by the appointment of an *amicus curiae*, and independent experts with appropriate actuarial and investment banking experience, and the power to direct the convening of meetings of classes of members.

Clause 17 provides for a meeting of members to approve the scheme. This requires 21 days' notice and the passing of a special resolution by the members.

Clause 18 provides for an application for final confirmation of the scheme by the Court.

Clause 19 provides for registration by the Registrar of Companies of the Corporation as a company limited by shares on receipt of certain documents which include a copy of the scheme, a sealed copy of the order and copies of the memorandum and articles of association together with ancillary documentation. A certificate of incorporation is to be issued which is conclusive evidence of incorporation as a company limited by shares.

Clause 20 deals with the allotment of shares.

Clause 21 deals with the legal consequences of conversion and provides for continuity of existing rights and duties of the Corporation.

Clause 22 deals with employment matters arising from the conversion.

Clause 23 protects the company into which the Corporation is converted from certain adverse consequences of the conversion which could otherwise apply.

Clause 24 deals with rights and liabilities altered by, or arising under, the scheme.

Clause 25 provides that no shares shall require further contribution by a member in the event of winding up of the company.

Clause 26 provides that the Corporation and the company shall be deemed to be the same person for taxation and related purposes.

Clause 27 repeals *Parts II and III* and the *Second Schedule* on the conversion date.

PART V

MISCELLANEOUS

Clause 28 repeals the Tower Corporation Act 1987 and removes the Corporation from the scope of the Ombudsmen Act 1975.

Clause 29 provides for the making of regulations by Order in Council to facilitate matters under the Act.

Clause 30 declares the Act to be a private Act.

The *First Schedule* deals with transitional provisions, and the *Second Schedule* specifies those provisions of the Companies Act 1955 that do not apply to the Corporation.

Hon. Fran Wilde

TOWER CORPORATION

[PRIVATE]

ANALYSIS

Title	
Preamble	
PART I	
PRELIMINARY	
1. Short Title and commencement	
2. Interpretation	
3. Content of proposed bylaws	
PART II	
TOWER CORPORATION	
4. Tower Corporation	
5. Protection of name "Tower Corporation"	"Tower Corporation"
6. No Crown liability	
7. Application of other Acts	
8. Contributors to Government Superannuation Fund	
PART III	
APPLICATION OF COMPANIES ACT 1955 TO CORPORATION	
9. Application of Companies Act 1955	
10. Rights of classes of members	
11. Annual returns and accounts	
12. Bylaws	
13. Membership criteria	
14. Members' liability	
PART IV	
CONVERSION TO COMPANY	
15. Scheme for conversion	
16. Application to High Court	
17. Meeting of members to approve scheme for conversion of Corporation into company under Companies Act 1955	
18. Application for final confirmation of scheme for conversion	
19. Registrar to register Corporation as a company on receipt of certain documents	
20. Allotment of shares	
21. Consequential provisions on conversion of Corporation	
22. Consequential provisions relating to employment	
23. Certain matters not affected by conversion of Corporation	
24. Enforceability of rights and liabilities altered by or arising under scheme for conversion	
25. Liability of members of company	
26. Taxes and duties	
27. Repeals	
PART V	
MISCELLANEOUS	
28. Consequential repeals and amendments	
29. Regulations	
30. Private Act Schedules	

A BILL INTITULED

An Act to provide for the restructuring of Tower Corporation and to permit that Corporation to be further restructured

WHEREAS

- (A) Tower Corporation (formerly known as Government Life Insurance Corporation) (hereinafter called “the Corporation”) is a corporation aggregate in the form of its Board of Directors established pursuant to the Tower Corporation Act 1987 as successor to the Government Life Insurance Commissioner: 5
- (B) The Tower Corporation Act 1987 provides for significant Government involvement in the operations of the Corporation, including the right of the Government to appoint the majority of directors of the Corporation and a guarantee by the Government of certain liabilities of the Corporation: 10
- (C) The Corporation wishes to clarify its status as a mutual association existing for the benefit and subject to the control of its policyholders: 15
- (D) The Corporation wishes to provide for the possible future restructuring of the Corporation as a company limited by shares subject to Court supervision to ensure the allotment of shares in the company proceeds on a basis which is equitable to the members of the Corporation: 20
- (E) The objects of this Act cannot be attained otherwise than by legislation: 25

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows: 25

PART I

PRELIMINARY

- 1. Short Title and commencement**—(1) This Act may be cited as the Tower Corporation Act 1990. 30
- (2) This section and **sections 2 and 3** of this Act shall come into force on the day on which this Act receives the Royal assent.
- (3) Except as provided in **subsection (2)** of this section, this Act shall come into force on a day to be specified by the Governor-General by Order in Council. 35
- (4) An Order in Council shall not be made under **subsection (3)** of this section unless—
- (a) The Corporation existing under the Tower Corporation Act 1987 has lodged with the Registrar proposed bylaws which have been certified by its board and approved by the Minister; and 40

(b) The Registrar has issued a certificate stating that the proposed bylaws have been duly lodged in accordance with **paragraph (a)** of this subsection.

5 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Actuary” means the person for the time being holding the appointment of, or acting as, actuary to the Corporation:

10 “Auditor” means the person for the time being holding the appointment as auditor to the Corporation:

“Board” means the board of directors of the Corporation:

“Company” means the company into which the Corporation becomes converted pursuant to **Part IV** of this Act:

15 “Conversion date” means the date of incorporation of the Corporation as a company:

“Corporation” means Tower Corporation as continued in existence under **section 4** of this Act:

20 “Employee” means a person employed in the service of the Corporation; but does not include a director:

“Instrument” includes—

25 (a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

30 (b) Any judgment, order or process of a court:
“Liabilities” means liabilities, debts, charges and duties of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

“Member” means a person who is a member of the Corporation by virtue of **section 13** of this Act:

35 “Minister” means the Minister of Finance:

“Officer” has the same meaning in respect of the Corporation as it has in respect of companies in the Companies Act 1955:

40 “Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and without limiting the generality of the foregoing includes—

(a) Choses in action and money; and

(b) Goodwill; and

(c) Rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective: 5

“Registrar” means the Registrar of Companies:

“Rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective:

“Scheme for conversion” means a scheme providing for conversion of the Corporation from a statutory corporation to a public company limited by shares under the Companies Act 1955 pursuant to **Part IV** of this Act: 10

“Specified date” means the date specified by the Governor-General by Order in Council in accordance with **section 1 (3)** of this Act. 15

Cf. 1987, No. 70, s. 2., 1988 No. 1, s. 2

3. Content of proposed bylaws—The proposed bylaws referred to in **section 1 (4)** of this Act shall comprise— 20

- (a) Part I which shall contain only matters of a type appropriate for inclusion in a memorandum of association of a company; and
- (b) Part II which shall contain only matters of a type appropriate for inclusion in articles of association of a company. 25

Cf. Australian Mutual Provident Society Act 1988 (NSW); 1988, No. 47, s. 2 (4)

PART II

TOWER CORPORATION 30

4. Tower Corporation—(1) There shall continue to be a body corporate called Tower Corporation which shall be the same body corporate as that existing under that name immediately prior to the commencement of this Act.

(2) The Corporation is a body corporate with perpetual succession and a common seal and is capable of acquiring, holding, and disposing of real and personal property, and of suing and being sued, and of doing and suffering all other acts and things that bodies corporate may do and suffer. 35

(3) The Corporation shall have the rights, powers, and privileges specified in the bylaws referred to **section 1 (4)** of this Act. 40

(4) The Corporation shall, on and from the specified date, consist of the members, whose rights and obligations shall be those provided in those bylaws.

(5) For the purposes of determining whether—

5 (a) Any taxpayer satisfies the requirements of section 188 (7) (a) of the Income Tax Act 1976:

(b) Any taxpayer is included in a group of companies or a specified group for the purposes of section 191 of the Income Tax Act 1976:

10 (c) Any debit arises to be recorded in a taxpayer's imputation credit account under section 394E (1) of the Income Tax Act 1976, or in a taxpayer's dividend withholding payment account under section 394zw (1) of that Act, or in a taxpayer's branch equivalent tax
15 account under section 394ZZP (3) of that Act,—

shares held by the Corporation in any company (whether directly or through any one or more interposed companies) immediately before the specified date shall be treated as having been acquired by the Corporation as continued under this
20 section and consisting of the members, at the time when they were acquired by the Corporation as consisting of its directors, or, in the case of shares held by the Corporation immediately before the specified date which were acquired by the
25 Government Insurance Investment Board under the Government Life Insurance Act 1953, at the time when they were acquired by that Board.

(6) For the purposes of section 394ZZU (3) of the Income Tax Act 1976, no debit shall arise to be recorded in the branch equivalent tax account (if any) of the Corporation by reason of
30 the Corporation ceasing to consist of its directors and consisting instead, by virtue of subsection (4) of this section, of the members.

Cf. 1987, No. 70, s. 3

5. Protection of name "Tower Corporation"—(1) No
35 company or other body shall be incorporated or registered under a name that contains the words "Tower Corporation" or under any other name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names
40 Protection Act 1981, so resembles such a name as to be likely to deceive.

(2) Nothing in this section applies to the Corporation or to any other person who is associated with the Corporation.

6. No Crown liability—The Crown shall not be liable to contribute towards the payment or satisfaction of any debts or liabilities of the Corporation.

7. Application of other Acts—Subject to this Act, the provisions of any other Act affecting life insurance companies shall apply to the Corporation in respect of any life insurance business conducted by the Corporation. 5

Cf. 1987, No. 70, s. 32

8. Contributors to Government Superannuation Fund—(1) Any person who, immediately before the specified date, was an employee of the Corporation and was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues in the service of the Corporation, and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if service with the Corporation were Government service. 10 15

(2) Subject to the Government Superannuation Fund Act 1956, nothing in **subsection (1)** of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor. 20

(3) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with **subsection (1)** of this section, to a person who is in the service of the Corporation and is a contributor to the Government Superannuation Fund, the term “controlling authority”, in relation to that person, means the Corporation. 25 30

Cf. 1987, No. 70, s. 40

PART III

APPLICATION OF COMPANIES ACT 1955 TO CORPORATION

9. Application of Companies Act 1955—(1) Subject to this Act,— 35

(a) The Companies Act 1955 shall apply—

(i) To the Corporation as if it were a company limited by guarantee without a share capital that had been duly registered under the name “Tower Corporation” and had been duly incorporated under that Act on the commencement of this section; and 40

- (ii) To the members and officers of the Corporation as if they were members and officers, respectively, of such a company:
- 5 (b) Sections 84 to 90 inclusive of the Companies Act 1955 shall apply in respect of debentures of the Corporation:
- 10 (c) Sections 219 (1), 260, 300 and 332 of the Companies Act 1955 shall apply as if for the words “contributory” or “contributories” there were substituted the words “member” or “members”, but no other reference to “contributory” or “contributories” in that Act shall apply to members of the Corporation:
- 15 (d) The High Court Rules relating to companies shall apply to the Corporation and to its members and officers in the same way and to the same extent that the Companies Act 1955 applies to the Corporation.
- (2) The provisions of the Companies Act 1955 that are listed in the **Second Schedule** to this Act shall not apply to the Corporation.
- 20 (3) Nothing in this Part of this Act shall be read or construed so as to constitute the Corporation as a company for the purposes of any law relating to companies.

Cf. AMP Act (NSW) 1988, No. 47, ss. 4–6, Sched 1

- 25 **10. Rights of classes of members**—A member shall not be taken to be in a class of members having rights for the purposes of sections 205 and 206 of the Companies Act 1955 by reason only of the member holding a life insurance policy or other policy or annuity or contract issued by the Corporation.

Cf. AMP Act (NSW) 1988, No. 47, s. 8

- 30 **11. Annual returns and accounts**—(1) In addition to an annual return as required by section 131 of the Companies Act 1955, the Corporation shall deliver to the Secretary for Justice copies of such statements, abstracts, and accounts as the Life Insurance Act 1908 requires to be prepared by the Corporation.

- 35 (2) In addition to the accounts required by section 133 of the Companies Act 1955, the Corporation shall lodge with the Registrar and send to every member at the address of the member recorded in the Corporation’s register an abstract of
40 the annual accounts containing the report of the Actuary or a summary of it, a statement of the policyholders’ funds and the balance sheet of the Corporation and each such abstract shall

state that members are entitled to obtain a copy of the annual accounts and auditor's report upon request to the Corporation.

Cf. AMP Act (NSW) 1988, No. 47, s. 9

12. Bylaws—(1) On and from the commencement of the specified date the bylaws of the Corporation are those bylaws lodged with the Registrar in accordance with **section 1 (4) (a)** of this Act, as amended from time to time in accordance with this section. 5

(2) Parts I and II of the bylaws of the Corporation—

(a) Shall, for the purposes of the application of the Companies Act 1955 to the Corporation and to its members and officers, be taken to be the memorandum of association and articles of association, respectively, of the Corporation; and 10

(b) Shall be deemed to constitute a contract between the Corporation and each member, the Corporation and each officer of the Corporation, and between a member and each other member. 15

(3) Part I of the bylaws may be amended in accordance with the Companies Act 1955 as if they were a memorandum of association of a company and Part II of the bylaws may be amended in accordance with the Companies Act 1955 as if they were articles of association of a company. 20

Cf. AMP Act (NSW) 1988, No. 47, s. 10

13. Membership criteria—Membership of the Corporation shall be in accordance with the bylaws of the Corporation. 25

Cf. AMP Act (NSW) 1988, No. 47, s. 11

14. Members' liability—(1) If the Corporation is wound up—

(a) No person shall, as a present or past member, be liable to contribute to the property of the Corporation for the purposes of payment of the debts or liabilities of or the costs, charges or expenses of the winding up of the Corporation or for the purposes of the adjustment of the rights of such members among themselves; and 30 35

(b) The property of the Corporation alone shall be liable for those purposes.

(2) In this section the expression “past member” includes a person who ceased to be a member before the coming into force of this section.

Cf. AMP Act, (NSW) 1988, No. 47, s. 12

5

PART IV

CONVERSION TO COMPANY

15. Scheme for conversion—(1) The Corporation shall be converted into a company limited by shares where any scheme for conversion of the Corporation into a public company limited by shares is—

- 10 (a) Proposed by the Corporation; and
- (b) Approved by special resolution of the members in accordance with this Part of this Act; and
- 15 (c) Confirmed by the High Court; and
- (d) Registered with the Registrar.

- (2) Any such scheme for conversion shall—
- (a) State that the name of the proposed company will be Tower Corporation Limited;
- (b) State the authorised capital of the proposed company;
- 20 (c) Have annexed to it the proposed memorandum of association and articles of association of the proposed company;
- (d) Specify the persons or classes of persons who will be the members of the proposed company;
- 25 (e) Specify, in the case of persons or classes of persons who are members of the Corporation and who will be members of the proposed company, by reference to the interests of those persons or classes of persons in the policies of the Corporation, the entitlements of those persons or classes of persons to shares in the capital of the proposed company;
- 30 (f) Specify, in the case of persons or classes of persons who are members of the Corporation and who will not be members of the proposed company, the rights and liabilities of such persons or classes of persons;
- 35 (g) Contain such other matters as the Corporation thinks appropriate or as the High Court directs.

16. Application to High Court—(1) Where any scheme for conversion of the Corporation into a company limited by shares is proposed, the Corporation shall apply to the High Court for an order directing such meetings of classes of members to be convened in such manner as the High Court

40

thinks fit. If any question arises under this section as to whether or not any members constitute a class of members, it shall be determined by the High Court as in the circumstances it thinks proper.

(2) The Corporation and any member or creditor of the Corporation shall have the right to appear and be heard on any application under this section. 5

(3) Before any order is made pursuant to **subsection (1)** of this section, the Corporation shall apply for directions in connection with the proposed scheme for conversion and the High Court shall make such order as it considers appropriate, including (without limitation): 10

(a) An order appointing independent counsel to act as *amicus curiae* to investigate and advise the High Court on the interests of members or creditors or any class or group of members or creditors in relation to the proposed scheme: 15

(b) An order determining the notice to be given to any interested person or, if the High Court thinks fit, an order dispensing with notice to any person: 20

(c) An order appointing an independent expert or experts with appropriate accounting, actuarial, banking, or valuation experience to report to the High Court on the scheme for conversion being an expert or experts nominated by the counsel appointed under **paragraph (a)** of this subsection. 25

(4) No order shall be made under **subsection (1)** of this section until after the High Court has received an opinion from the counsel and the report or reports of the expert or experts appointed under **subsection (3)** of this section. 30

(5) At any time after any order is made pursuant to **subsection (4)** of this section the High Court may, by further order, make:

(a) An order varying the proposed scheme in any manner: 35
 (b) An order approving any notice to be given pursuant to **section 17 (1)** of this Act:

(c) An order to indemnify any member or creditor in respect of legal costs in connection with any application.

(6) In making any order under **subsection (1)** of this section or **section 17 (3)** of this Act the High Court shall have regard to the rights and interests in, and claims against, the Corporation of members and creditors to ensure that as far as practical: 40

(a) Any allocation of shares is made fairly between members of the Corporation and between members of the Corporation and any other person; and

(b) The rights of creditors are adequately protected in the scheme for conversion.

5 (7) Any counsel appointed under **subsection (3)(a)** of this section and any independent expert appointed under **subsection (3)(c)** of this section shall have full access to the officers and employees of the Corporation and to books, papers, and all other records of the Corporation including information kept in other than written form and shall be entitled to attend and speak at any extraordinary general meeting convened under **section 17** of this Act and any other meetings ordered by the High Court under **subsection (2)** of this section.

10 (8) The fees of any counsel and independent expert appointed under **subsection (3)** of this section shall be paid by the Corporation.

15 (9) For the purposes of this section, when the approval of a scheme by any class of members is directed by the High Court to be obtained, such approval shall require a special resolution to be passed by a majority in number representing three fourths of the total voting rights of those members attending and voting at such meeting.

20 Cf. 1955, No. 63, s. 205.

17. Meeting of members to approve scheme for conversion of Corporation into company under Companies Act 1955—(1) A notice or notices complying with the provisions of **subsection (3)** of this section shall be served on every member not less than 21 clear days before any extraordinary general meeting of the members (or any class or classes of members) at which a resolution to approve a scheme for conversion referred to in **section 15** of this Act is to be proposed.

30 (2) Any notice required for the purposes of **subsection (1)** of this section shall be given by the Corporation to each member at the address of the member recorded in the Corporation's register in the manner specified in the bylaws of the Corporation, shall be deemed to be duly given as specified in those bylaws, and shall be accompanied by a form of proxy.

35 (3) Every notice required for the purposes of **subsection (1)** of this section shall—

40 (a) Summarise, in sufficient detail to enable the members to determine properly how to vote on the resolution, the matters required to be referred to in, and the contents of any documents required to be annexed to, the scheme for conversion as specified in **section 15 (2)** of this Act:

- (b) Specify any proposed change in the principal activities of the Corporation:
- (c) Specify the names of the persons who will be the directors, secretary, and auditor of the proposed company: 5
- (d) State whether any financial benefits are to be conferred as a consequence of the scheme on any director of the Corporation or the proposed company:
- (e) State whether it is intended that the proposed company will, within 6 months of the conversion date, issue any shares in the proposed company other than in accordance with the scheme for conversion: 10
- (f) Contain a summary of the opinion of the counsel and report or reports of the independent expert or experts appointed under **section 16 (3)** of this Act: 15
- (g) State that a copy of the scheme for conversion and of the full opinion of the counsel and report or reports of the independent expert or experts appointed under **section 16 (3)** of this Act are available for inspection by any member at the registered office and regional offices of the Corporation at any time during normal business hours and give the locality of such offices: 20
- (h) State the date, time, and place of the extraordinary general meeting at which the resolution is to be proposed. 25
- (4) Brief particulars of the notice referred to in **subsection (1)** of this section shall be advertised in the *Gazette*, in one daily newspaper circulating in each of Auckland, Wellington, Christchurch, and Dunedin, and in 2 other newspapers having national circulation. 30
- (5) No scheme for conversion including a statement purporting to be made by an expert, and no document relating to a scheme for conversion including a statement purporting to be made by an expert, shall be sent to, or made available for inspection by, any person for the purposes of this section, unless— 35
- (a) The expert has given and has not, before the date on which the scheme for conversion or other document, as the case may be, is sent to, or made available for inspection by, any person, withdrawn his or her written consent to distribution of the scheme or other document with the statement included in the form and context in which it is included; and 40

- (b) A statement that the expert has given and has not withdrawn his or her consent appears in the scheme or other document, as the case may be; and
- 5 (c) A statement of the expert's qualifications appears in the scheme or other document, as the case may be; and
- (d) A statement which appears in the scheme or other document, as the case may be, states whether or not the expert is, or is intended to be, a director, officer, or employee of, or professional adviser to, the
- 10 Corporation or the proposed company; and
- (e) The statement was made not earlier than 4 months before the scheme or other document, as the case may be, was sent to, or made available for inspection by, any person for the purposes of this section.
- 15 (6) For the purposes of **subsection (5)** of this section and **section 16 (3)** of this Act, the expression "expert" means any person who holds himself or herself out to be of a profession or calling that gives authority to a statement made by him or her; and includes an accountant, actuary, banker, or valuer; but does not
- 20 include a person acting in his or her capacity as an auditor or as a director or officer of the Corporation.
- (7) The Corporation shall ensure that the meeting or meetings convened by any notice referred to in **subsection (1)** of this section is or are duly held in accordance with the bylaws of
- 25 the Corporation and any other requirements specified by the High Court, and that the special resolution to approve the scheme of conversion is put to the meeting or meetings.
- (8) The Corporation shall forward a copy of the special resolution passed at any meeting or meetings convened
- 30 pursuant to **subsection (1)** of this section to the Registrar pursuant to section 147 of the Companies Act 1955 as soon as practicable after the passing of the special resolution.

Cf. 1987, No. 175, s. 113A.

- 18. Application for final confirmation of scheme for conversion**—(1) If the meeting or meetings of members of the
- 35 Corporation each pass a special resolution approving the scheme for conversion the Corporation shall then apply to the High Court for final confirmation of the scheme.
- (2) The persons entitled to appear on an application under
- 40 **subsection (1)** of this section are:
- (a) The Corporation;
- (b) The *amicus curiae*:

- (c) Members who hold 5 per cent or more of the votes exercisable by any class of members and who have voted against the scheme for conversion:
 - (d) With leave of the High Court, any other member of the Corporation. 5
 - (3) On any application for final confirmation the High Court may—
 - (a) Make an order approving, or amending and approving, or declining to approve, the scheme for the conversion of the Corporation into a company either wholly or in part, and on such terms and conditions as it thinks fit: 10
 - (b) Adjourn the proceedings:
 - (c) Give such directions and make such orders as it thinks fit for facilitating or carrying into effect any such scheme. 15
 - (4) No appeal from any judgment or order made under **subsection (3)** of this section shall be brought after the expiration of 30 days from the date of such judgment or order.
 - (5) An order made under **subsection (3)** of this section shall not take effect until the expiration of 30 days from the decision of the High Court or, if an appeal is lodged, until the expiration of 30 days from the determination of the appeal in favour of the scheme, by the Court of Appeal. 20
- Cf. 1955, No. 63, s. 76; 1987, No. 175, s. 113B; Ontario Business Corporations Act 1982, s. 3181 (5). 25

- 19. Registrar to register Corporation as a company on receipt of certain documents**—(1) After the expiration of the period referred to in **section 18 (5)** of this Act and if the scheme for conversion has been confirmed by the High Court or the Court of Appeal, as the case may be, the Corporation shall deliver to the Registrar the following documents and fee: 30
- (a) A copy of the scheme for conversion:
 - (b) A sealed copy of the order of the High Court or Court of Appeal, as the case may be:
 - (c) The memorandum of association in the form annexed to the scheme approved by the Corporation completed in accordance with sections 14 and 15 of the Companies Act 1955: 35
 - (d) The articles of association in the form annexed to the scheme approved by the Corporation completed in accordance with section 20 of the Companies Act 1955: 40

- (e) A notice of situation of registered office of the proposed company as required by section 115 of the Companies Act 1955:
- 5 (f) The written consents to act as directors as required by section 184 (1) (a) of the Companies Act 1955 of all persons to be appointed directors of the proposed company:
- (g) Any undertaking required by subparagraph (iii) or any statutory declaration required by subparagraph (iv) of section 184 (1) (b) of the Companies Act 1955:
- 10 (h) A list of the persons who have consented to be directors of the proposed company as required by section 184 (4) of the Companies Act 1955:
- (i) Such fee as is payable under the First Schedule to the Companies Act 1955 for the registration of a company.
- 15

(2) For the purposes of **paragraphs (c) and (d) of subsection (1)** of this section, the memorandum of association and articles of association filed with the Registrar under that subsection shall be signed by the persons who have consented to be directors of the proposed company on behalf of all persons who are to be members of the proposed company and the memorandum of association and articles of association shall, when signed, be deemed to have been executed by all persons who are to be members of the company in accordance with the scheme for conversion in the manner required by sections 15 and 20 of the Companies Act 1955.

20

25

(3) The Registrar, on being satisfied that the documents delivered under **subsection (1)** of this section are in accordance with that subsection, shall retain and register them and issue a certificate of incorporation for the company.

30

(4) The certificate of incorporation shall be conclusive evidence that the requirements of this section have been complied with and that the Corporation was, on the date shown in the certificate, duly registered as a company under the Companies Act 1955.

35

(5) From the commencement of the conversion date the Corporation shall cease to be incorporated under this Act and shall be a company incorporated under **Part II** of the Companies Act 1955 and that Act (except sections 117 and 134, the proviso to section 135 (1), and the first proviso to section 152 (1)) shall apply to it accordingly.

40

(6) The Registrar shall forthwith publish a notice in the *Gazette* of the registration of the Corporation as a company pursuant to this section.

45

- 20. Allotment of shares**—(1) Upon the registration of the Corporation as a company—
- (a) All persons who are to be members of the company in accordance with the terms of the scheme for conversion shall be members of the company; and 5
 - (b) The shares in the capital of the company to which all such persons are entitled in accordance with the scheme for conversion shall be deemed to be allotted to such persons and shall be deemed to be fully paid up in consideration of the satisfaction of such liability of the Corporation to such persons as is specified in the scheme for conversion pursuant to **section 15 (2) (e)** of this Act; and 10
 - (c) An entry shall be made in the register of members of the company in respect of each such person showing— 15
 - (i) The name of that person:
 - (ii) The address of that person to which notices and other documents are to be sent:
 - (iii) The class of share and the number and nominal amount of the shares in the capital of the company to be held by that person calculated in accordance with the terms of the scheme for conversion. 20
- (2) Where any shares are, pursuant to **subsection (1)** of this section, deemed to have been allotted to members of the company, the company shall, as soon as practicable, deliver to the Registrar— 25
- (a) A list, verified by the statutory declaration of a director, showing—
 - (i) The number and nominal amount of the shares comprised in the allotment: 30
 - (ii) The names, addresses, and descriptions of the allottees:
 - (iii) The amount credited as paid up on each share allotted:
 - (iv) The consideration deemed to have been provided by the allottees for the shares which were allotted: 35
 - (b) A statutory declaration by a director of the company to the effect that, to the best of his or her knowledge and belief, having made due enquiry,— 40
 - (i) The shares deemed to have been allotted have been allotted in accordance with the scheme for conversion:
 - (ii) The consideration deemed to have been provided is not less than the amount by which the 45

shares have been credited as paid up otherwise than in cash—

and describing the consideration deemed to have been given by the allottees for the allotment (or, where the effect of the allotment is to satisfy the whole or part of a liability of the Corporation or the company, the liability) in sufficient detail to identify it and stating an estimate of its value and how that value was assessed.

(3) Nothing in section 60 of the Companies Act 1955 shall apply to any allotment of shares deemed to have been made pursuant to **subsection (1)** of this section by the company.

(4) Notwithstanding anything contained in **subsection (2) (a)** of this section or section 118 of the Companies Act 1955, the company shall not be required—

(a) To show on the list required to be delivered to the Registrar by **subsection (2) (a)** of this section; or

(b) To enter in the register of its members referred to in section 118 of the Companies Act 1955—

the description of any person who, immediately before the conversion date, was a member of the Corporation if the register of members of the Corporation did not contain a description of that person.

Cf. 1987, No. 175, s. 113D.

21. Consequential provisions on conversion of Corporation—(1) Where the Corporation becomes converted into a company pursuant to this Part of this Act:

(a) The undertaking of the Corporation shall, on the conversion date, vest in the company by virtue of this Part of this Act:

(b) The name of the company shall, on and after the conversion date, be Tower Corporation Limited.

(2) For the purposes of **paragraph (a)** of **subsection (1)** of this section, the expression “undertaking”, in relation to the Corporation, means the property, rights, and liabilities of the Corporation.

(3) Nothing in this Act shall prevent the name of the company being changed at any time after the conversion date in accordance with the Companies Act 1955.

(4) Without limiting the generality of **subsection (1)** of this section, the following provisions shall have effect on and after the conversion date in respect of the company:

(a) A reference (express or implied) to the Corporation in any Act or instrument made, given, passed or executed at

- any time, or in any sign, poster, notice or policy shall be read and construed as a reference to the company:
- (b) Except as provided in **section 22** of this Act, every contract, agreement, conveyance, deed, lease, licence, security, instrument, undertaking, and notice (whether or not in writing) entered into by, made with, given to or by, or addressed to, the Corporation (whether alone or with any other person) before the conversion date and subsisting immediately before the conversion date shall, to the extent that it was previously binding on and enforceable by, against, or in favour of the Corporation be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the Corporation, the company had been the person by whom it was entered into, with whom it was made, or to or by whom it was given or addressed, as the case may be: 5
- (c) An instruction, order, direction, mandate, or authority given to the Corporation and subsisting immediately before the conversion date shall be deemed to have been given to or by the company: 20
- (d) A security held by the Corporation as security for a debt or other liability to the Corporation incurred before the conversion date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the conversion date; and, in relation to a security, the company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the Corporation would have been entitled or subject if the Corporation had not become converted into a company: 25 30 35
- (e) All the rights and liabilities of the Corporation as bailor or bailee of documents or chattels shall be vested in and assumed by the company:
- (f) A negotiable instrument or order for payment of money which before the conversion date is drawn on or given to or accepted or endorsed by the Corporation or payable at a place of business of the Corporation shall, unless the context otherwise requires, have the same effect on and after the conversion date as if it 40 45

had been drawn on or given to or accepted or endorsed by the company instead of the Corporation or was payable at the place of business of the company:

- 5 (g) Any action, arbitration or proceedings, or cause of action which immediately before the conversion date is pending or existing by, against, or in favour of the Corporation or to which the Corporation is a party may be prosecuted, and without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the company.

22. Consequential provisions relating to employment—Without limiting the generality of section 21 (1) of this Act, the following provisions shall have effect on and after the conversion date in respect of employees—

- 15 (a) On the conversion date each employee of the Corporation shall become an employee of the company but, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service with the Corporation shall be deemed to have been a period of service with the company:
- 20 (b) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the Corporation immediately before the conversion date and shall be capable of variation in the same manner:
- 25 (c) No such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing, by virtue of this Part of this Act, to be an employee of the Corporation:
- 30 (d) Section 8 of this Act shall apply to any employees of the Corporation who are, immediately before the conversion date, contributors to the Government Superannuation Fund as if all references in that section to the specified date were references to the conversion date, and all references to the Corporation (apart from the first reference) were references to the company.
- 35
- 40

23. Certain matters not affected by conversion of Corporation—Nothing effected or authorised by this Part of this Act—

- (a) Shall be regarded as placing the Corporation, or the company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or 5
- (b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or 10
- (c) Shall be regarded as placing the Corporation, or the company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or 15
- (d) Shall release any surety wholly or in part from any obligation; or
- (e) Shall invalidate or discharge any contract or security; or
- (f) Shall give rise to crystallisation of any floating charge created by the Corporation. 20

Cf. 1987, No. 175, s. 113E; 1986 No. 129, s. 7.

24. Enforceability of rights and liabilities altered by or arising under scheme for conversion—(1) Where a scheme for conversion provides for the conversion or alteration of the rights or liabilities of any person that were subsisting immediately before the conversion date those rights and liabilities shall, notwithstanding **section 23** of this Act, cease to be enforceable by, against, or in favour of the company on or after the conversion date except to the extent that that scheme provides otherwise. 25 30

(2) Where a scheme for conversion provides for any rights or liabilities to arise immediately after the conversion date those rights and liabilities shall be enforceable by, against, or in favour of the company on and after the conversion date. 35

Cf. 1987, No. 175, s. 113F.

25. Liability of members of company—No shares in the capital of a company into which the Corporation has become converted pursuant to this Part of this Act that are issued to a person as a member of the Corporation shall require a 40

contribution from that person to the assets of the company in the event of the company being wound up.

Cf. 1987, No. 175, s. 113G.

- 26. Taxes and duties**—(1) For the purposes of the Acts specified in the First Schedule to the Inland Revenue Department Act 1974 and any other enactment that imposes or provides for the collection of a tax, duty, levy or other charge, where the Corporation becomes converted into a company pursuant to this Part of this Act,—
- 5
- 10 (a) The Corporation and the company shall be deemed to be the same person with effect on and after the conversion date; and
- (b) In respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing on and after the conversion date under any such enactment, all transactions entered into by, and acts of, the Corporation before the conversion date shall be deemed to have been entered into by, or to be those of, the company and to have been entered into or performed by the company at the time when they were entered into or performed by the Corporation.
- 15
- 20
- (2) For the purposes of determining whether—
- 25 (a) Any taxpayer satisfies the requirements of section 188 (7) (a) of the Income Tax Act 1976;
- (b) Any taxpayer is included in a group of companies or a specified group for the purposes of section 191 of the Income Tax Act 1976;
- 30 (c) Any debit arises to be recorded in a taxpayer's imputation credit account under section 394E (1) of the Income Tax Act 1976, or in a taxpayer's dividend withholding payment account under section 394zw (1) of the Income Tax Act 1976, or in a taxpayer's branch equivalent tax account under section 394zzp (3) of the Income Tax Act 1976,
- 35 shares held by the Corporation in any company (whether directly or through any one or more interposed companies) immediately before the conversion date shall be treated as having been acquired by the company to which the Corporation has become converted in accordance with this Part of this Act at the time when they were acquired by the Corporation.
- 40
- (3) The conversion of the Corporation to a company in accordance with this Part of this Act—

- (a) Shall not, for the purposes of the Income Tax Act 1976, be treated as, or as giving rise to, a sale or other disposition or distribution or transfer of any property of the Corporation or as a receipt of any property by the company: 5
- (b) Shall not, for the purposes of the Goods and Services Tax Act 1985, be treated as a supply of any goods or services:
- (c) Shall not give rise to any debit in the branch equivalent tax account (if any) of the company notwithstanding the provisions of section 394ZZU (3) (c) of the Income Tax Act 1976. 10
- (4) Nothing in **subsection (2)** or **subsection (3)** of this section shall limit the generality of **subsection (1)** of this section.
- (5) For the purposes of the Income Tax Act 1976 and the Goods and Services Tax Act 1985, the company to which the Corporation has become converted in accordance with this Part of this Act is not a public authority as defined for the purposes of those Acts. 15
- 27. Repeals**—**Parts II** and **III** of, and the **Second Schedule** to, this Act are hereby repealed, which repeal shall have effect on the conversion date. 20

PART V

MISCELLANEOUS

- 28. Consequential repeals and amendments**—(1) The Tower Corporation Act 1987 and the Tower Corporation Amendment Act 1989 are hereby repealed. 25
- (2) The Government Life Insurance Corporation Act Commencement Order 1987 (S.R. 1987/111) and the Government Life Insurance Corporation Election Order 1987 (S.R. 1987/143) are hereby revoked. 30
- (3) The Ombudsmen Act 1975 is hereby amended by omitting from **Parts I and II** of the First Schedule the item relating to the Government Life Insurance Corporation.
- (4) Notwithstanding **subsection (3)** of this section, the Ombudsmen Act 1975 and the Official Information Act 1982 shall continue to apply in respect of any matter under investigation or in respect of which a complaint or application has been received by any Ombudsman on the date on which this section comes into force. 35
- (5) Notwithstanding the repeal of the Tower Corporation Amendment Act 1989, every reference to the Government Life Insurance Corporation in any other enactment, Order in 40

Council or document shall, unless the context otherwise requires, be read as a reference to the Corporation.

(6) The First Schedule to this Act shall apply in respect of the Corporation, its members, officers, and employees.

5 **29. Regulations**—(1) Prior to the conversion date the Governor-General may by Order in Council 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
10 or giving effect to the objects of this Act.

(2) Without affecting the generality of **subsection (1)** of this section, the regulations may provide that specified provisions of the Companies Act 1955 do or do not apply to the Corporation or to its members or officers, or apply with such modifications
15 as are specified in the regulations.

Cf. AMP Act (NSW) 1988, No. 47, s. 13

30. Private Act—This Act is hereby declared to be a private Act.

SCHEDULES

FIRST SCHEDULE

ANCILLARY SAVINGS AND TRANSITIONAL PROVISIONS

1. Continuity and terms of employment—

- (a) Nothing in this Act affects the continuity of employment of officers and employees of the Corporation holding office immediately before the specified date:
- (b) The Corporation may appoint employees on such terms and conditions as the Board sees fit and the provisions of the Labour Relations Act 1987 shall apply to such appointments.

2. Directors—(1) Any person who—

- (a) Was appointed or elected a director of the Corporation before the specified date; and
 - (b) Held that position immediately before the specified date—
- shall be deemed to have been appointed in accordance with this Act and the bylaws of the Corporation (as in force on the specified date) as if this Act applied to the Corporation and the bylaws were in force at the time of the appointment.

(2) Any such director shall continue to hold that position until the end of the first annual general meeting of the Corporation after the specified date and, for the purposes of the bylaws of the Corporation, such directors shall be deemed to have retired by rotation, shall cease to hold office at the time specified in the bylaws for retiring directors, and shall be eligible for election as directors as if they were retiring directors under the bylaws.

(3) In **subclause** (1) of this clause every reference to a director includes a reference to the managing director, who on the specified date shall become the chief executive officer of the Corporation. Such appointment as chief executive shall be subject to the bylaws and that person shall remain managing director until the conclusion of the first duly convened meeting of the Board.

3. Auditors—From the specified date the Audit Office shall cease to audit the Corporation and an auditor shall be appointed by the Board pursuant to section 163 (4) of the Companies Act 1955.

4. Registered office—(1) On the specified date the Corporation shall lodge with the Registrar notice of the proposed registered office and particulars of the directors and secretary of the Corporation.

(2) The notices shall be in the forms prescribed in accordance with the Companies Act 1955 for the purposes of sections 115 and 200 of that Act.

(3) The Registrar is hereby authorised to accept notices lodged under this clause.

Cf. AMP Act (NSW) 1988, No. 47, Sched. 2, para. 8.

SECOND SCHEDULE

PROVISIONS OF COMPANIES ACT 1955 THAT DO NOT APPLY TO
CORPORATION

Sections 8 (1) (b), 8 (1) (d), 14, 15, 15A (1), 19, 21, 23, 25, 30–34, 36, 39–41, 42A, 42B, 52, 60, 61, 62, 64–83, 90 (4)–(7), 91, 93, 94, 117, 120, 130, 133, 134, 136 (1) (b), 151–162, 184, 185, 193, 201, 208, 209 (2) (c), 211–215, 251, 253–256, 259, 345C, 458, 471, 475.

Parts VIII, IX, X, XI, XII, XIII (except sections 420 to 423), XIV, and XV (except section 451).

The Third, Eighth, Ninth, Tenth, and Twelfth Schedules.