48, 1961

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In the Privy Council

No. 22 of 1961

ON APPEAL FROM THE SUPREME COURT OF NEW ZEALAND

BETWEEN

AUSTRALIAN MUTUAL PROVIDENT SOCIETY Appellant

AND

THE COMMISSIONER OF INLAND REVENUE Respondent

RECORD OF PROCEEDINGS

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Certificate of Registrar of Supreme Court of New Zealand.

In the Priuy Council

ON APPEAL FROM THE SUPREME COURT OF NEW ZEALAND

BETWEEN
AUSTRALIAN MUTUAL PROVIDENT SOCIETY Appellant
AND
THE COMMISSIONER OF INLAND REVENUE Respondent

RECORD OF PROCEEDINGS

No. 1

CASE STATED BY MAGISTRATE

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON DISTRICT
WELLINGTON REGISTRY

In the Supreme Court of New Zealand

No. 1

Case Stated by Magistrate 31 August 1960

IN THE MATTER of the Land and Income Tax Act 1954:

AND

IN THE MATTER of an appeal from the judgment of the Magistrate's Court at Wellington.

between

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

Appellant

and

THE COMMISSIONER OF INLAND REVENUE

Respondent

CASE STATED BY JAMES SUGDEN HANNA, ESQUIRE S.M. UNDER THE PROVISIONS OF THE ABOVE-MENTIONED ACT.

1. This is an appeal from the determination of the Magistrates Court sitting at Wellington on appeal against a certain assessment for Income

In the Supreme Court of New Zealand

No. 1

Case Stated by Magistrate 31 August 1960

continued.

Tax made under the Land and Income Tax Act, 1954, against the Appellant the appeal being brought, as required by the provisions of the said Act, upon a case being stated by the Commissioner of Inland Revenue.

2. A copy of the Case Stated before me and of the Answer of the Appellant thereto are transmitted herewith.

3. The matter was heard before me on the 29th day of February 1960 and upon the 1st and 2nd days of March 1960, when I reserved my decision.

4. A note of the evidence before me was taken by shorthand writers. A copy of the transcript of evidence is transmitted herewith, together with the evidence-in-chief as prepared and given by the witnesses for the Appellant.

5. I have also received in evidence the exhibits which with a list thereof are transmitted herewith.

6. On the 30th day of May 1960, I delivered a written judgment through the Registrar of the Magistrates Court at Wellington. A copy of the said Judgment is transmitted herewith.

7. My Answers to the first and second questions for determination as stated by the Commissioner of Inland Revenue and by the Appellant in its Answer to the Case Stated are set out on page 11 of that Judgment.

8. On the 22nd day of June 1960 the Appellant filed in the Magistrates Court at Wellington a notice of appeal against the whole of the determination upon the grounds that such determination is erroneous in law and in fact.

9. I am satisfied that the amount of tax bona fide in dispute exceeds the sum of Two Hundred Pounds (£200).

10. The Appellant has lodged the required security.

11. The question for the determination of this Honourable Court is whether the determination of the Magistrate's Court as set out in my judgment is erroneous in law or in fact or both in law and in fact.

DATED at Wellington this 31st day of August, 1960.

J. S. HANNA
Stipendiary Magistrate.

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

No. 2

CASE STATED BY RESPONDENT

CASE STATED

pursuant to section 30 of the Land and Income Tax Act 1954.

1. The Appellant is a mutual insurance society incorporated in New South Wales under the Australian Mutual Provident Society's Act 1910 as amended by The Australian Mutual Provident Society's Act 1941 and having its registered office at 87 Pitt Street Sydney. Its business comprises ordinary life insurance (including annuity business) and industrial insurance and is carried on by the Appellant in Australia, New Zealand and the United Kingdom. Industrial insurance is not carried out in the United Kingdom.

2. The Appellant has no shareholders and an annual allotment of surplus funds is made to such of its policy holders as are entitled to share in such an allotment.

3. The balance date of the Appellant's annual accounts is the 31st day of December and the Respondent accepts a return of income in respect of a year ended on the 31st day of December in any year as being a return of income in respect of the year ended on the following 31st day of March.

4. For the purposes of the figures appearing in paragraphs 9 to 15 inclusive hereof and Schedule A hereto New Zealand and English pounds are included as and assumed to be equal in value to Australian pounds.

PART I

5. The Appellant makes an actuarial valuation of its net liabilities under its policies as at the 31st day of December in each year.

6. The Annual Valuation Balance Sheet of the Appellant shows the Funds of the Appellant, the net liabilities as determined by the said actuarial valuation, amounts provided for reserves, and the resulting surplus funds of the Appellant.

7. The said actuarial valuation made as at the 31st day of December 1955 was made upon a net premium basis and the net liabilities under the policies set forth therein were taken as the difference between the present values (sometimes hereinafter referred to as cash values) at the said date of valuation of:

(a) the reversion in the sums assured, including any reversionary bonuses declared and still in force at the date of valuation; and

(b) the future net premiums, less any reduction of those premiums which may have been obtained by the giving of any valuable consideration.

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

8. For the purpose of calculating the present values referred to in paragraph 7 hereof the Tables of Mortality (when mortality is a factor in such calculation) and the rates of interest used by the Appellant were as follows:

For ordinary life insurance business:

(a) Tables:

(1) For Insurance:

The Institute of Actuaries and Faculty of Actuaries A 24-29 and A 49-52 ultimate Tables.

(2) For Annuities on lives

The Institute of Actuaries and Faculty of Actuaries a^{+} (m) and a^{+} (f) Tables.

(b) Rates of Interest:

(1) For Insurance with Deferred Participation—2 per centum.

(2) For certain Insurances with Immediate Participation on a reduced scale—$2\frac{3}{4}$ per centum.

(3) For all other classes of Policies—$2\frac{1}{2}$ per centum.

For Industrial Insurance Business:

(a) Table—The Am 33 Australian Life Tables 1932-34.

(b) Rate of Interest—$2\frac{1}{2}$ per centum.

9. The said actuarial valuation made as at the 31st day of December 1955 disclosed that the Appellant's total net liabilities under its policies were £296,163,845 and that its total surplus as at the 31st day of December 1955 after allowing for reserves held, was £11,030,396. Particulars of such amounts are included in the Appellant's Valuation Balance Sheet prepared by the Appellant's Chief Actuary as at the said date, a copy whereof is annexed hereto and marked "A".

10. The said sum of £11,030,396 comprised the sum of £8,768,194 representing the Surplus in respect of the Appellant's Ordinary Life Insurance business, and the sum of £2,262,202 in respect of the Appellant's Industrial Insurance business as at the 31st December 1955.

11. The said sum of £8,768,194 was allocated by the Appellant as follows:—

Divided among policies with Immediate Participation	£7,384,762
Divided among policies with Deferred Participation	111,533
Reserved for Interim Bonuses	60,000
Reserved for Contingencies	1,000,000
Surplus carried forward unappropriated	211,899
	£8,768,194

12. The total surplus divided and allotted as Reversionary Bonuses to participating Ordinary Life Insurance policies was £7,496,295 (being the total of the said sums of £7,384,762 and £111,533).

13. The sum of £2,262,202 referred to in paragraph 10 hereof, (being the surplus as at the 31st day of December 1955 in respect of the Appellant's Industrial Insurance business) was allocated by the Appellant as follows:—

Divided among policies with participation	£1,242,484
Reserved for Contingencies	850,000
Reserved for the increase of sums insured and other purposes	169,718
	£2,262,202

14. The amounts of £7,496,295 set forth in paragraph 12 and £1,242,484 set forth in paragraph 13 made a total of £8,738,779, which was allotted by way of reversionary bonuses on Ordinary Life and Industrial Insurance policies respectively.

15. The scale upon which the face value of the said reversionary bonuses was based was such that, valued in accordance with the respective Tables and rates of interest set forth in paragraph 8 hereof, their total cash value as at the 31st day of December 1955 equalled the said total of £8,738,779.

16. In furnishing its return of income to the Respondent for income tax purposes dated the 18th day of July 1956 for the income year ended on the 31st day of December 1955 the Appellant declared that its assessable income for that year was £1,668,238.4.1, comprised as follows:—

Surplus funds allotted in respect of policies comprised in the New Zealand business of the Appellant	£1,752,083	0	0
Less Dividends received	83,844	15	11
Assessable Income	£1,668,238	4	1

The said amount of £1,752,083 is comprised as described in the Chief Actuary's Certificate annexed to the said return.

17. The text of the said Certificate is:—

"I the undersigned, Leslie George Oxby of Sydney, N.S.W., Chief Actuary for Australian Mutual Provident Society, do hereby certify that the surplus funds of the said Society allotted to its policy holders for the year ended 31st December 1955 in respect of policies comprised in the New Zealand business of the Society were as follows:—

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

(a) Cash payments totalling £15,591 made in respect of policies terminated during 1955.

(b) Reversionary bonuses for a total face value of £2,929,285 allotted to policies in force at 31st December 1955.

The cash value of the Reversionary bonuses of face value £2,929,285 according to the respective bases employed by the Society in valuing its policies was £1,736,492 at 31st December 1955.

Dated at Sydney this twenty-sixth day of June 1956.

(L. G. Oxby) Sgd." 10

18. Subsequently by a Return dated the 25th day of January 1957 and before assessment of tax by the Respondent the Appellant furnished to the Respondent for income tax purposes an amended return of income where in the Appellant's assessable income was declared to be £1,325,365.4.1 comprised as follows:—

Surplus funds allotted in respect of policies comprised in the New Zealand business of the Appellant	£1,409,210	0	0
Less Dividends received (particulars whereof are set out in the schedule referred to in paragraph 24 hereof)	83,844	15	11
Assessable income	£1,325,365	4	1

The said amount of £1,409,210 was calculated as described in the Chief Actuary's Certificate annexed to the said amended return.

19. The text of the said Certificate is:

"I the undersigned, Leslie George Oxby of Sydney, N.S.W., Chief Actuary for Australian Mutual Provident Society, do hereby certify that the surplus funds of the said Society allotted to its policyholders for the year ended 31st December 1955 in respect of policies comprised in the New Zealand business of the Society were as follows:—

(a) Cash payments totalling £15,591 made in respect of policies terminated during 1955.

(b) Reversionary bonuses for a total face value of £2,929,285 allotted to policies in force at 31st December 1955.

The cash value of the Reversionary Bonuses of face value £2,929,285 according to the A1924-29 ultimate Table of mortality and an interest rate of $3\frac{3}{4}\%$ per annum, was £1,393,619 at 31st December 1955.

Dated at Sydney this twenty-second day of January 1957.

(L. G. Oxby) Sgd."

20. The total net liabilities of the Appellant under its policies referred to in paragraph 9 hereof was not calculated on the basis of the interest rate of 3¾% per annum referred to in the said Actuary's certificate but on the basis of the respective interest rates stated in paragraph 8 hereof. Nor did the Appellant employ the said rate of 3¾% per annum for the purpose of calculating the face value of the reversionary bonuses referred to in paragraph 15 hereof. The rates of interest used for both such purposes were those set forth in paragraph 8 hereof.

21. The Respondent on the 28th day of February 1957 assessed the Appellant for income tax for the income year ended on the 31st day of December 1955 on the basis of the amount of assessable income returned by the Appellant in its original return for that year, referred to in paragraph 16 hereof, as follows:

Assessable Income	Tax
£1,668,238 4 1	£325,306 8 2

22. Subsequently on the 6th day of March 1957 the Respondent made an amended assessment of the Appellant's liability for income tax for the income year ended on the 31st day of December 1955 as follows:—

Assessable Income	Tax
£1,710,998 6 6	£333,644 12 2

23. In making the assessments referred to in paragraphs 21 and 22 hereof the Respondent treated the sum of £1,752,083 referred to in paragraph 16 hereof as being the surplus funds allotted for the said year ended on the 31st day of December 1955 in respect of policies comprised in the New Zealand business of the Appellant.

PART II

24. In furnishing to the Respondent its return of income dated the 18th day of July 1956 for the income year ended on the 31st day of December 1955 the Appellant deducted from the amount of the surplus funds therein declared, the sum of £83,844.15.11 representing dividends received as set out in the Schedule hereto marked "B".

25. In furnishing the amended return dated the 25th day of January 1957 referred to in paragraph 18 hereof the Appellant deducted from the amended amount of the surplus funds therein declared the aforesaid sum of £83,844.15.11.

26. The Respondent when assessing the Appellant on the 28th day of February 1957 for income tax for the income year ended on the 31st day of December 1955 for the amount of £325,306.8.2 referred to in

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

paragraph 21 hereof did so on the basis that the amount of £83,844.15.11 shown in the Appellant's return of income for that year properly represented the amount deductible from surplus funds.

27. The Respondent when making the amended assessment dated the 6th day of March 1957 referred to in paragraph 22 hereof deducted from the amount of £1,752,083 referred to in paragraph 16 hereof an amount of £41,084.13.6, being the total amount as advised by the Appellant to the Respondent, of the dividends derived from New Zealand by the Appellant during the said year, as follows:—

Surplus funds allotted as described in paragraph 16 hereof	£1,752,083	0	0
Less Dividends derived from New Zealand as advised by Appellant	41,084	13	6
Amended Assessable Income	£1,710,998	6	6

A copy of a schedule furnished by the Appellant setting out particulars of the said dividends is annexed hereto and marked "C".

28. Subsequently on the 12th day of March 1957 the Appellant advised the Respondent that certain adjustments were required to the schedule of dividends referred to in paragraph 27 hereof and furnished to the Respondent an amended schedule purporting to contain "Dividends received from New Zealand Companies for year ended 31st December 1955", the total amount thereof being £39,721.13.6. A copy of the said schedule is annexed hereto and marked "D".

29. The Appellant objected to the assessment dated the 28th day of February 1957 for the year ended on the 31st day of December 1955 as set forth in paragraph 21 hereof on the grounds set out in a Notice of Objection dated the 20th day of March 1957 addressed by the Appellant to the Respondent. A copy of the said Notice of Objection is annexed hereto and marked "E".

30. The Appellant objected to the amended assessment dated the 6th day of March 1957 for the year ended on the 31st day of December 1955 as set forth in paragraph 22 hereof on the grounds set out in a Notice of Objection dated the 26th day of March 1957 addressed by the Appellant to the Respondent. A copy of the said Notice of Objection is annexed hereto and marked "F".

31. Subsequently it was ascertained by the Respondent that certain of the dividends included in the amended schedule referred to in paragraph 28 hereof were derived from shares in companies incorporated outside New Zealand, such shares not being listed on New Zealand Share Registers. Particulars of such dividends are as follows:

Ordinary Shares	Amount of Dividend					
Amalgamated Wireless (A/sia) Ltd. 5/- Stock Units f.p.	£2,633	13	2			
Broken Hill Pty. Co. Ltd. £1 f.p.	8,483	8	11			
Kauri Timber Co. Ltd. £1 f.p.	326	15	8			
Patons & Baldwins Ltd. £1 Stock Units f.p.	480	14	6			
Commercial Bank of Australia Ltd. 10/- f.p.	358	1	8			
Queensland Insurance Co. Ltd. £1 f.p.	1,583	15	0			
Broken Hill Pty. Co. Ltd. £1 paid to 13/4	565	12	3			
				£14,432	1	2
Preference Shares						
Kauri Timber Co. Ltd. £1 5% cum. red. prefs.	7,500	0	0			
Patons & Baldwins Ltd. £1 5% cum. prefs.	3,009	0	4			
				10,509	0	4
				£24,941	1	6

The Respondent accordingly, by deducting the said amount of £24,941.1.6 from the amount of £39,721.13.6 referred to in paragraph 28 hereof, calculated that the amount of dividends derived from New Zealand by the Appellant during the said year was £14,780.12.0.

32. As a consequence of the adjustments referred to in paragraph 31 hereof the Respondent on the 23rd day of April 1957 made a further amended assessment of the Appellant's liability for income tax for the income year ended on the 31st day of December 1955 as follows:

Surplus funds allotted as described in paragraph 16 hereof	£1,752,083	0	0
Less Dividends derived from New Zealand	14,780	12	0
Amended Assessable income	£1,737,302	8	0
Tax assessed	£338,773	17	9

33. The Appellant objected to the assessment for the year ended on the 31st day of December 1955 as set forth in paragraph 32 hereof on the grounds set out in a Notice of Objection dated the 14th day of May 1957 addressed by the Appellant to the Respondent. A copy of the said Notice of Objection is annexed hereto and marked "G". The grounds of objection referred to in paragraphs 29 and 30 hereof are

In the Magistrate's Court

No. 2
Case Stated by Respondent
20 January 1960
continued.

accepted as relating also to the said assessment set forth in paragraph 32 hereof.

34. Upon the objections referred to in paragraph 33 hereof being disallowed the Respondent was required to state this Case.

35. The Appellant now says that the Bonus Issues section of the list of dividends received, which list was furnished to the Respondent with its return of income dated the 18th day of July 1956 for the income year ended on the 31st day of December 1955 and a copy of which list is attached hereto as the Schedule marked "B" should have read as follows:—

BONUS ISSUES (expressed in New Zealand currency)

Kandos Cement Co. Ltd.	£ 560	0	0
Tooheys Ltd.	5,799	10	5
Tooth & Co. Ltd.	2,395	4	0
	£8,754	14	5

and that accordingly the amount of £83,844.15.11 shown as the total of the said list and in the returns of income referred to in paragraphs 24 and 25 hereof should have been shown as £79,843.18.4.

The Appellant further says that the said sum of £79,843.18.4 related solely to dividends received by its New Zealand Branch in respect of shares held by such Branch and that the said sum was made up as follows:—

(a) The sum of £14,780.12.0 being dividends so derived from Companies registered in New Zealand, and

(b) The sum of £65,063.6.4 being dividends so derived from Companies incorporated in Australia.

36. In the light of paragraph 35 hereof the Appellant by its objections before referred to claims *inter alia* to deduct in accordance with the provisions of sections 86 and/or 149 of the Land and Income Tax Act 1954 the full sum of £79,843.18.4.

37. By its objections before referred to the Appellant claimed also to deduct from the surplus funds allotted for the year 1955, as returned, further sums being:

(a) all dividends derived by the Appellant from all sources, and

(b) all the other income of the Appellant from sources in Australia. The claims for such deductions were based in such objections upon the provisions of sections 86 (1) (i) and 149 and 165 of the Land and Income Tax Act 1954. The Appellant says that the figures given for income additional to that specified in the foregoing paragraph 35 were—

as to (a)—the sum of £409,566 New Zealand currency (being £511,957 Australian currency), being dividends received by the Appellant's Australian Branches in respect of shares held by such Branches, and the sum of £52,520 New Zealand currency (being £52,520 English currency), being dividends received by the Appellant's United Kingdom Branch in respect of shares held by such Branch, and

as to (b)—no figures were given;

which sums the Appellant claimed were exempt from tax within the meaning of sections 86, 149 and 165 of the said Act.

38. The questions for the determination of the Court are:

(a) Whether the Respondent, in making the assessment for the income year ended on the 31st day of December 1955 as set forth in paragraph 32 hereof acted correctly in treating the said amount of £1,752,083 as being the surplus funds allotted for the said year in respect of policies comprised in the New Zealand business of the Appellant, and, if not, in what respects should such amount be varied.

(b) Whether the Respondent, in making the said assessment, acted correctly in allowing a deduction against the said amount of £1,752,083 only to the extent of the said amount of £14,780.12.0 and, if not, in what respects should the amount of such deduction be varied.

DATED at Wellington this 20th day of January 1960.

F. R. MACKEN,
Commissioner of Inland Revenue.

"A"

VALUATION BALANCE SHEET OF THE AUSTRALIAN MUTUAL PROVIDENT SOCIETY AS AT 31st DECEMBER 1955

Net Liabilities under Policies	Ordinary Life Insurance Business	Industrial Insurance Business	Total		Ordinary Life Insurance Business	Industrial Insurance Business	Total
On Australian Registers	£186,161,986	£41,245,666	£227,407,652	Amount of Funds	£263,176,220	£49,518,021	£312,694,241
Other Policies	63,746,040	5,010,153	68,756,193				
Reserve Accounts	4,500,000	1,000,000	5,500,000				
Surplus	8,768,194	2,262,202	11,030,396				
	£263,176,220	£49,518,021	£312,694,241		£263,176,220	£49,518,021	£312,694,241

(As set out in form J of the Second Schedule of the Return of the Society to the Insurance Commissioner, Commonwealth of Australia.)

"B"

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY, NEW ZEALAND BRANCH.

DIVIDENDS RECEIVED FOR YEAR ENDED 31st DECEMBER 1955.

	Name of Company	Dividend		
	Ordinary Shares			
10	Electrolytic Zinc Co. of A/asia Ltd.	£2,582	6	5
	Henry Jones Co-op. Ltd. £1 f.pd.	286	11	4
	British Tobacco Co. (Aust.) £1 f.pd.	1,867	9	7
	Tooheys Ltd. £1 f.pd.	2,238	19	6
	Tooth & Co. Ltd. £1 f.pd.	827	9	0
	New Zealand Breweries Ltd. £1 f.pd.	56	11	11
	Ross & Glendining Ltd. £1 f.pd.	681	5	10
	General Industries Ltd. £1 f.pd.	2,275	16	2
	Felt & Textiles of N.Z. Ltd. £1 f.pd.	1,600	0	0
	Patons & Baldwins Ltd. £1 Stock Units f.pd.	480	14	6
20	Wellington Woollen Manufacturing Co. Ltd. £5 f.pd.	96	12	0
	Australian Paper Manufacturers £1 f.pd.	7,137	19	2
	Dunlop Rubber (Aust.) Ltd. £1 f.pd.	1,823	7	1
	Australian Consolidated Industries Ltd. £1 f.pd.	1,699	11	6
	Fletcher Holdings Ltd. £1 f.pd.	1,755	0	0
	Kandos Cement Co. Ltd. £1 f.pd.	80	1	6
	The Kauri Timber Co. Ltd. £1 f.pd.	326	15	8
	Broken Hill Pty. Ltd. £1 f.pd.	8,483	8	11
	Broken Hill Pty. Ltd. Paid to 13/4	565	12	3
	Amalgamated Wireless (Aust.) Ltd. 5/- f.pd.	2,633	13	2
30	Turnbull & Jones Ltd. £1 f.pd.	209	16	10
	Commercial Bank of Aust. Ltd. 10/- f.pd.	358	1	8
	The National Bank of Australasia Ltd. £1 f.pd.	764	9	8
	The National Bank of Australasia Ltd. Paid to 12/6	1,801	11	11
	Queensland Insurance Co. Ltd. £1 f.pd.	1,583	15	0
	Goldsborough Mort. & Co. Ltd. £1 f.pd.	2,507	3	3
	John Chambers & Son Ltd. £1 f.pd.	800	0	0
	W. Watson & Sons Ltd. £1 f.pd.	75	1	11
	Macky Logan Caldwell Ltd. £1 f.pd.	112	0	0
	Nelson Freezing Co. Ltd. £5 f.pd.	244	0	0
40	N.Z. Refrigerating Co. Ltd. £1 paid to 10/-	303	3	9
	Anthony Hordern & Sons Ltd. £1 f.pd.	2,522	6	1
	G. J. Coles & Co. Ltd. 5/- stock units	116	7	7
	David Jones Ltd. £1 f.pd.	241	4	8
	Farmers' Trading Co. Ltd. £1 f.pd.	1,345	0	0
	The Myer Emporium Ltd. 5/- stock units	168	3	7
		£50,651	11	5

In the Magistrate's Court

No. 2
Case Stated by Respondent
20 January 1960

continued.

"B"

AUSTRALIAN MUTUAL PROVIDENT SOCIETY. NEW ZEALAND BRANCH.

DIVIDENDS RECEIVED FOR YEAR ENDED 31st DECEMBER 1955.

Name of Company	Dividend
Preference Shares	
Dunlop N.Z. Ltd. £1 4½% cum. pref.	£ 290 6 8
Patons & Baldwins (Aust.) Ltd.	3,009 0 4
Wm. Cable Holdings Ltd. "B" prefs.	575 0 0
Australian Paper Manufacturers Ltd. 6%	258 17 5
Electrolytic Zinc Co. of A/asia Ltd. 5/- f.pd. 8% ptg.	1,831 18 1
General Industries Ltd. 7%	260 15 0
Whakatane Board Mills 5% ptg. to 7%	3,479 17 0
Wellington Woollen Manufacturing Co. Ltd. £5 6% reduced to 5% ptg.	81 18 0
R. & E. Tingey & Co. Ltd. (red)	2,250 0 0
Irving Clarke Ltd. (red)	900 0 0
The Kauri Timber Co. Ltd. (red)	7,500 0 0
	£20,437 12 6
Bonus Issues	
Kandos Cement Co. Ltd.	700 0 0
Tooheys Ltd.	9,061 12 0
Tooth & Co. Ltd.	2,994 0 0
	£12,755 12 0
Ordinary Shares	50,651 11 5
Preference Shares	20,437 12 6
	£83,844 15 11

"C"

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY. NEW ZEALAND BRANCH.

COMPANY DIVIDENDS DERIVED FROM NEW ZEALAND FOR THE YEAR ENDED 31st DECEMBER 1955.

Name of Company	Dividend		
Ordinary Shares			
N.Z. Breweries Ltd. £1 f.p.	£ 56	11	11
Ross & Glendining Ltd. £1 f.p.	681	5	10
Felt & Textiles of N.Z. Ltd. £1 f.p.	1,600	0	0
Wellington Woollen Manufacturing Co. Ltd. £5 f.p.	96	12	0
Fletcher Holdings Ltd. £1 f.p.	1,755	0	0
Turnbull & Jones Ltd. £1 f.p.	209	16	10
John Chambers & Son Ltd. £1 f.p.	800	0	0
Macky Logan Caldwell Ltd. £1 f.p.	112	0	0
Nelson Freezing Co. Ltd. £5 f.p.	244	0	0
N.Z. Refrigerating Co. Ltd. £1 paid to 10/-	303	3	9
Farmers' Trading Co. Ltd. £1 f.p.	1,345	0	0
Amalgamated Wireless (A/asia) Ltd. 5/- stock units f.p.	2,633	13	2
Broken Hill Pty. Co. Ltd. £1 f.p.	8,483	8	11
Kauri Timber Co. Ltd. £1 f.p.	326	15	8
Patons & Baldwins Ltd. £1 stock units f.p.	480	14	6
Commercial Bank of Australia Ltd. 10/- f.p.	358	1	8
Queensland Insurance Co. Ltd. £1 f.p.	1,583	15	0
Broken Hill Pty. Co. Ltd. £1 paid to 13/4	565	12	3
	£21,635	11	6
Preference Shares			
Dunlop (N.Z.) Ltd. £1 4½% cum. prefs.	290	6	8
William Cable Holdings Ltd. £1 5% "B" cum. prefs.	575	0	0
Whakatane Board Mills Ltd. £1 5% ptg. to 7% cum. prefs.	3,479	17	0
Wellington Woollen Mfg. Co. Ltd. £5 6% red. 5% ptg.	81	18	0
R. & E. Tingey & Co. Ltd. £1 4½% "B" cum. prefs.	2,250	0	0
Irving Clarke Ltd. £1 5% cum. prefs.	900	0	0
Kauri Timber Co. Ltd. £1 5% cum. red. prefs.	7,500	0	0
Patons & Baldwins (Aust.) Ltd. £1 5% cum. prefs.	3,009	0	4
	£18,086	2	0
Bonus Issue			
Ross & Glendining Ltd. £1 Ords. f.p.	1,363	0	0
Ordinary Shares	21,635	11	6
Preference Shares	18,086	2	0
	£41,084	13	6

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

"D"

AUSTRALIAN MUTUAL PROVIDENT SOCIETY. NEW ZEALAND BRANCH.

DIVIDENDS RECEIVED FROM NEW ZEALAND COMPANIES FOR YEAR ENDED 31st DECEMBER 1955.

Name of Company	Dividend
Ordinary Shares	
N.Z. Breweries Ltd. £1 f.p.	£ 56 11 11
Ross & Glendining Ltd. £1 f.p.	681 5 10
Felt & Textiles of N.Z. Ltd. £1 f.p.	1,600 0 0
Wellington Woollen Manufacturing Co. Ltd. £5 f.p.	96 12 0
Fletcher Holdings Ltd. £1 f.p.	1,755 0 0
Turnbull & Jones Ltd. £1 f.p.	209 16 10
John Chambers & Son Ltd. £1 f.p.	800 0 0
Macky Logan Caldwell Ltd. £1 f.p.	112 0 0
Nelson Freezing Co. Ltd. £5 f.p.	244 0 0
N.Z. Refrigerating Co. Ltd. £1 paid to 10/-	303 3 9
Farmers' Trading Co. Ltd. £1 f.p.	1,345 0 0
Amalgamated Wireless (A/asia) Ltd. 5/- stock units f.p.	2,633 13 2
Broken Hill Pty. Co. Ltd. £1 f.p.	8,483 8 11
Kauri Timber Co. Ltd. £1 f.p.	326 15 8
Patons & Baldwins Ltd. £1 stock units f.p.	480 14 6
Commercial Bank of Australia Ltd. 10/- f.p.	358 1 8
Queensland Insurance Co. Ltd. £1 f.p.	1,583 15 0
Broken Hill Pty. Co. Ltd. £1 paid to 13/4	565 12 3
	£21,635 11 6
Preference Shares	
Dunlop (N.Z.) Ltd. £1 4½% cum. prefs.	290 6 8
William Cable Holdings Ltd. £1 5% "B" cum. prefs.	575 0 0
Whakatane Board Mills Ltd. £1 5% ptg. to 7% cum. prefs.	3,479 17 0
Wellington Woollen Manufacturing Co. Ltd. £5 6% red. 5% ptg.	81 18 0
R. & E. Tingey & Co. Ltd. £1 4½% "B" cum. prefs.	2,250 0 0
Irving Clarke Ltd. £1 5% cum. prefs.	900 0 0
Kauri Timber Co. Ltd. £1 5% cum. red. prefs.	7,500 0 0
Patons & Baldwins Ltd. £1 5% cum. prefs.	3,009 0 4
	£18,086 2 0
Ordinary Shares	21,635 11 6
Preference Shares	18,086 2 0
	£39,721 13 6

"E"

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

NOTICE OF OBJECTION TO ASSESSMENT OF INCOME TAX THE LAND AND INCOME TAX ACT, 1954.

To the Commissioner of Inland Revenue,
(Taxes Division),
WELLINGTON, N.Z.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY HEREBY GIVES NOTICE that it objects to your assessment of income tax dated 28th February, 1957 upon the grounds that for the purpose of arriving at the taxable assessable income of the Society,

(a) the amended return dated 25th January, 1957 based upon the actuary's certificate of the 22nd January, 1957 should be adopted as a basis for determining the amount of the surplus funds allotted for the year ended 31.12.55 in respect of policies comprised in the New Zealand business of the Society.

(b) that there should be deducted from the surplus referred to in paragraph (a) hereof not only the sum of £83,844.0.0 representing company dividends within the meaning of the Act derived by the Society in respect of its New Zealand business but also the sum of £409,566.0.0 New Zealand currency (being £511,957.0.0 Australian currency) representing Company dividends within the meaning of the Act derived by the Society in respect of its Australian business and the sum of £52,520.0.0 New Zealand currency (being £52,520.0.0 English currency) representing Company dividends within the meaning of the Act derived by the Society in respect of its United Kingdom business.

Additional or alternative grounds of objection are:

(c) that in arriving at the surplus of the Society for the year ended 31.12.55 of which the surplus funds allotted in respect of the New Zealand business formed a portion, all dividends derived by the Society from all sources were taken into account, and accordingly should be deducted under S.149(5).

(d) that paragraph (i) of S.86 of the Land and Income Tax Act, 1954, and subsection (5) of S.149 require the deduction of all dividends derived by the Society from all sources. Alternatively the aforesaid provisions require the deduction of all dividends derived from shares in companies forming part of the investment of the New Zealand funds of the Society.

In the Magistrate's Court

No. 2
Case Stated by Respondent
20 January 1960
continued.

(e) as a further alternative, as all the income of the Society from sources in Australia is included in arriving at the surplus funds allotted in respect of the New Zealand business of the Society, there should be deducted

(i) by reason of Sections 149 (5) and 86 (i), all dividends derived from sources in Australia; and

(ii) by reason of Sections 149 (5), and 165 (3) all other income derived from sources in Australia.

DATED this twentieth day of March, 1957.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

H. M. COLLIE,

MANAGER FOR NEW ZEALAND.

"F"

In the Magistrate's Court

No. 2

Case Stated by Respondent 20 January 1960

continued.

NOTICE OF OBJECTION TO ASSESSMENT OF INCOME TAX THE LAND AND INCOME TAX ACT, 1954.

The Commissioner of Inland Revenue,
(Taxes Division),
WELLINGTON, N.Z.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY HEREBY GIVES NOTICE that it objects to the amended assessment of income tax dated 6th March, 1957, upon the grounds that for the purpose of arriving at the taxable assessable income of the Society:—

1. In lieu of the deduction allowed there should be deducted pursuant to Sections 149 (5) and 86 the whole of the dividends derived by the Society from all sources.

2. As an alternative to ground 1, there should be deducted the whole of the dividends derived by the Society and which arose from investments of New Zealand and Australian funds in shares of Companies.

3. As a further alternative to 1, there should be deducted the whole of the dividends derived by the Society and which arose from investments of the New Zealand funds in shares of Companies.

Dated this twenty-sixth day of March, 1957.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

H. M. COLLIE,

MANAGER FOR NEW ZEALAND.

In the Magistrate's Court

No. 2
Case Stated by Respondent 20 January 1960

continued.

"G"

NOTICE OF OBJECTION TO ASSESSMENT OF INCOME TAX THE LAND AND INCOME TAX ACT, 1954.

The Commissioner of Inland Revenue,
(Taxes Division),
WELLINGTON, N.Z.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY HEREBY GIVES NOTICE that it objects to the amended assessment of income tax dated twenty-third April, 1957, for the tax year ended 31st March, 1956, upon the grounds that for the purpose of arriving at the taxable assessable income of the Society:—

1. In lieu of the deduction allowed there should be deducted pursuant to Sections 149 (5) and 86 the whole of the dividends derived by the Society from all sources.

2. As an alternative to ground 1, there should be deducted the whole of the dividends derived by the Society and which arose from investments of New Zealand and Australian funds in shares of Companies.

3. As a further alternative to 1, there should be deducted the whole of the dividends derived by the Society and which arose from investments of the New Zealand funds in shares of Companies.

The foregoing grounds of objection relate to the additional assessment referred to and do not affect the objections taken to previous assessments or amended assessments for the year concerned which still remain for decision.

Dated this fourteenth day of May, 1957.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

H. M. COLLIE,

MANAGER FOR NEW ZEALAND.

No. 3

In the Magistrate's Court

No. 3

Answer by Appellant 9 February 1960

ANSWER BY APPELLANT

ANSWER

Pursuant to Section 31 of the Land and Income Tax Act 1954 and Regulation 26 of the Land and Income Tax Regulations 1946 (Serial No. 1946/74).

1. The Appellant agrees to the facts set forth in writing in the Case Stated herein save and except in respect of the matters referred to in the succeeding paragraphs hereof and the paragraphs therein mentioned of the Case Stated in respect whereof the Appellant alleges as hereinafter set out.

2. With regard to paragraph 7 of the Case Stated the Appellant says, in relation to "the present values" referred to therein, that in general, these present values of amounts due in the future are appreciably less than the face values of such amounts due in the future—as allowance is made for the periods expected to elapse before the amounts become due and for interest expected to be earned in the meantime.

3. With regard to paragraph 8 of the Case Stated the Appellant says that the rates of interest referred to in paragraph 8 of the Case Stated were appreciably lower than that which it assumed that it would earn during the future existence of its policy contracts in force at the said 31st day of December, 1955 (hereinafter referred to as the "assumed future interest rate"), and that these lower rates were chosen so that the actuarial valuation upon a net premium basis, referred to in paragraph 7 of the Case Stated, would make such provision as the Appellant considered proper for the maintenance of future bonuses, at appropriate though unspecified rates, on the said policy contracts. The Appellant further says that, in accordance with common actuarial practice, the interest rates set out in paragraph 8 of the Case Stated were used for the purpose of calculating figures to show, in the Appellant's published reports, the relationship between the face values of the reversionary bonuses allotted and the surplus funds appropriated to produce them; and that the use for this purpose of such interest rates instead of the assumed future interest rate caused the amount of surplus funds apparently required to be allotted to provide the reversionary bonuses to exceed materially the amounts so in fact required on the basis of the assumed future interest rate. The Appellant further says that this excess (of surplus funds apparently required to be allotted to provide reversionary bonuses over those so in fact required) formed part of an internal reserve set up for subsequent distribution in future years (to policy contracts in force at the 31st day of December 1955) as part of the surplus funds being allotted for those years.

In the Magistrate's Court

No. 3

Answer by Appellant 9 February 1960

continued.

4. With regard to paragraph 11 of the Case Stated, the Appellant says that the true position was as follows:

"The said sum of £8,768,194 was shown in the Appellant's published reports as being allocated by the Appellant as follows:—

Divided among policies with Immediate Participation	£7,384,762
Divided among policies with Deferred Participation	111,533
Reserved for Interim Bonuses	60,000
Reserved for Contingencies	1,000,000
Surplus carried forward unappropriated	211,899
	£8,768,194"

5. With regard to paragraph 12 of the Case Stated the Appellant says that the true position was that the total surplus, shown in the Appellant's published reports as being divided and allocated as Reversionary Bonuses to participating Ordinary Life Insurance policies, was £7,496,295 (being the total of the said sums of £7,384,762 and £111,533).

6. With regard to paragraph 13 of the Case Stated the Appellant says that the true position was that the sum of £2,262,202 referred to in paragraph 10 of the Case Stated, (being the surplus as at the 31st day of December 1955 in respect of the Appellant's Industrial Insurance business) was shown in the Appellant's published reports as being allocated by the Appellant as follows:—

Divided among policies with participation	£1,242,484
Reserved for Contingencies	850,000
Reserved for the increase of sums insured and other purposes	169,718
	£2,262,202

7. With regard to paragraph 14 of the Case Stated the Appellant says that the true position was that the amounts of £7,496,295 set forth in paragraph 12 of the Case Stated and £1,242,484 set forth in paragraph 13 of the Case Stated, making a total of £8,738,779, were shown in the Appellant's published reports as being distributed so as to provide reversionary bonuses on Ordinary Life and Industrial Insurance policies respectively.

8. With regard to paragraph 15 of the Case Stated the Appellant prefers to state the contents of the said paragraph as follows:—

"15. The face value of the said reversionary bonuses was such that, valued in accordance with the respective Tables and rates of interest set forth in paragraph 8 hereof, the total Cash Value of such reversionary bonuses as at the 31st day of December 1955 was £8,738,779."

9. With regard to paragraph 20 of the Case Stated the Appellant prefers to state the contents of that paragraph as follows:—

"The rates of interest stated in paragraph 8 hereof (none of which was $3\frac{3}{4}\%$) were used for the calculation of the present values (referred to in paragraph 7 hereof) required for the computation upon a net premium basis of the amount of the Appellant's total net liabilities under its policies referred to in paragraph 9 hereof. The rates of interest, in accordance with which the face values of the reversionary bonuses referred to in paragraph 15 hereof had cash values as at the 31st day of December 1955 totalling £8,738,779, were those stated in paragraph 8 hereof—not $3\frac{3}{4}\%$."

10. With further regard to Part I of the Case Stated the Appellant further says:—

(a) That the interest rate of $3\frac{3}{4}\%$ per annum referred to in the said Chief Actuary's certificate dated the 22nd day of January 1957 was chosen as being more suitable than the interest rates stated in paragraph 8 of the Case Stated for the purpose of calculating the cash value of such reversionary bonuses of face value of £2,929,285 as stated in the said certificate; such cash value being the measure of the surplus funds allotted by way of reversionary bonuses for the year ending 31st December 1955 in respect of policies comprised in the New Zealand business of the Appellant.

The said rate of interest of $3\frac{3}{4}\%$ per annum, not being greater than the assumed future interest rate referred to in paragraph 3 of this Answer, was the rate of interest used by the New Zealand Government Life Insurance Office for the calculation of its net liabilities under its participating policy contracts in force at the 31st day of December 1955, and was the rate which the Appellant understood was used by at least one other Life Office operating in New Zealand for the purpose of calculating the cash value of the reversionary bonuses allotted by it for the year ending 31st December 1955 in respect of policies comprised in its New Zealand business.

(b) That subsequently, the Respondent assessed the Appellant for income tax for the income years ended on the 31st days of December 1956 and 1957 respectively on the basis (so far as cash values of reversionary bonuses allotted for those years in respect of participating Ordinary Life Insurance policies comprised in the New Zealand business of the Appellant were concerned), of such cash values calculated on the basis of an interest rate of 4% per annum and The Institute of Actuaries and Faculty of Actuaries A49-52 ultimate Table of Mortality. For the purpose of calculating its net liabilities under such policies at 31st December 1956 and 31st December 1957 respectively, the Appellant used the bonus reserve method of valuation, using

In the Magistrate's Court

No. 3

Answer by Appellant 9 February 1960

continued.

an interest rate of 4% per annum and the Table of Mortality just referred to. This rate of interest was that which, for the purpose of the said calculations, the Appellant assumed that it would earn during the future existence of such policies in force at 31st December 1956 and 31st December 1957 respectively.

11. With regard to paragraph 37 of the Case Stated, the Appellant says that the first sub-paragraph (a) should be amended by the insertion of the word "other" between the words "all" and "dividends".

12. The Appellant intends to call oral evidence at the hearing of this case to support its contentions of fact.

THE APPELLANT CONTENDS and sets forth pursuant to the said Regulation 26 the grounds of its appeal as follows:—

(a) That the Respondent in making the assessment for the income year ended on the 31st day of December 1955 as set forth in paragraph 32 of the Case Stated did not act correctly pursuant to the Land and Income Tax Act 1954 in treating the said amount of £1,752,083 as being the surplus funds allotted for the said year in respect of policies comprised in the New Zealand business of the Appellant and that the sum of £1,409,210 is the correct amount of the surplus funds so allotted.

(b) That the Respondent in making the said assessment did not act correctly pursuant to the Land and Income Tax Act 1954 in allowing a deduction against the said amount of surplus funds to the extent only of the amount of £14,780.12.0 and that the Respondent should have deducted further sums (as referred to in paragraphs 35, 36 and 37 of the Case Stated) namely,

(i) The sum of £65,063.6.4 being dividends derived from companies incorporated in Australia and received by the Appellant's New Zealand Branch in respect of shares held by such Branch:

(ii) All other dividends derived by the Appellant from all sources, amounting to £462,086.

DATED at Wellington this 9th day of February, 1960.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY
by its Solicitors:
Chapman Tripp & Co.

This Answer to Case Stated is filed for and on behalf of the Appellant by its Solicitors, Messieurs Chapman Tripp & Co., 20 Brandon Street, Wellington.

No. 4

In the Magistrate's Court

No. 4

List of Exhibits received in evidence 29 February 1960

LIST OF EXHIBITS RECEIVED IN EVIDENCE BEING EITHER PRODUCED OR PUT IN BY CONSENT.

APPELLANT'S EXHIBITS:

(A) File of Letters between Respondent and Appellant:

(C) Return made by Appellant to Insurance Commissioner of Australia:

(D) Annual Report (107th) of Appellant for 1955:

(E) Report of Taxation Committee of New Zealand:

(F) Life Insurance Acts (Australia) 1945-53:

(G) Act of Incorporation and Bylaws of Appellant:

Exhibits attached to evidence of Alfred Leslie Sinclair.

RESPONDENT'S EXHIBIT:

(B) Letter from Respondent to Solicitor-General.

In the Magistrate's Court

No. 5

Appellant's Evidence Leslie George Oxby Examination

No. 5

NOTES OF EVIDENCE

EVIDENCE OF LESLIE GEORGE OXBY—CHIEF ACTUARY OF AUSTRALIAN MUTUAL PROVIDENT SOCIETY

LESLIE GEORGE OXBY, being duly sworn, states:—

(i) I am the Chief Actuary and Secretary of the Appellant Australian Mutual Provident Society—having been Secretary of the said Society since 1st January 1948 and Chief Actuary thereof since 6th July 1953.

(ii) I reside at Sydney, in the State of New South Wales, Commonwealth of Australia.

(iii) In the year 1935 I qualified by examination and was admitted as a Fellow of the Institute of Actuaries, incorporated by Royal Charter on 29th July 1884, and in the year 1953 was admitted as an Associate of the Society of Actuaries (of U.S.A. and Canada).

INTRODUCTION

I have read the Answer of the Respondent as filed herein and depose that all statements of fact contained in the Answer are true.

Paragraph 1 of this evidence gives a broad outline of the process by which a life insurance office ascertains its Surplus and the reversionary bonuses to be allotted to its policyholders.

Paragraphs 2 to 12 set out and discuss the application of principles underlying the calculation of a life insurance office's net liability under its policies and the allotment of Surplus, and indicate some of the differences between the "bonus reserve" and "net premium" methods of performing such calculations. It has been assumed that the calculations of net liability are being made with the object of determining the amount of Surplus to be distributed to participating policyholders and/or shareholders. (A different approach would be required if the calculations were being made to ascertain whether or not the office was solvent.) In these paragraphs I seek, *inter alia,* to demonstrate how:—

(a) a life insurance office which values on the "net premium" method and which allots reversionary bonuses to its policyholders sets up, in the early years of a policy's existence, an internal reserve to provide for part of the reversionary bonuses to be allotted to the policy in future; and

(b) in the later years of the policy's existence, the office releases this internal reserve in the form of surplus funds allotted to the policy; and

(c) taxation of the office on the basis on which the Commissioner of Inland Revenue assessed the Appellant for the year ended 31st December 1955 results in double taxation—because the basis results in

(i) taxation of certain amounts put to such internal reserve—such taxation being levied in respect of the years in which they are put to such internal reserves, and

(ii) subsequent taxation of such amounts again—at the stage when they are released from such internal reserves and added to the surplus funds allotted to the policy in later years.

Paragraphs 13 to 18 outline the manner in which the Appellant arrived at the amounts of its net liability under its policies and its Surplus as at the 31st day of December 1955 and then allotted part of this Surplus to policies comprised in its New Zealand business. For the purpose of the figures appearing in these paragraphs, New Zealand and English pounds are included as and assumed to be equal in value to Australian pounds. This assumption was made for all the Appellant's actuarial and accounting statements and balance sheets for 1955.

Paragraphs 19 to 21 relate to the deficiency in the Appellant's New Zealand Branch Funds and to the effect of this on allotment of reversionary bonuses.

Broad Outline of Process for Ascertainment of Surplus and Allotment of Reversionary Bonuses.

1. (a) In general, a life insurance office's premium rates are based on estimates of future experience as regards rates of mortality, interest earnings and expense, and include a margin or margins

(i) to guard against adverse fluctuations in such experience and,

(ii) In the case of participating policies, to contribute to bonus additions to the policies.

For different classes of policy there may be different estimates of future experience and different rates of bonus may be contemplated. On most policies issued in Australia and New Zealand bonuses are allotted annually as reversionary bonuses—i.e. as bonuses of which the face values are payable in full only when the policies are terminated by death or maturity.

These bonuses arise partly from the abovementioned margins and partly from differences between the office's actual experience as regards mortality, interest and expenses and the estimates of these factors underlying its premium rates. Profits from miscellaneous sources (e.g. from

non-participating business, from the surrender or variation of policy contracts, or from the sale of assets) may also contribute. Adverse experience will tend to reduce bonuses.

(b) The life insurance fund of an office is built up by premiums, investment income and any other revenue receipts, and is depleted by payments to policyholders, commissions and expenses paid, and any other revenue payments. Allowance is made for income or expenditure which has accrued, but not yet received or paid. In broad terms, the amount of the fund at any particular time is the sum which the office then has in hand to meet its obligations under its policies.

Periodically the office computes, by means of actuarial calculations, what is termed its net liability under its policies—the whole process often being referred to as a "valuation of policy liabilities" or, more shortly, as a "valuation". In order to carry out such a valuation, the office's actuary chooses a basis, whereby the present value of the expected future claim payments and premium receipts in terms of the policies may be ascertained as at the date at which the calculation is being made (referred to hereafter as the "valuation date"). Such basis involves assumptions as to rates of mortality, interest earnings and expense to be experienced in the future. In general, these assumptions would correspond with similar assumptions made in calculating premium rates at the valuation date. However, for reasons which will be explained hereafter, under one method of valuation the elements (interest rate in particular) will be varied from the underlying assumptions of future experience, to give effect to the office's policy as regards distribution of Surplus. In principle, the office's net liability under its policies at the valuation date is an amount such that, on the basis of the assumed future rates of mortality and interest and allowing for the receipt of future premiums as they fall due, the office will be able to honour its obligations under all its policy contracts as they fall due. Suitable allowances are made for future expenses.

Having calculated its net liability under its policies, the office then ascertains the excess of its life insurance fund over this sum. This excess, or Surplus, is available for disposal in accordance with the office's rules and any relevant legislation. In practice, the bulk of the Surpluses of well-established offices operating in Australia and New Zealand are absorbed in the distribution of reversionary bonuses to participating policyholders.

When the Surplus has been ascertained, the office decides how much thereof should be absorbed in the distribution of reversionary bonuses to policyholders and what the face value of those bonuses should be. (If the "net premium" method of valuation is being used, the portion of the Surplus so absorbed will include certain amounts (applicable to individual policies) added to an internal reserve. As explained later, such internal reserve is one set up for subsequent distribution in future years as part of the Surplus being allotted as reversionary bonuses for those years). The rates of bonus may differ according to

class of contract. The balance of the Surplus is then appropriated or reserved for special purposes, or carried forward unappropriated.

Settling of a Valuation Basis—General Considerations.

2. When settling the basis of valuation (i.e. the basis which is to be used to calculate the office's net liabilities under its policies in force at any time) two main problems require solution—viz.:—

(a) the problem of dealing with possible future changes in the rates of interest, mortality and expense, etc., which will affect the amount of Surplus.

(b) the problem, even if the future rates of interest, mortality and expense, etc., could be accurately foretold, of settling the valuation basis so that the Surplus is released for distribution at the proper time in each policy's existence, having regard to the system of participation adopted.

The first problem is a matter of judgment, and is usually solved by examining the office's recent experience and then making conservative estimates of future trends. The second problem is a technical actuarial one and is usually solved by one of two methods, i.e. by methods known as a "net premium valuation" or a "bonus reserve valuation". In the paragraphs which follow this problem is discussed, and illustrated by reference to a typical Endowment Assurance policy.

Data for hypothetical example.

3. Assume that we know that the future rates of mortality, interest and expense will be

Mortality	....	as per A24-29 ultimate Table
Interest	....	$3\frac{3}{4}\%$ per annum
Expenses	....	15% of each premium

and that participating premium rates are calculated on the assumptions that

(i) these rates of mortality, interest and expense will be experienced, and

(ii) compound reversionary bonuses will be allotted each year at the rate of 1.5% on (sum assured plus previously allotted bonuses).

Then the yearly premium rate for an entrant, at age 20, for a 40-year Endowment Assurance policy (i.e. a policy payable at the expiration of 40 years or at previous death) for a Sum Assured of £1,000 would be £25.78—made up as follows:—

	£
For payment of Sum Assured	12.94
,, ,, ,, bonuses	8.97
,, ,, ,, expenses	3.87
	25.78

In the Magistrate's Court

No. 5

Appellant's Evidence

Leslie George Oxby

Examination

continued.

Premium Basis Valuation.

4. In respect of a group of policies of the type described in paragraph 3, we could then each year calculate a "net liability under policies" figure by subtracting

> the sum of the present values of those parts only (i.e. £12.94 per annum per policy) of the premiums to be received in future which are necessary to maintain the basic Sums Assured,

from the sum of the present values of the basic Sums Assured and of the reversionary bonuses in force at the date of valuation

having regard, in these calculations of present values, to the nature of the policies concerned (e.g. the contingencies upon which the sums assured are payable, and the ages of the lives assured), and allowing for an interest rate of $3\frac{3}{4}\%$ per annum and for mortality at rates according to the A24-29 ultimate table of mortality. I shall call such a method of valuation a "Premium Basis Valuation"—as distinct from a "Net Premium Valuation", which will be referred to in paragraphs 6 to 12 hereafter.

Since, in fact, each year we would be receiving a premium of £25.78 per policy, of which £3.87 per policy could be regarded as being immediately set aside for expenses, we would find that the cash amount arising at the beginning of each year, to be available as Surplus at the end of that year, would be £8.97 per policy, i.e. the part of the premium calculated as required for payment of bonuses. This cash amount, with one year's interest thereon at $3\frac{3}{4}\%$ p.a., would amount to £9.3 (to 1 decimal place) at the end of the year, and if each year the whole of such sums were applied to produce reversionary bonuses, the face values of the bonuses so produced, for policies of different periods in force, would be:—

Period in Force	Cash Amount applied at end of year	Face Value of Reversionary Bonus (for 1 year) so produced
years	£	£
1	9.3	34.0
10	9.3	25.6
20	9.3	18.4
30	9.3	13.2
40	9.3	9.3

It will be seen that the distribution, in the form of reversionary bonuses, of the whole of the Surplus thrown up each year by such a "Premium Basis Valuation" would result, so far as a particular policy was concerned, in the allotment each year of a reversionary bonus with a lower face value than that allotted to it for the previous year. (The reason for this is that with the passing of each year the time for payment of the face value of the bonuses draws nearer—and hence the

period for which the current year's cash Surplus can be invested to accumulate at compound interest until the policy becomes a claim is less than the period for which the previous year's cash Surplus could then have been invested).

This result would obviously be unsatisfactory since the system of participation adopted by the office (compound reversionary bonuses) would have led the policyholder to expect increasing bonuses. Because of this effect, an office using a compound reversionary bonus system cannot use a "Premium Basis Valuation" in practice, but needs to modify it considerably.

Bonus Reserve Valuation.

5. As stated in paragraph 2, there are two main methods of modifying the "Premium Basis Valuation" (referred to in paragraph 4) to meet the unsatisfactory position which otherwise could result therefrom. One of these methods is the "Bonus Reserve Valuation".

In effect, this method adds to the net liability figure produced by a "Premium Basis Valuation" the excess of

the present value of the future bonuses (e.g. at 1.5% p.a. compound) expected to be allotted to each policy

over the present value of the part (e.g. £8.97 p.a.) of each of the future premiums which is designed to provide for bonuses.

The effect of this modification is to increase the net liability figures brought out from year to year for each policy by amounts which increase during the early years of the policy's existence and decrease to zero over the later years of its existence until the policy matures. Hence (since Surplus available for distribution is the excess of the office's life insurance fund over its net liability under its policies), the amounts of Surplus thrown up as available for distribution in the policy's early years are less, and those so thrown up in its later years are greater, than those which would be thrown up if the unmodified "Premium Basis Valuation" were used. The following table illustrates, in respect of a policy of the type we are considering as an example, the effect of the modification on the cash Surplus thrown up for certain specimen years and the reversionary bonuses which would be allotted for those years if the whole of each cash Surplus, so modified, was applied to produce reversionary bonuses.

Period in Force	Cash Surplus for year—as thrown up by Premium Basis Valuation	Effect (reduction or increase) of modification (by use of Bonus Reserve Valuation) on cash Surplus thrown up for year		Cash Surplus for year—as thrown up by Bonus Reserve Valuation	Face Value of Reversionary Bonus allotted for year—on basis of Bonus Reserve Valuation
years	£	£		£	£
1	9.3	5.2	Reduction	4.1	15.0
10	9.3	3.1	,,	6.2	17.2
20	9.3	.8	Increase	10.1	19.9
30	9.3	7.0	,,	16.3	23.1
40	9.3	17.5	,,	26.8	26.8

This method produces a progression of amounts of reversionary bonus from year to year which agrees with the 1.5% compound reversionary bonuses which the policyholder might expect to receive. The method is thus regarded as a satisfactory one for adoption by an office following this system of participation.

Net Premium Valuation.

6. The technique of the "Bonus Reserve Valuation" has been employed in practice only in comparatively recent years, although the theory was developed as long ago as 1907. For many years, however, a similar result has been obtained by means of a technique known as a "Net Premium Valuation"—which could be described more accurately as a "Net Premium Valuation with Artificially Lowered Interest Rate". It has been found that if the valuation is done on the general lines indicated in paragraph 4 for the "Premium Basis Valuation" but with the following modifications;

(i) assuming an artificial future interest rate lower by a suitably chosen amount than the rate which is really expected,

(ii) assuming that, after providing for expenses, the office will receive only "net premiums"—i.e. the premiums which would be just sufficient to provide the Sum Assured (without bonuses) if the interest rate earned during the whole existences of the policies concerned with the artificial interest rate only,

i.e. if the "net liability under policies" figures are calculated by subtracting the sum of the present values of the "net premiums" to be received in future from the sum of the present values of the basic Sums Assured and of the reversionary bonuses in force at the date of valuation

then the resulting net liability figures brought out from year to year for a particular policy exceed those which would be brought out by a "Premium Basis Valuation"; the excesses being such that the Surplus thrown up in each year of the policy's existence is equivalent (when valued on the basis of the mortality rates and artificial future interest rate just referred to) to reversionary bonuses with face values in approximate agreement with those on a compound scale.

The precise level of the "artificial future interest rate" to be assumed for the method to produce any desired result as regards bonus distribution, varies within fairly narrow limits according to the type of policy and the period it has been in force. In practice an office would for convenience use one "central" artificial interest rate for a large group of its policies even though such "central" rate were too high for some policies included in the group and too low for others. For the purpose of the following illustration a rate of £2.11.5% p.a. has been chosen, that being the correct rate for the particular policy we have been considering—at the stage when it has been in force for exactly 10 years.

The "Net Premium Valuation" method is universally admitted to be a device in which many of the important elements are unreal, e.g. the artificial interest rate is not that really expected, and the net premiums which the method assumes will be received in future bear little relationship to the premiums which will actually be received. The main virtue of the method from the viewpoint of allotment of bonuses is that it produces in a very simple manner end results which are consistent with the system of compound reversionary bonuses, and which the policyholders consequently might expect to receive.

7. Employing a "Net Premium Valuation" with an artificial interest rate of £2.11.5% p.a. to value the 40-year Endowment Assurance policies mentioned in these notes, the end results are as follows:—

Period in Force	Cash Surplus for year	Face Value of Reversionary Bonus allotted for 1 year
years	£	£
1	6.0	14.9
10	8.5	17.2
20	12.5	20.1
30	18.1	23.1
40	26.4	26.4

As previously indicated, strictly the rate of £2.11.5% p.a. is applicable only at the end of the 10th year. However, it has been used for each Period in Force shown in the above table—with the object of illustrating (in paragraph 8) how a suitably chosen "central" rate results in the allotment of reversionary bonuses virtually equivalent to those resulting from the use of a Bonus Reserve Valuation.

Comparison of Net Premium and Bonus Reserve methods of Valuation: "Additional Reserve".

8. A comparison of the amounts of Reversionary Bonus for 1 year produced by the "Bonus Reserve Valuation" method and the "Net Premium Valuation" method (as shown in paragraphs 5 and 7) is as follows:—

Period in Force	Face Value of Reversionary Bonus for 1 year resulting from Bonus Reserve Valuation	Face Value of Reversionary Bonus for 1 year resulting from Net Premium Valuation
years	£	£
1	15.0	14.9
10	17.2	17.2
20	19.9	20.1
30	23.1	23.1
40	26.8	26.4

9. The comparison given in paragraph 8 illustrates the fact that the "Bonus Reserve Valuation" and "Net Premium Valuation" methods produce similar results as regards the progression of reversionary bonuses. Each method does so by bringing out from year to year "net

liability under policies" figures which exceed those which would be brought out by "Premium Basis Valuations"—in such a way that the amount of such excess, or additional net liability, for a particular policy increases during the early years of the policy's existence and then decreases over the later years of its existence. (And hence each method holds back, as an internal reserve, part of the Surplus that would otherwise arise in the early years of a policy's existence, and in later years releases it for distribution.) However, the means by which each method sets up this additional net liability are very different.

The additional net liability is set up

(a) in the Bonus Reserve method—by calculating the present value of expected future bonuses, and deducting the present value of the parts of the actual future premiums designed to provide bonuses;

(b) in the Net Premium method—by employing an artificially low interest rate.

(Note especially that the method requires that this artificial rate be used in the calculation of the present values of what can be termed all the elements of the policy taken into account, i.e. Sum Assured, Existing Bonuses, Future Net Premiums, and Bonus accruing for the Current Year. So far as this last-mentioned element is concerned, the requirement can be expressed a little differently by saying that the artificial interest rate must be used for the purpose of calculating the face values of reversionary bonuses which correspond to the amounts of Surplus which are to be absorbed in the distribution)

and hereafter it will be referred to as the Additional Reserve.

By way of illustration, the following table summarises the way in which this Additional Reserve is set up in the case of a policy (of the type which has been used as an example) which is 10 years in force.

Sum Assured £1,000
Existing Bonuses .... £143.4 (declared in first 9 years)
Bonus accruing for current year £17.2 (for 10th year)

Elements	Method of Valuation				
	Premium Basis	Bonus Reserve		Net Premium £2.11.5%	
	Present Value	Present Value	Additional Reserve (2) — (1)	Present Value	Additional Reserve (4) — (1)
	(1)	(2)	(3)	(4)	(5)
Sum Assured less future "Premiums"	133.3	133.3	—	163.6	30.3
Existing Bonuses	51.9	51.9	—	70.8	18.9
Future Bonuses less future "Bonus Loadings"	—	51.5	51.5	—	—
Bonus accruing for current year	6.2	6.2	—	8.5	2.3
Total Net Liability under policy	191.4	242.9	51.5	242.9	51.5

NOTES (a) In line 1 of the Table, "Premiums" means premiums (excluding allowances for expenses) in respect of the basic Sum Assured only—calculated on the basis of the following interest rates:—

$3\frac{1}{2}$% per annum—for the Premium Basis and Bonus Reserve Valuations
£2.11.5% per annum—for the Net Premium Valuation.

(b) In line 3 of the Table, "Bonus Loadings" means those parts of the premiums (excluding allowances for expenses) which are included to provide bonuses.

The above Table shows that for this policy the "Bonus Reserve Valuation" makes an Additional Reserve of £51.5. This Additional Reserve is the accumulation over the first 10 years of the policy's existence of the amounts of which specimens are given in the "Effect of modification (by use of Bonus Reserve Valuation) on cash Surplus thrown up for year" column of the Table in paragraph 5. It is important to note (from the same Table) that this Additional Reserve reduces, thus augmenting cash Surpluses, in the later years of a policy's existence.

10. As indicated in the two right-hand columns of the table given in paragraph 9, in the case of the "Net Premium Valuation" this same Additional Reserve is set up as follows in the present values of the relevant elements:—

Elements	Present Value	Portion of Additional Reserve included therein
	£	£
Sum Assured less future Premiums	163.6	30.3
Existing Bonuses	70.8	18.9
Bonus accruing for current year	8.5	2.3
	242.9	51.5

The right-hand column of this Table clearly illustrates the essence of the present case—that the Net Premium method sets up part of the Additional Reserve in its treatment of each of the various elements **(including the Bonus accruing for the current year)** of the policies in force.

Double Taxation (of a life insurance office using the Net Premium method of valuation) arising from the Commissioner of Inland Revenue's basis of assessment.

11. As stated towards the end of the second paragraph of Paragraph 9, the "Net Premium Valuation" method requires that its artificial low interest rate be used for the purpose of calculating the face values of reversionary bonuses corresponding to the amounts of Surplus which are to be absorbed in the distribution; and it has been common actuarial practice for offices using the method to state, in published reports, the amount of Surplus so absorbed as being the amount of Surplus distributed or allotted. However, as illustrated in paragraphs 9 and 10, this amount includes part (£2.3 in the example

under consideration) of the Additional Reserve, and hence appreciably overstates the actual cost of providing the bonuses. The point at issue is whether this part of the Additional Reserve should be regarded as Surplus allotted to policyholders and so made subject to Income Tax in the current year of taxation.

The case against such taxation is that it would result in double taxation. This follows because this part of the Additional Reserve would again be taxed at the stage when, together with the balance of such Additional Reserve, it is released and added to the cash Surplus allotted to policyholders in the later years of the policy's existence. So far as the policy in the example is concerned, it would result, over the 40 years of its existence, in taxation on a total sum of approximately £556 —instead of on the (correct) total sum of approximately £480 as would be the case if the Bonus Reserve Valuation referred to earlier were used throughout the period.

12. In the example in paragraph 9, of the £8.5 Surplus required by the "Net Premium Valuation" to permit the allotment of the current year's reversionary bonus of £17.2,

£6.2 is Surplus actually to provide for that £17.2 bonus; and

£2.3 is part of the net liability required to provide for that part of future reversionary bonuses which will not be provided by the future "bonus" portions (i.e. £8.97 p.a.) of the premiums.

It follows, therefore, that there will be double taxation if this net liability of £2.3 (which has been set up to augment future Surplus available for allotment) is taxed at the end of the 10th year, as well as in a later year, when it is released and forms part of the Surplus then allotted.

The Appellant's Life Insurance Statutory Fund.

13. The Appellant's Life Insurance Statutory Fund is made up of two separate funds—the Ordinary Department Fund and the Industrial Department Fund.

Each of these two Funds is built up by premiums, investment income and miscellaneous other revenue receipts, and is depleted by payments to policyholders, commissions and expenses paid and miscellaneous revenue payments. Allowance is made for income or expenditure which has accrued, but not yet received or paid. The progress of each Fund is shown by a Revenue Account which for any year shows how the Fund at the beginning of the year is brought, as a result of the above-mentioned receipts and payments, to that at the end of the year. The Revenue Account is not affected by capital transactions such as purchases and sales of assets—except insofar as it brings into account profits and losses thereon. Revenue Accounts for the year 1955 for the Ordinary Department Fund and Industrial Department Fund are printed on pages 2 and 3 respectively of the Appellant's Return to the Insurance Commissioner Commonwealth of Australia—referred to

hereafter as "the Return". However, for convenience, they are summarised hereunder:—

Ordinary Department Revenue Account

	£		£
Fund at beginning of year	242,627,352	Claims, etc	13,396,283
Premiums and considerations for annuities granted	29,079,388	Commissions, Expenses, etc.	4,764,391
Interest, Dividends and Rents—less Income & Land Taxes	9,775,160	Written off Assets .... Loss on realisation of assets	245,006
Transfer from Provision for Taxation	100,000	Fund at end of year	263,176,220
	£281,581,900		£281,581,900

Industrial Department Revenue Account

	£		£
Fund at beginning of year	47,883,410	Claims, etc.	4,144,989
Premiums	5,477,193	Commissions, Expenses, etc.	1,558,414
Interest, Dividends & Rents—less Income & Land Taxes	1,908,527	Written off Assets .... Loss on realisation of assets	47,706
		Fund at end of year	49,518,021
	£55,269,130		£55,269,130

NOTE: The Appellant, being a wholly mutual office transacting life business only, does not make out a Profit and Loss Account.

14. The Life Insurance Statutory Fund is the principal Liabilities item in the Appellant's Balance Sheet as at 31st December 1955—which is printed on pages 4 and 5 of the Return. It may be summarised as follows:—

Liabilities	£	Assets	£
Life Insurance Fund		Sundry Assets	321,468,468
Ordinary Department (includes £4,500,000 Investment and Contingencies Reserve)	263,176,220		
Industrial Department (includes £1,000,000 Investment & Contingencies Reserve)	49,518,021		
	312,694,241		
Other Liabilities (e.g. Provision for Taxation, Overdraft, Outstanding Accounts)	8,774,227		
	£321,468,468		£321,468,468

Calculation of the Appellant's Net Liability under its policies as at 31st December 1955

15. The amount of the Appellant's net liabilities under its policies as at 31st December 1955 was calculated by Net Premium Valuations, and the results are summarised in the right-hand columns of the Sum-

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mary and Valuation tables shown on pages 6–7 and 8 of the Return. They may be summarised more briefly as follows:—

	Ordinary Department £	Industrial Department £
Present value of—		
£937,048,790 Sum Assured (and some annuities)	491,557,147	
£105,919,899 Reversionary Bonuses	69,939,443	
	561,496,590	
Future net premiums of £20,865,505 per annum	311,588,564	
£118,415,403 Sum Assured		85,623,101
£ 5,167,188 Reversionary Bonuses		4,403,488
		90,026,589
Future net premiums of £4,275,246 per annum		43,770,770
Net liabilities under policies in force at 31/12/55		
	£249,908,026	£46,255,819

£249,908,026 + £46,255,819 = £296,163,845

Calculation of the Appellant's Surplus as at 31st December 1955.

16. The Appellant's Surplus as at 31st December 1955 was ascertained by finding the excess of the amount of its Life Insurance Statutory Fund over the sum of the amounts of its Investment and Contingencies Reserves and the amount of its net liabilities under its policies in force at 31st December 1955. These various items are shown in the Appellant's Valuation Balance Sheet, which is printed on page 8 of the Return and annexed as "A" to the Case Stated and may be summarised as follows:— 10

	£		£
Net liabilities under policies	296,163,845	Funds	312,694,241
Reserve Accounts	5,500,000		
Surplus			
Ordinary Department	8,768,194		
Industrial Department	2,262,202		
	£312,694,241		£312,694,241

NOTES:

(1) "Funds" in the above summary refers to the Life Insurance Statutory Fund shown in the Balance Sheet printed on pages 4 and 5 of the Return.

(2) "Reserve Accounts" in the above summary refers to the Investment and Contingencies Reserves shown, in the Balance Sheet printed on pages 4 and 5 of the Return, as parts of the Life Insurance Statutory Fund.

(3) The amount of Surplus in the above summary is that as at 31st December 1955 and before the allotment of reversionary bonuses for the year—although it should be noted that the figure is net of any cash allotments of Surplus which were made in respect of policies terminated during the year.

The portions of Surplus thrown up during the year 1955 were £7,911,495 (Ordinary Department) and £997,413 (Industrial Department)—as indicated in Answers numbered (8) and printed on pages 12 and 15 of the Return.

Allotment (by the Appellant) of Reversionary Bonuses for the year 1955

17. The Appellant then decided to absorb £8,738,779 (£7,496,295 Ordinary Department and £1,242,484 Industrial Department) of its Surplus at 31st December 1955 in the distribution of reversionary bonuses of about £12,996,000 to Ordinary Department policyholders and about £1,528,000 to Industrial Department policyholders, and in the consequent addition (in respect of these bonuses accruing for the year 1955) to the Appellant's Additional Reserve. This addition was rendered necessary by the Appellant's use of the Net Premium Valuation method.

These two amounts last mentioned (about £12,996,000 and about £1,528,000) total about £14,524,000.

18. Of the sums of £8,738,779 and about £14,524,000 mentioned in paragraph 17 hereof, amounts of £1,736,492 and £2,929,285 respectively related to policies comprised in the Appellant's New Zealand Branch business.

As indicated in my Certificate furnished with the Appellant's amended return of income dated 25th January 1957, the cash value of the reversionary bonuses of £2,929,285 referred to above was £1,393,619—based on the A24-29 ultimate Table of mortality and an interest rate of $3\frac{3}{4}\%$ per annum. This figure of £1,393,619 is comparable with that of £6.2 given in paragraph 12 hereof and is the figure which should be taken as the amount of surplus funds allotted by way of reversionary bonuses for the year ending 31st December 1955 in respect of policies comprised in the Appellant's New Zealand business. To this amount should be added an amount of £15,591—being cash allotments of surplus to New Zealand Branch policies terminated during 1955.

The total amount of surplus funds allotted to policyholders by the Appellant for the year ending 31st December 1955, by way of reversionary bonuses or otherwise, in respect of policies comprised in its New Zealand business was thus £1,409,210.

The difference of £342,873 (as at 31st December 1955) between this figure of £1,409,210 and that of £1,752,083 referred to in paragraph 16 of the Case Stated represents the portion of the Appellant's Additional Reserve which the Appellant's use of the Net Premium Valuation method made it necessary to include (in such Additional Reserve) in respect of the reversionary bonuses allotted by the Appellant for the year 1955 in respect of policies comprised in its New Zealand business. In other words, it represents sums (comparable with that of £2.3 to

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which I have referred earlier) held back for release and addition to cash Surpluses allotted to policyholders in later years of the policies concerned.

Of the amounts quoted in this paragraph, only £8,738,779 and £14,524,000 are ascertainable from published matter. The others were ascertained from the Appellant's internal records and do not appear in any of the Appellant's published reports.

Effect of Deficiency in the Appellant's New Zealand Branch Funds as at 31st December 1955.

19. As at the 31st day of December 1955—

(a) The book values of the assets of the Appellant's New Zealand Branch, less liabilities of that Branch other than the Life Insurance Statutory Fund, amounted to £57,701,708; and

(b) its total net liabilities under the policies comprised in its New Zealand Branch business, as shown by the actuarial valuation referred to in paragraph 9 of the Case Stated, amounted to £59,823,315; and

(c) accordingly, on the basis of the figures given in sub-paragraphs (a) and (b) hereof, there was a deficiency of £2,121,607 in the Appellant's New Zealand Branch funds, and this deficiency was increased to £3,858,099 by the allotment of reversionary bonuses for the year 1955 and the necessary addition, in respect of these bonuses, to the Appellant's Additional Reserve; and

(d) there was a deficiency in its United Kingdom funds; but

(e) these deficiencies in its New Zealand and United Kingdom funds were more than covered by the surplus in its Australian funds.

(f) The Appellant had an Investment and Contingencies Reserve of £5,500,000 in relation to its whole world business, and Surplus Carried Forward totalled £2,291,617. All the assets covering these amounts were invested in Australia. A proportion of these amounts was attributable to the Appellant's New Zealand Branch.

20. On the basis of the actuarial valuation referred to in paragraph 9 of the Case Stated and in view of the deficiency in its New Zealand funds referred to in sub-paragraph (c) of paragraph 19 hereof, the Appellant could not have properly allotted any reversionary bonuses for the year 1955 to policies comprised in its New Zealand Branch business if there had not been, as at 31st December 1955, a Surplus in its Australian funds.

As indicated in paragraph 16 hereof, a large part of the Appellant's Surplus at 31st December 1955 was thrown up during the year 1955.

21. Income (for the year ended 31st December 1955) derived by the Appellant in Australia included dividends, and part of it was earned on assets which enabled the deficiency in the Appellant's New Zealand

Branch funds to be covered; part of it was also earned on assets covering the New Zealand Branch proportion of the Investment and Contingencies Reserve and Surplus Carried Forward mentioned in paragraph 19 (f). These dividends contributed towards surplus funds allotted for the year 1955 in respect of policies comprised in its New Zealand Branch business. Such income was assessable income for taxation purposes in Australia.

Leslie George Oxby, Chief Actuary of Australian Mutual Provident Society (reads evidence). (Attached.)

Sir W. J. Sim: Your Worship will allow me: before we finish your evidence, Mr Oxby, I have before me here a letter put in by the Commissioner by consent, dated 26th February 1960, on which I wish your comment, any, you have to make on paragraph (c). (Reads out paragraph (c).) In your opinion, is there any reason why the practice you have adopted in 1955 is unsound or criticisable?

Wild: Is not that a question for the Court?

Sim: Could you make comment on the Commissioner's paragraph (c) —I think it is a question for the Court.

Oxby: It is the first information to me as to what the Department would no longer permit in such a case. At the time I gave my second certificate we had been informed of the assessment of another office on this basis, which assessment was subsequently revoked, but at that time it did not appear to me that it was an improper assessment and that is one reason why we gave our certificate.

Sim: Yes, the Commissioner's letter (paragraph c) suggests as I would read it, some impropriety.

Oxby: In the valuation of bonuses for the year 1955 he says he would not allow it.

Sim: It is not for the Commissioner to correct us you say; your method of conducting the business.

Oxby: Well, I would think that I have given a correct certificate and its correctness does not depend upon whether the Department permits it. I have made a certificate which is permissible under the Act and acceptable to my Company. Everything I have done has been adopted by my Company, that is, the Board of Directors. The Board has knowledge of transactions and the certificate is part of our records.

Sim: I would take it to be an official allocation of your Company for the year.

Oxby: The allocation for the year did comprise the face value of those bonus certificates. It required the absorption according to our official returns of so much surplus, which surplus absorbed included amounts which were not allotted to the policyholders at that time but

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were held back as part of the internal reserve for subsequent allotment. I think my second certificate makes it clear. My second certificate involves no internal reserve and no double taxation, assuming the correctness of the basis on which that is made, $3\frac{3}{4}\%$, that is a question of judgment.

(Commissioner's letter put in by the Crown by consent.)

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Cross-Examination

Cross-examined—Mr Wild:

Q. Your evidence Mr Oxby shows that there are two methods of calculating the net liabilities of a Life Office, the net premium method and the bonus reserve method, and as I understand it, up to and including 1955, the A.M.P. adopted the net premium basis?

A. For its published accounts. I think it is fair to say that all offices would do other valuations which were not published to enable them to determine . . .

Q. Up till 1955, it adopted the net premium basis for its published accounts?

A. Yes.

Q. And from 1956 onward it has adopted the bonus reserve method?

A. For ordinary participating business New Zealand Branch—again for its published accounts.

Q. Now I also understand that for the purpose of calculating your net liabilities you have to use certain tables of mortality and rates of interest?

A. Yes.

Q. And those are set out in paragraph 8 of the case stated?

A. Yes.

Q. Now, will you mind if I refer to those in the questions I want to ask you as the "paragraph 8 rates". You will know what I mean?

A. Yes, I understand.

Q. The case stated, paragraph 9 (if your Worship would note that paragraph I want to ask some questions), paragraph 9 states that your total net liabilities for 1955 were £296 million odd, does it not?

A. Yes.

Q. What rates of interest were used for the purpose of calculating that figure—paragraph 8 rates?

A. Yes, the whole basis of paragraph 8.

Q. Now, paragraph 10 sets out the surplus for your ordinary business

and the surplus for your industrial business. What rates do you use for the purpose of calculating those figures—paragraph 8 rates?

A. Yes, they were obtained by deducting the liabilities calculated by paragraph 8 from the Statutory Fund residual figures.

Q. Paragraph 11 gives a sum of £8 million odd which was the surplus in respect of ordinary business. Is that correct?

A. £8,768,194—that was the surplus in respect of ordinary business. It was part of the surplus which was shown by our published reports as being allocated in this valuation.

Q. What rates of interest were used in the course of arriving at that sum—the paragraph 8 rates?

A. Yes, the paragraph 8 rates were the basis.

Q. Similarly, the paragraph 8 rates were the basis which resulted in the figures shown in paragraph 12, were they not?

A. Yes.

Q. Paragraph 13 refers to the sum of £2 million odd, which was surplus in respect of industrial business, does it not?

A. Yes.

Q. The paragraph 8 rates were also the original basis which resulted in that figure being arrived at, were they not?

A. Yes.

Q. Now, in paragraph 14, the next paragraph, you arrive at a total of £8,700,000 odd, which was the total surplus allotted by way of reversionary bonus on both ordinary and industrial insurance. Is that correct?

A. £8.7 million there is the total.

Q. So it follows that the paragraph 8 rates were the basis which resulted in that figure being reached.

A. For what it is worth, yes.

Q. And then, in paragraph 15, you say that the scale on which the face value, upon which those reversionary bonuses were based was such that valued in accordance with the paragraph 8 rates, their cash value was £8.7 million. So paragraph 8 rates applied there too?

A. I did not say that.

Q. No, but I am putting it to you, is it not so?

A. That is what the paragraph says, yes.

Q. Now, coming to paragraph 16—that sets out the return of income that you first made, does it not?

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Cross-Examination

continued.

A. Yes.

Q. And you set out there in accordance with Section 149 of the Act the surplus funds allotted and you deduct the dividends received and the difference you then declare to be assessable income, is that so?

A. I see no reference to Section 149.

Q. No, but you know that you made that return in accordance with Section 149.

A. Yes, that is right.

Q. Now that figure that you show as your surplus funds allotted is £1.7 million is it not?

A. Yes, in paragraph 16.

Q. And that figure comes from the adding of the figures shown in paragraph 17 (a) and (b)?

A. 17 (a) is a cash amount, 17 (b) is a reversionary amount.

Q. I do not think we are at cross purposes, but I was not clear as to what I asked you. That figure of £1.7 million shown in paragraph 16 is the addition of the figure of £15,000 odd shown in 17 (a) and the figure £1,736,492 shown in 17 (b)?

A. Yes—no, pardon. That is not part of 17 (b). I think the printing is in error—that last sentence should be set out again, it is not part of 17 (b).

Q. May I ask the question again so that, because this may have to be looked on later, so that there is no mistake of it. The figure of £1,752,083 shown in paragraph 16 represents the total of the figure of £15,591 in 17 (a) and the figure of £1,736,492 shown at the end of your certificate in paragraph 17?

A. Yes.

Q. Now then, would you look at the last sentence of your certificate in paragraph 17 and read it to yourself beginning with "cash value". Having read that, do those words "according to the respective bases employed by the Society in valuing its policies", do those words refer to the paragraph 8 rates, they do?

A. Yes.

Q. So that up to this point of the case stated, all the figures that I have discussed with you have had as their basis the paragraph 8 rates?

A. Yes.

Q. But in paragraph 19 and in the certificate which appears there you switch, do you not, to an interest rate of $3\frac{3}{4}\%$?

A. For determining the cash value.

Q. Answer the question first, did you use the $3\frac{3}{4}\%$ rate (it is right there by you)?

A. In respect of that last paragraph, yes.

Q. You agree then, you there adopt a different rate, namely $3\frac{3}{4}\%$?

A. Yes.

Q. Was the rate of $3\frac{3}{4}\%$ used in 1955 for the purposes of any of the valuations in the Society's books?

A. Not any of the published valuations.

Q. I want to point to what I think you will agree is the essential difference between your Society and the Commissioner in this matter, and I have been leading up to it: in your first certificate which appears in paragraph 17, you give the cash value of the bonuses at the rates which were employed for all the other figures in the Society's published report?

A. Yes.

Q. In your first certificate which appears in paragraph 17 you give the cash value of the reversionary bonuses . . . according to the rates stated in paragraph 8 of the Case Stated. That was the rate used for the figures appearing in all the Society's published reports?

A. Yes.

Q. That is to say you were consistent in the interest rate adopted with that used throughout the Society's published reports?

A. It was the same basis, yes.

Q. On the other hand in paragraph 19 in your second certificate you give a cash value of the bonuses at a different rate of $3\frac{3}{4}\%$ which rate was not used in any of the figures in the Society's published reports.

A. Yes.

Q. Now that is the essential difference between your Society and the Commissioner, is it not?

A. On this leg of the case, I believe so.

Q. What you want to do is to use a rate that you have not used anywhere else while the Commissioner for his part wants to hold you to your rate that you have used everywhere else.

A. Yes, but may I explain our motives? Both of my certificates as to the surplus funds are identical. I have certified the surplus funds as being so much cash and so much by way of reversion. When it came to the second certificate we considered the $3\frac{3}{4}\%$ rate the better basis for measuring the amount of surplus allotted to policyholders. We take the

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continued.

view that previous bases included not only the surplus allotted to policyholders but also surplus absorbed—

Q. That is your motive, but the fact is that you have sought to use in your second certificate a rate different from the rate you used everywhere else in the Society's published reports. That is the position isn't it?

A. Of necessity we did so because the rate of interest shown in our published reports was an ingredient of the net premium method of valuation and did not represent our view as to the expected future interest rate to be earned.

Q. The rate of $3\frac{3}{4}\%$ that you seek to use on your second certificate is of course higher than the rate used for all other purposes, isn't it?

A. It is higher than the artificially lowered rates.

Q. It is higher than the rates shown in paragraph 8?

A. Quite.

Q. What result does the use of that higher rate have on the cash value of the reversion of bonuses?

A. It reduces the cash value, or produces a lower cash value.

Q. That is to say it produces a lower surplus allotted for income tax purposes?

A. For income tax purposes.

Q. That means that you pay less tax?

A. Yes, if it is accepted by the Commissioner.

Q. Do you confirm what Sir Wilfred has said that that is the main reason for your having adopted the higher rate?

A. Yes it is, certainly for the purpose of the certificate.

Q. Can you tell me whether ever before the A.M.P. has used a different rate of interest for calculating the cash value of bonuses than the rate it used for valuing its liabilities?

A. All the cash values of bonuses are calculated at a different rate to the rate used in a valuation. If a policyholder sought to take the cash value of his reversion he would not get it on value calculated according to the valuation basis. The cash value at the time we speak of would have been on a $4\frac{1}{2}\%$ interest rate.

Q. Can you tell me whether the A.M.P. has ever before used a different rate for valuing its reversionary bonuses than the rate used for valuing its liabilities?

A. Always for calculating cash values of bonuses we use a different rate.

Q. Has it ever used a different rate for calculating cash values of bonuses for tax purposes than the rate used for valuing its liabilities?

A. The only occasions to calculate for tax purposes would be for this certificate to the New Zealand authorities.

Q. Has it ever before for that purpose used a rate different from that used for calculating its liabilities?

A. No.

Q. Would you just look at the Case Stated on the one hand, and the answer on the other. I want to ask you some questions arising out of that. Would you look at paragraph 11 of the Case Stated and compare it with paragraph 4 of the answer. I just want to draw your attention to the point you make there. In paragraph 11 of the Case Stated it is said: "The said sum of £8,768,194 was allocated by the Appellant as follows:" Then the method is set out. In your answer you say in paragraph 4: "With regard to paragraph 11 of the Case Stated, the Appellant says that the true position was as follows: 'The said sum of £8,768,194 was shown in the Appellant's published reports as being allocated by the Appellant as follows:' " The difference is that the Case Stated said that £8 million was allocated and the qualification you put on that is that you say that that sum was "shown in your published reports" as being allocated. That is the position isn't it?

A. That is so, yes.

Q. What is the reason for that qualification?

A. The published reports show the allocation for the net premium method of valuation.

Q. Does the A.M.P. Society mean by that answer that the £8 million odd was not allocated as show in that paragraph?

A. It was allocated as surplus divided but it was not in our opinion immediately allotted to the policyholders.

Q. Does the A.M.P. mean by its answer in paragraph 4 that the £8 million was not allocated as shown in that paragraph?

A. No, it doesn't mean it was not allocated.

Q. The fact is that your return shows that it was allocated in that way, doesn't it?

A. Yes.

Q. (I would like your Worship to refer to this return. It is in Exhibit B.) This is a return that your Society is required to make by law in Australia isn't it?

A. Yes.

Q. I suppose we can accept without the slightest qualification that

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continued.

everything in this is strictly accurate because it is a statutory return?

A. Yes.

Q. Would you look at page 8 of it. In the last line on the left there is a figure of £8,768,194 is there not?

A. Yes.

Q. That is the same figure as is shown in paragraph 11 is it not?

A. Yes.

Q. And it is the same figure as is shown on page 12 of the return in answer 8?

A. Yes.

Q. Do you see half-way down on page 12 the words "The surplus was allocated as follows"? What surplus?

A. The surplus emerging from the valuation.

Q. What is the figure? It is the same £8,768,194 is it not?

A. Yes.

Q. So that what the Society is saying in the middle of page 12 is "The surplus of £8,768,194 was allocated as follows", isn't it?

A. That is right.

Q. What follows, the a, b, c down to f, accords with what is set out in paragraph 11 of the Case Stated?

A. Yes.

Q. So that we may take it may we that the statement in paragraph 11 "the said sum of £8,768,194 was allocated as follows" is correct?

A. It is correct as is shown in these published reports.

Q. But the published reports say the same thing don't they? You just agreed with me that we may read that portion "The surplus of £8,768,194 was allocated as follows" as being correct.

A. Within the meaning of the word "allocated" as used by the draftsman. These are answers to statutory questions.

Q. They are correct answers, aren't they?

A. Yes, the Society meant what it said.

Q. Similarly may we compare page 15 which deals with the industrial side with what you say in the statutory return. The figure of £2.2 million shown in paragraph 13 is the same figure as appears first in answer 8 on page 15 of the return, is it not?

A. Yes.

Q. And the allocation of that as shown below in answer 8 is the same as it set out in paragraph 13 is it not?

A. Yes.

Q. May we then take it that paragraph 13 of the Case Stated is correct?

A. Yes.

Q. And we needn't worry about the "quibbling", if you don't mind my calling it that, that is made in paragraph 6 of the answer?

A. I think the quibble was about the two different senses given to the word "allocated". Allocation of surplus resulting from a net premium valuation does not necessarily mean so much for policyholders by way of allotment.

Q. Will you agree with me that according to the Society's Statutory Return paragraph 13 of the Case Stated is correct?

A. According to the Society's Statutory Return it is correct.

Q. And what the Society said in its Statutory Return was absolutely accurate?

A. Yes.

Q. Now we come to paragraph 14 of the Case Stated and compare that with paragraph 7 of the answer. Paragraph 14 of the Case Stated says that the amount of 7.4 million set forth in paragraph 12 and the amount of 1.2 million set forth in paragraph 13 made a total of 8.7 million which was allotted by way of reversionary bonuses and ordinary life and industrial insurance policies. That is correct is it not?

A. In the answer we said that those amounts were shown in the published reports as being distributed so as to provide reversionary bonuses.

Q. The figure of 8.7 million shown in paragraph fourteen was distributed by way of Reversionary Bonuses wasn't it?

A. Yes, but on pages 12 and 15 I think we have the expression "divided".

Q. You have used various expressions but they mean allotted don't they?

A. I don't think so, No. I think the distribution is something which takes place in our books.

Q. Are you telling me that when this sum is distributed or divided or allocated it is not allotted? You are telling me that.

A. Yes.

Q. Have you got the Directors' Report for 1955, is it correct?

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continued.

A. It is correct.

Q. It is put out by the A.M.P. Society for the information of all its policyholders is it not?

A. Yes, it is a report of the Society to the annual meeting. Policyholders who request a copy are sent one.

Q. It is part of the information that is available to all policyholders and no doubt to the investing public generally?

A. We have got no shareholders.

Q. Reference is made in this document to that figure of eight million. Page two on the inside second-to-last line in heavy type "Surplus distributed"—£8,738,000, that is the same old figure isn't it within a few hundreds of pounds?

A. Yes.

Q. That is the same figure as appears in paragraph fourteen of the Case Stated.

A. Yes.

Q. It is said there that it is the surplus distributed.

A. Yes.

Q. Now look at page five on the right hand side under the heading of "Allocation of Surplus"—halfway down that we find surplus divided and allotted as reversionary bonuses to participating policies, that is the same figure isn't it?

A. Yes.

Q. Notice the word "Allotted".

A. Applicable to the Reversionary Bonuses.

Q. Do you still wish to press this difference between this word allotted and the word distributed?

A. There is a difference in my mind.

Q. The Directors sanctioned this statement did they not?

A. Yes, they signed it.

Q. Evidently they saw no difference between "divided" and "allotted". "Surplus divided and allotted", that is what they said?

A. I think you put a comma after "divided".

Q. Do you agree that that statement sets out the same figure of 8.7 million as divided and allotted. Do you agree with that?

A. I think you will find a fuller reference on page seven. "Surplus

divided for year 1955 and allotted as Reversionary Bonuses to participating policies".

Q. This statement here is supported by certain certificates.

A. Yes.

Q. May I draw attention to page seven where is set out a statement of assets and liabilities and we find the same figure of 8.7 million there which is described as "surplus divided for the year 1955, and allotted as Reversionary Bonuses".

A. Yes, I think that is a fuller description than the other one.

Q. Then we come to the certificates that are printed on page eight. Are these the certificates referred to in the footnote at the bottom of page five and the bottom of page six?

A. The certificates on page eight are integral parts of these statements.

Q. The second certificate is signed by Mr Oxby, is that you?

A. That is I.

Q. Would you read paragraph E of your certificate?—(Reads.) Is the total of those two figures the same old 8.7 million?

A. Yes.

Q. That 8.7 million, it is referred to throughout the Directors' report or the annual report and throughout the Statutory Return and it is the same figure as occurs in paragraph fourteen of the Case Stated, isn't it?

A. Yes.

Q. And it is the figure that was distributed, divided, allotted, allocated—I don't care what you say?

A. If you can exclude "allotted" I would agree with you. Allotted describes the Reversionary Bonuses.

Q. The figure of 8.7 million is the figure which was allocated or distributed, etc., by way of Reversionary Bonuses in 1955.

A. That was the cash surplus not Reversionary Bonus. It is the surplus divided. It is set aside. The figure recurs throughout this Return but I do not agree with your description of it. We have described it. It is the same figure of 8.7. We have described it as you described but not "allotted".

Q. The rate of interest used is the basis or the result of the paragraph eight rates?

A. Yes, calculations leading to that were on the net premium valuation basis as set out in paragraph eight.

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continued.

Q. If, instead of using these paragraph eight rates you had used $3\frac{3}{4}$ per cent would that figure of 8.7 million have been the same?

A. For what purpose are you speaking now?

Q. If, instead of using the paragraph eight rates for the purposes which resulted in arriving at that figure of 8.7 million you had used instead $3\frac{3}{4}$ would that figure of 8.7 million have been the same or different?

A. If we had used the Bonus Reserve basis and had in fact distributed the same amount of Reversionary Bonuses then the amount of surplus to be distributed would be less.

Q. If the amount of surplus to be distributed would be less, the figure of 8.7 million would have been a lower figure, is that so?

A. Yes.

Q. Now can I sum it up—for the purposes of the Society's Statutory Returns you use the paragraph eight rates?

A. Yes.

Q. For the purposes of the one-hundred-and-seventh Annual Report that goes to all policyholders you use the paragraph eight rates.

A. Yes, to describe the net premium basis of valuation.

Q. For the purposes of letting policyholders know how generous the Company is in the matter of surplus you use the paragraph eight rates?

A. They are bound up in other aspects in the method of valuation.

Q. For all those things you use the paragraph eight rates but when it comes to New Zealand taxation you want to use the $3\frac{3}{4}$ per cent, a different rate; that is the position isn't it?

A. Yes.

Q. Which has the effect of reducing the value of the Bonus?

A. It prevents an over-statement of the amount of the surplus.

Q. It reduces the cash value of the Bonus doesn't it and accordingly reduces your tax.

A. It reduces the tax. It is to prevent an over-statement of the amount of surplus distributed to justify the actual allotment of Reversionary Bonuses.

Q. I think you are broadly familiar with the provisions of Section 149 of the New Zealand Act?

A. Yes.

Q. And you know that what you have to do first is to get the surplus funds?

A. Yes.

Q. And in the year in question they came to eleven million odd as shown in paragraph nine of the Case Stated?

A. I do not take that view. I took it that I was certifying surplus funds of the Society allotted to its policyholders.

Q. All I wanted to ask you is whether we have to ascertain surplus funds and they are eleven million.

A. That would not be consistent with my certificate. So much cash payments and so much Reversionary Bonuses.

Q. Would you look at paragraph nine of the Case Stated, read the first sentence "Total Surplus 31st December 1955 eleven million odd." Is that correct?

A. Yes.

Q. Of that eleven million, the greater part was allotted as Bonuses wasn't it?

A. Yes.

Q. And the part so allotted was our old friend 8.7 million?

A. No.

Q. That is what is said in the Annual Return isn't it—I am looking at the Directors' Report.

A. No.

Q. The 8.7 million referred to on the second page as the Surplus distributed is the greater part of that eleven million surplus.

A. It is, but that isn't the surplus allotted.

Q. The point is, the 8.7 million that is referred to throughout the Directors' report is portion of that eleven million surplus?

A. Certainly.

Q. What portion of that is referable to the New Zealand business?

A. I think that would be done on the same basis as my first certificate. It would correspond to that figure of £1,736,492 stated in the first certificate.

Q. In other words the £1,736,492 stated in the first certificate is directly comparable with the £8,738,779 referred to in the Directors' report and in the annual report.

A. Yes.

Q. If it should be correct that the 8.7 million just referred to was

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continued.

the amount of surplus funds allotted by way of Reversionary Bonuses then the corresponding figure for the New Zealand business was the £1,736,492 in your first certificate?

A. That is on a supposition with which I don't agree.

Q. I realise that.

A. One figure is for the whole Society, the other you quote is for the New Zealand Branch.

Q. I understand that the answer to my question was "Yes" on that assumption. Your Worship, is that not so?

Mr Hanna

I am relying on the shorthand notes, but my note here, in narrative, reads (reads his notes).

Q. Now, would you look at the letter from the Commissioner which Sir Wilfred showed you—look at paragraph 10 of your answer, Mr Oxby. Now, may I read that to refresh your mind (reads "The Government Life use that rate, etc.)

A. Yes.

Q. Would you read the first sentence of the letter?

A. (He reads.)

Q. I want to ask, all I want to ask is, do you accept that? Then you go on (he reads from the last few words of page 4). Do you accept that also?

A. Yes. I might say the reference to this matter in our own answer was correct at that date but we had been informed of the change in this tentative assessment before this present case.

Q. I don't say for a moment that you were not entitled to use that argument (and from courtesy accept what the Minister says as to the further fact. My learned friend, A question to you which I wish to take up with the Commissioner in this matter. He was really trying to dictate to you how you should make your calculations?

A. Related to paragraph (c) of this letter, does it?

Q. No.

A. I think it did relate to this, did it not?

Mr Hanna

The question is not allowed.)

Q. Anyway, you remember the question, Mr Oxby?

A. Yes, it was in reference to this paragraph "the Department would not any longer permit etcetera".

Q. Will you accept that that is their attitude but yours is different is it not?

A. Yes.

Sim

You had no reasons for the prohibition.

Q. I think Mr Oxby understood quite well and he will tell you in a moment. You know that the Commissioner does not mind whether you use the net premium basis or the bonus reserve basis, does he?

A. Well, he accepts certificates on both bases.

Q. I thank you. Now, his only requirement is that if you use one basis or one rate of interest for calculating your net liabilities, you should use the same one for determining the cash value of your bonus.

A. Well, he says that.

Q. You appreciate that that is his view.

A. Yes, I agree with that.

Q. His only requirement is that if you use one basis for net liabilities, he requires the same basis used for valuing reversionary bonuses. Is that right?

A. He would not any longer permit otherwise.

Q. Now, there are one or two minor points. You referred to double taxation. You recall no doubt the A.M.P. knows that if its operations and the Commissioner's assessment in fact results in double taxation, if it in fact results in double taxation, the Society can make representations to the Government about that.

A. Well, I feel that double taxation has been suffered by the Society for many years prior to this case.

Q. You know that you can make representation?

A. The Society has been subject to double taxation for many years preceding this case. Had I known that you could make representations of course . . .

Sim

How could you fish up the fractions in future years?

Q. Do you know that you have made representations on it in respect of taxation in New Zealand? Did you not know that? Did you know that you made representations to the very Committee that my friend Sir Wilfred Sim referred to?

A. The A.M.P. New Zealand Branch gave evidence to that Committee. I do know fairly well the evidence we gave. But we did advocate an entirely different basis. We pointed out the disadvantages from our

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continued.

point of view of the present basis and pointed out that in fact it was resulting in double taxation. We have known this for some time, but I think our view has been that as long as it was applied equally to all competing Life Offices then we had no special point to make as against the share of taxation levied on the industry as a whole.

Q. Now for your change to the bonus reserve basis in 1956, how does that affect the complaint that you alleged about double taxation?

A. Well, the acceptance of returns on that basis means that they have been accepted on the basis that we have claimed for this year, 1955.

Q. So the question of double taxation disappears?

A. Yes, accepting the use of $3\frac{3}{4}\%$ or subsequent 4% rate, a fair rate I think.

Q. Yes, thank you. So that if, if, in fact there was double taxation you cured it yourself in 1956.

A. For the future yes. With the way we cured it in 1955 too—not quite.

Q. One other point I noted which I want to refer to, and will leave till morning.

Resuming 10 a.m. 1st March 1960.

Mr Oxby resworn.

Q. Mr Oxby, your second certificate, that is the one in paragraph 19 of the case stated, was based on paragraph 8 tables with only the rate of interest altered, was it not?

A. No Mr Wild. The certificate in paragraph 19, says the cash value of the reversionary bonuses have been determined according to the A.1924/29 ultimate table. The certificate in paragraph 17 says "according to the respective bases employed by the Society in valuing its policies . . ." and those I think are in paragraph 8. The interest rates do differ as you mention, but so also in some slight respects do the mortality rates.

Q. Yes, thank you. So that the mortality tables differ in slight respects but the main difference is in the interest?

A. Yes, for the bulk of the business there would be no change in the mortality table—A.1924/29—but there was a small class of policies which in 1955 had been valued on the A.49/52 table and also the industrial policies had been valued on what is known as the A.M.33 table. The difference was only a minor one in its ultimate effect.

Q. I would say the major difference between the bases on which the two separate certificates turned, the major difference is in the rate of interest.

A. That is right.

Q. And the second certificate like the first was based on the net premium basis of valuation?

A. No, both certificates state that the surplus funds allotted to the policyholders comprise for the most part certain reversionary bonuses. The certificates then state the cash value of those reversionary bonuses.

Q. The face value of the reversionary bonuses shown in both certificates is the same is it not? Using for that the net premium in the case of both.

A. We did, yes. The same result could have been produced by the alternate method, the method is really irrelevant to producing the face value of bonuses.

Q. I think that I have got you now correctly for the record, both certificates show reversionary bonuses of a total face value of 2.9 million.

A. Yes.

Q. Which figure was arrived at on a net premium basis in fact.

A. In fact it was.

Q. It could equally have been ascertained by the alternate method.

A. Yes.

Q. And the difference between the two certificates is in the cash value shown.

A. Yes.

Q. In the case of the first certificate, you arrived at that by using the tables of mortality and the rates of interest shown in paragraph 8 method which was used for the basis of the figures in the Society's published reports, but in the case of the second certificate you used a slightly different table of mortality and the different rate of interest of $3\frac{3}{4}\%$?

A. I agree as regards the interest rate. As regards the mortality table, it was the same table as was used for the bulk of the bonuses referred to in both certificates; for a minor portion of such bonuses it did differ. The effect of the difference would not be material in the case of that.

Q. Thank you very much, that puts it admirably. (p. 16 of Mr Oxby's evidence) "Of the amounts quoted in this paragraph only £8,738,779 and £14,524,000 are ascertainable from published matter, etcetera." Now, the £8,738,779 there is the total surplus funds shown in the published reports which I asked you about yesterday.

A. It is the total surplus distributed.

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continued.

Q. I want to ask you about one of the figures in paragraph 19 which you say is not ascertainable from published matter but from the Society's internal records, and the figure I am asking about is the figure of £1,393,619 which appears the third and fourth lines down in the second paragraph in paragraph 19. Now that is the figure shown in your second certificate is it not?

A. Yes, as the cash value of those reversionary bonuses.

Q. And it appears in your internal records because you calculated that for the purposes of that second certificate?

A. Yes.

Q. It was not calculated for any other purpose?

A. No.

Q. The A.M.P. is a Mutual Insurance Company is it not? What does "Mutual" mean in that context?

A. It means there are no shareholders and that all the assets are the property of the participating policyholders after allowing for other liabilities properly charged on them.

Q. Could you put it another way by saying that all the policyholders share according to the individual rights and interests under their policies irrespective of whether they are in Australia or New Zealand or Fiji?

A. For all participating policyholders, but their rights would be expressed in the Society's by-laws, but there is no distinction between nationalities or places of residence.

Q. It may interest you to know that I am a policyholder of your Company. Your rights and mine would be just the same although we live in different parts, according to the policies we get, would they not.

A. According to the policies and the by-laws. That does not mean that identical policies are issued in the three countries. In fact we have regard to experience in different countries to determine the rates of bonus allotted to policies on the various branch registers.

Q. Now, Mr Oxby, the information given in this annual report applies equally to policyholders in all the countries.

A. Yes.

Q. No separate report is made for New Zealand policyholders.

A. Not a separate annual report, but we do render a return to the New Zealand Government in terms of the Life Insurance Act which gives certain information relating to the N.Z. Branch as well as information relating to the whole Society.

Q. Well, that is a return required by the Government.

A. It corresponds in relation to New Zealand to this return for the Australian Government.

Q. It is true that the Society makes an annual distribution?

A. Yes.

Q. From surplus funds to provide reversionary bonuses to its policy-holders.

A. Yes.

Q. Look at this certificate.* If you are asked to fill in that certificate in respect of the year 1955 what would you put in those two blanks?

A. Would I be correct, Mr Wild, in saying that this is the form of certificate adopted by our Society over several previous years?

Q. I don't know.

A. I asked that question because I consciously changed the form of this certificate, I think in 1954, because I felt that what I should be referring to was the reversionary bonus not the cash amount.

Q. You are asking me whether this is the one used in earlier years—I don't know.

A. It does not look like one that I use, but what my predecessor used.

A. Yes, I know what they are, but prefer to stand by the certificate I did give, not this one.

Sim

This is merely to assist the Court on this case. I suggest, Sir, with respect, this is an attempt to ask the witness to recast his certificate, that is what it amounts to in terms upon any selected by my learned friend and it is a certificate such as he would not give. I do suggest that my friend is going too far in attempting to create this into a new certificate made by the witness.

Q. The answer, Sir, is that this is not an attempt to get any certificate that is going to be used for tax purposes. It is merely to assist Your Worship in determining your case as at a later stage I will show.

Sim

I suggest Sir, that the answer is that this goes deeper than that. It would enable my friend to say at a later stage the witness gave a third certificate, under pressure from himself, and this is the certificate he gave. I do not think, with respect, that that is a fair thing.

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* Draft certificate reads:—

I certify that according to the accounts of the Society as audited and certified the total surplus funds allotted by way of reversionary bonuses was ..... and that the due proportion thereof in respect of the New Zealand business was .....

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continued.

Q. I assure you that I would not do any such thing. It won't be done. This is for the purposes of the Court and I think, Mr Oxby, you will have no trouble in filling in the certificate.

Sim

There are ambiguous points in it and I wish to protect the witness. There are ambiguous words in this proposed certificate, it has elements of uncertainty in it and the word "allotted", your Worship, will be subject for much discussion as to what allotted means, and in re-examination I shall be going into that with Mr Oxby, and for him to adopt the word "allotted" here in the certificate is in my submission not proper in the circumstances, and at the moment Sir is with dangerous implications.

Q. Well if my friend has advised the witness to decline to sign this certificate, I am content to have it that way.

Sim

I am opposed to it as an improper course in the delicate circumstances of this case.

A. Well, Sir, I have throughout tried to draw a distinction between surplus distributed and the allotment of reversionary bonuses. You are asking me to certify to surplus allotted, which I deny is a fact. I have tried in my mind throughout to adopt the distinction between the distribution or division of surplus and the allotment of the reversionary bonuses, but here I am asked to certify in relation to the word "allotted" the distributed part of the surplus.

A. This certificate does not enable me to make that distinction. For that reason I prefer not to complete the certificate in that form.

Q. Mr Oxby you know that the word "allotted" there is the word that the Act uses do you?

A. Yes, I do. I have used in my certificates the verbiage of the Act.

Q. Will you please explain that to us.

A. Both of my certificates certify that the surplus funds—
(quotes from certificates)
I think that is the verbiage of the Act.

Q. What are the sums that were allotted?

A. a. Cash payments for 15 thousand odd.
b. Reversionary amounts.

Q. It doesn't say reversionary amounts does it?

A. It says reversionary bonuses for a total face value of so much.

Q. What you are asked to certify is the surplus funds allotted.

A. I think I have.

Q. "I certify that the surplus funds are"—you would expect something to follow that in pounds. In paragraph a. you do. You say cash payments totalling 15 thousand. I would just like to turn again to the draft certificate I put before you. Would you prefer to use another word instead of "allotted"? Would it help you to answer the question?

A. I would certainly feel it necessary to describe the surplus funds as distributed, but it would have no significance to the Taxation Act.

Q. If you put the word distributed there would you care then to fill in the blank?

A. I think I would prefer not.

Q. Is your answer then that first you decline to fill in the certificate in its present form?

A. I would stand by the answer that I prefer not to complete any further certificate.

Q. The first question is: Do you prefer not to fill in the certificate in the form in which it is put to you?

A. Yes.

Q. The second question is: Do you still prefer not to fill it in even if the word "distributed" is substituted for the word "allotted".

A. Yes.

Q. One last question. Yesterday you said that the principal reason for your second certificate was in order to reduce your company's taxation liabilities.

A. I don't think I would have used the word "reduce". It was to show what was our then consideration, a better measure of the tax liability. I wish to put it that way. The principal reason for the second certificate was to give a better basis for measuring the cash value of the surplus allotted to New Zealand policyholders.

Q. You wanted that better basis for taxation purposes?

A. Yes, to avoid double taxation.

Q. Did you have any other reason for it?

A. No.

Sir W. Sim:

Does that mean giving the certificate was giving the certificate in the form it was given? I won't have it trailed through the case that he gave the certificate for taxation purposes. It is a routine procedure annually followed and then from that he put it in this form as he was justified in doing with a design on taxation. There is a great difference.

In the Magistrate's Court

No. 5

Appellant's Evidence Leslie George Oxby Re-examined

Re-examined:

Q. Mr Oxby, go back a little bit: when the accounts were all struck as for the annual meeting, they are presented are they not for the company's whole operations?

A. They are Sir.

Q. And they were ready for the annual meeting which was to be held on the 8th June 1956. I am reading from the notice of the annual general meeting appearing in the annual report for the year. No doubt the meeting was held on the appointed date?

A. Yes.

Q. And the accounts that were before the meeting would be as set out in the return which you have presented to the Commissioner?

A. The only accounts would be those submitted in the annual report.

Q. The reports based upon that placed before the meeting in the annual report were based upon the accounts as they were up to that date? Those accounts were not complete in all that was required because the New Zealand situation had not been segregated.

A. Not complete for the purpose of rendering our New Zealand income tax return.

Q. That did not take place until you prepared your first certificate? It was some months later, or rather it was completed when you had completed your first certificate.

A. That was signed on the 26th June which was after the date of the Annual Meeting.

Q. The second certificate is sometime later. All your work in New Zealand figures would arise after the Annual General Meeting?

A. I could not be sure just when it was done. It was an unrelated task based on the same data.

Q. The giving of the certificate—was that an annual affair with you?

A. Yes, every year.

Q. How many years had you done it?

A. The first certificates I gave were in respect of the two previous years. I was appointed to this present position in July 1953 so I would have signed certificates in 1954 and 1955. This was the one signed in 1956.

Q. Have you done so since?

A. I have.

Q. We have the figure allocated by the General Meeting for the overall picture, and as I understand it bonus distributions are made according to the surplus, what is called allocated. Bonus distributions are thus fixed upon the basis of the surplus allocated.

A. The words in my mind are that the surplus is distributed, that it is allotted as reversionary bonuses. Allocation covers both of those processes and also the application of some of that surplus to visible reserves.

Q. The New Zealand bonuses would become fixed as at the time of the Annual General Meeting before the certificate.

A. Yes.

Q. And whatever form of valuation was effected to achieve the surplus the bonuses remain the same?

A. That is so.

Q. Also holders are entirely unaffected by your subsequent valuation of the surplus which you have attributed to New Zealand?

A. Yes.

Q. Can you assure the Court that in adopting the course you did in giving the second certificate you adopted a course which was actuarially unassailable? You have no occasion that you are aware of for criticising yourself that the certificate is actuarially unsound?

A. The certificate is actuarially sound.

Q. And there is nothing about it which creates a discord in the whole structure of your company's accounts?

A. Nothing about it Sir. There is nothing.

Q. Apart from the complaint from the Commissioner that he does not like it, have you ever heard any criticism from any other source of your adoption of the certificate?

A. No Sir.

Q. Even now, with your wide actuarial experience, after having heard all that has been said in this case, are you aware of any basis of criticism of your certificate other than that of the Commissioner that he doesn't like it?

A. No Sir.

Q. You have said that when adopted it gives the true measure of the surplus absorbed in New Zealand to grant the deferred bonuses to New Zealand, or the truest measure of the sum absorbed to meet the declared bonuses?

A. I think I would not have used the word, "absorbed".

In the Magistrate's Court

No. 5

Appellant's Evidence

Leslie George Oxby

Re-examined

continued.

Q. To those in your profession of Life Insurance the surplus is supposed to represent the surplus used, is supposed to represent the cash value or the sum required to meet the bonuses which you actually declared. The surplus which you have in relation to the declared bonuses is in a general way intended to be to indicate the sum absorbed within the Company by the bonuses now declared?

A. Yes, that would be speaking of the valuation results as a whole, that the surplus distributed was absorbed in the allotment of those bonuses. My second certificate gives a truer measure of the surplus allotted to New Zealand policyholders.

Q. Cash value, is that not equivalent to the cash absorbed in the creation of the bonuses?

A. No Sir. I would take it that the surplus absorbed did include this allocation to internal reserve to which I referred in my evidence.

Q. When the surplus is declared on a net premium basis that is not a true indication of the sum absorbed to produce the bonuses when it is made on a net premium basis?

A. I would say it is a true indication of the sum absorbed but not a true measure of the cash value of the bonuses allotted to the policyholders.

Q. What you just said a moment ago, is that consistent with your other evidence?

A. I think my evidence says that it is absorbed but the absorption includes a part of it which is immediately transferred to an Internal Reserve and it is only the balance which is recorded as cash value of the bonuses allotted to the policyholders.

Q. That leads us on to the use and meaning of these words, "allotted", and "allocated", "divided", "distributed". You are familiar with the Act, Section 149, page 143 of that book. Subsection 2 (reads). See those words. In terms of the Act what do you actually allot?

A. We allot the Reversionary Bonuses.

Q. It is the Reversionary Bonuses that you allot. In your return to the Australian Commissioner on page 12 for instance, you have used the word "allocate". Where do you get that word "allocate" from?

A. It is part of the statutory question in the Commonwealth Life Insurance Act.

Q. The Life Insurance Commissioner I understand is an Actuary and is able to read your Return with the Actuary's mind?

A. Yes Sir.

Q. When you make your valuation upon a net premium basis you

declare so in the Return itself don't you. You make that clear to the Commissioner?

A. Yes Sir. It is on page ten.

Q. He, reading the Report as an Actuary and knowing that the valuation was made upon a net premium basis, what would he read "allocated" to mean?

A. I think it would be held to cover all the sub-paragraphs (a) to (f) in answer to that question.

Q. With the Act before you and citing from paragraph eight of the second schedule you are directed to show the figures allocated for a number of things?

A. That is so Sir.

Q. In your (a) to (f) do you follow exactly the matters you are called upon to show the allocation of?

A. We follow the precise wording of that question.

Q. Can you interpret for us then what the statement to the Commissioner that you had allocated so much surplus to such policies meant—the valuation being upon the net premium basis. What would that mean to the Commissioner?

A. The word "allocated"—The following sub-divisions are firstly (a) which was cash paid as interim bonuses and those amount to £46,368, and they are the amount corresponding to the amount £15,591 which is part of my certificate. The following two amounts (b) and (c) are surplus divided which in my evidence I have differentiated from the cash value of bonuses allotted. (d) is a nil entry. (e) are amounts applied to other visible reserves, £60,000 being a Reserve to pay for the next year's interim bonuses and £1,000,000 . . . a general Reserve for contingencies. (f) is a figure carried forward unappropriated. The word "allocated" we used to cover all those processes.

Q. I wish you to refer to your notes. When we come to the Annual Report of 1955 your certificate makes it clear there on page eight, paragraph (b). That paragraph makes it clear that your valuations had been upon a net premium basis?

A. It does, Sir.

Q. And in (d) you say:—(reads)?

A. That is so Sir.

Q. Turn back a page and look at the Balance Sheet where you use the term "surplus divided for 1955, and allotted as Reversionary Bonuses to participating policies etc." There is a distinction between the process of distribution or division applied to the surplus and allotment of bonuses to individual policies?

In the Magistrate's Court

No. 5

Appellant's Evidence Leslie George Oxby Re-examined

continued.

A. There is.

Q. That is a distinction between the distribution or division of the applied surplus as ascertained and the allotment of bonuses to individual policies? (Page seven of the Annual report.) You say there is a distinction between the words "divided" and "allotted".

A. Yes Sir.

Q. What is that distinction?

A. I did make some notes, may I read them? I say there is a distinction between the processes of, (a) distribution or division applied to the surplus ascertained by a valuation of assets and policy liabilities and, (b) allotment of bonuses to individual policies.

Q. There you are beginning to use the language of the New Zealand Act—allotment by way of Reversionary Bonus.

A. That is so. The surplus is a cash amount represented by present values.

Q. Working on to your New Zealand certificate, you find the sum allotted by way of Reversionary Bonuses within the terms of the Act. That is a face value?

A. Yes. That is a face value.

Q. Your first step is to ascertain the face value of the deferred bonuses?

A. I have got it here in my notes— " . . . Reversionary amounts representing future claims crystallizing only on the happening of certain contingencies expressed in the relevant policies."

Q. And it is that allotment which you have interpreted as being referred to in the Section which is the allotment of surplus funds by way of Reversionary Bonuses. The allotment is an allotment of Reversionary Bonuses and that is a face value figure?

A. Yes.

Q. And that figure you take from the face value figure of Reversionary Bonuses as declared in the over-all accounts?

A. Yes.

Q. Now you have got the allotment of Reversionary Bonuses to New Zealand as required by the Act the next step is you have to declare that in terms of present value of those Reversionary Bonuses. Because it is the quantum of surplus funds allotted by way of Reversionary Bonuses. Having got your Reversionary Bonuses allotted there are two methods by which you can obtain the present value of those Reversionary Bonuses. Is that correct? Net premium and the Bonus Reserve?

A. Yes. There are two methods by which we can achieve the same result.

Q. Both, whichever adopted, the policyholder receives the same quantum of Reversionary Bonuses allotted to him.

A. Yes.

Q. As an Actuary with the widest experience is there anything in Actuarial Science which prohibits you from valuing the New Zealand allotment of Reversionary Bonuses upon a $3\frac{3}{4}$ equivalent Bonus Reserve valuation?

A. No.

Q. Have I, in these steps, correctly described the sequence of events which you went through in bringing about the second certificate?

A. I would think so Sir.

Q. Are you aware of any law, regulation, or prohibition which would prevent you from cancelling your first certificate?

A. I am not aware of any.

Q. Just to get it on the record—all that you did on this occasion, the second certificate, was adopted by the Company as part of its official records and has been acted upon since as the official record of the sum allotted by way of Reversionary Bonuses for the year for New Zealand policies?

A. Yes Sir.

Q. Suppose, to take an extreme example, you discovered in your accounts some time afterwards a mistake, an extra "0" put in somewhere, a 100,000 for 10,000, suppose an error arose in the accounts, I suggest to you do you know any reason why that should not be corrected afterwards, I assume the impossibility that such an error could arise, your science would require that it should be corrected, would it not?

A. I think the normal practice would be to correct it on the following balance sheet.

Sim:

Accounts are not built into the form of the ten commandments, they are alterable according to the necessities of circumstance. That is so, is it not? If they call for amendment at a later date you, as Chief Actuary would find it your duty to see that they were corrected?

A. Yes.

Sim:

Passing on now to another little thing that you said yesterday, my learned friend asked was there any occasion where a net liability, net premium calculations, were, would you ever switch over to a bonus reserve percentage—a question along those lines, and you replied —Well, when a bonus holder cashes in we do it on a $4\frac{1}{2}\%$.

In the Magistrate's Court

No. 5

Appellant's Evidence

Leslie George Oxby

Re-examined

continued.

A. Yes.

Q. As I understand it in my terms, where you revalue the bonus to a $4\frac{1}{2}\%$ basis and he is given the result. Now $4\frac{1}{2}\%$ basis would be a lower bonus value than if you took a 3% or $3\frac{1}{2}\%$?

A. A lower cash value for the same reversionary bonus.

Q. Now, all his bonuses paid we assume have been made upon the net premium basis; that does illustrate one occasion at least where the bonus reserve valuation is intruded into what has been the structure of a net premium basis, is it not?

A. Yes. I think if I may express it this way: When he comes to collect a cash value of the bonus he is given a lower amount than the amount of surplus according to the net premium valuation basis that has been absorbed in granting that bonus. In other words, part of the amount absorbed is not available immediately to him, the only amount that is available immediately to him is that allowable by way of cash value.

Q. Have you given any further thought to what might be any other occasions when a bonus reserve figure intrudes into what have been net premium structure, that is my word you will know what I mean by it, to a net premium financial structure?

A. I think the cases you have mentioned are the only ones which come to my mind.

Q. We will run off this line of examination. When you state in the annual reports "surplus divided and allotted as reversionary bonuses", do you understand that of what had been actually allotted you need further the figure of the deferred bonuses which were actually declared on their face value?

A. Those entries state only the surplus divided. The amount of reversionary bonuses allotted are not quoted in the balance sheet, they are referred to in the Directors' Report.

Q. Then the surplus as declared was on a net premium basis, and is not a true indication of the sum absorbed in the declaration of the bonuses?

A. I think it is a true indication of surplus absorbed—I take it that "absorbed" includes both the amount allotted to the policy owner and the amount transferred to the internal reserve, the word "absorbed" covers both.

Q. That is the phraseology I have adopted.

So the absorption of the figure on the net premium basis there does have impressed within it, that out of that surplus this internal reserve was created, which comes out for double taxation?

A. Yes.

Q. You had said that your Company joined with others in giving evidence before the Taxation Committee on the subject of double

taxation. I wonder if you can recapture the theme of the evidence which was presented?

A. This would be speaking without the book, but as I recall it, our representative made a case for the adoption of an income tax code corresponding to that adopted in Australia, which was a code whereby the interest, less certain expenses, less a deduction for the interest required on the valuation reserves, should be regarded as the assessable income.

Q. In other words, you wanted the Australian code adopted in New Zealand.

A. We presented that primarily.

Q. In what respect did you emphasise this position of double taxation arising under the current Act?

A. If I may continue, we did say that failing the adoption of the Australian basis we felt that a uniform basis of determining the surplus allotted should be applied in New Zealand.

Q. And they adopted your recommendation. We are still feeling here, this morning. In what respect did you represent the double taxation?

A. I think that calculations were made showing the surplus apparently allotted according to two bases and to indicate that property if taxed in the first year would be released in a subsequent year and later be taxed.

Q. That is the very point you have been explaining to this Court?

A. That is so.

Q. Did the other members of the deputation also share that view that double taxation was going on under the existing net premium basis?

A. The evidence was presented as a joint submission by three offices, ourselves, the Mutual Life and Citizens and the Prudential.

Q. So that view would be also held by at least three offices that you were subject to double taxation upon a net premium basis?

A. I would think so.

Q. Now, the learned Solicitor-General then followed that up and said, "Oh, but that has been cured for the future", and you said, "Yes, it has been cured so far as 1956 onwards" in that you adopted a bonus reserve valuation?

A. I said for the future, but I would like to amplify that.

Q. And is it generally recognized that by the use of that 4% or $3\frac{3}{4}$% something of the equivalent double taxation is avoided?

In the Magistrate's Court

No. 5

Appellant's Evidence Leslie George Oxby Re-examined

continued.

A. It is a fact in so far as amounts are not being added to the internal reserve in those years. By our adopting this bonus reserve valuation we will not be adding further amounts to our internal reserve from 1956 onwards.

Q. In so far as anybody can be satisfied with any system of taxation, the working out of the Section for you since 1956 has called for no further comment?

A. We accept a basis of taxation on surplus with which we do not agree but we feel that we have got on to a better basis—a truer and fairer basis of taxation, and the Commissioner accepts it without demur.

Sim:

Why he is so sticky in the year 1955 is beyond my comprehension.

Q. This cure of double taxation thereafter does not in any way does it Mr Oxby, cure the double taxation which you have been subject to in this assessment of 1955?

A. No Sir.

Q. I want to make that plain that it has been ascertained, you entertain no doubt mathematically, actually that your surplus which the Commissioner demands will involve double taxation of a part of it?

A. For the year 1955.

Q. And is it a substantial part?

A. Yes.

Q. I wonder if you can tell us, your figure of taxation for the year ends at £300,000 odd in the assessment, does it not?—£333,644. I wonder if you will tell us what your overall tax for the whole Company in Australia amounts to for 1955, about half a million.—(Act of Incorporation of the Company produced.)

Supplementary Statement by Mr Oxby:

I would say that I might have misled Mr Wild in saying that double taxation would have ceased from 1956 onwards. I gave an incomplete answer to the question by Mr Wild, which asked whether from 1956 onwards we had adopted a bonus reserve valuation and thereafter double taxation would cease. I think I said yes, for the future, it was partially correct but not complete, but I felt I should make this statement.

By adopting a Bonus Reserve Valuation of N.Z. ordinary participating policies from 1956 onwards, A.M.P. Society has from that date adopted a process under which:—

(a) The amount of surplus distributed; and

(b) The present value of Reversionary Bonuses allotted may be

regarded as the same. This was not the case under the previous net premium process.

If taxation is charged on the basis of surplus distributed (rather than value of bonuses allotted) this change in valuation process means that taxation would not as from 1956 onwards, be paid on amounts which are added to the internal reserve in those years. To this extent we have removed the complaint of double taxation for the future.

However, double taxation will still arise, even under the Bonus Reserve Valuation adopted because some of the surplus distributed (or value of bonuses allotted) from 1956 onwards will be amounts previously added to the Society's internal reserve under the net premium method of valuation. To the extent that these amounts were added to such reserve in the years 1930 to 1954 (or 1955 if the present appeal is unsuccessful), and are released from such reserve from 1956 onwards, double taxation will continue.

(As read by Mr Oxby.)

In the Magistrate's Court

No. 5

Appellant's Evidence Alfred Leslie Sinclair Examined

EVIDENCE OF ALFRED LESLIE SINCLAIR— CHIEF ACCOUNTANT OF AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

ALFRED LESLIE SINCLAIR states:—

1. I am the Chief Accountant of the Appellant Australian Mutual Provident Society—having held this position since 1st April, 1956. For some eleven years prior to that date I held the position of Assistant Accountant at Head Office of the said Society.

2. I reside at Sydney, in the State of New South Wales, Commonwealth of Australia.

3. Since 1942 the Appellant's Australian Returns of Income have been prepared under my close personal supervision.

4. I have had full access to such of the Appellant's Head Office records as bear upon the dividends derived by the Appellant from shares held by its Australian, New Zealand and United Kingdom Branches and the sources of such dividends and accordingly am able to give evidence touching the same.

5. When furnishing to the Respondent

its return of income dated the 18th day of July 1956 and referred to in Paragraphs 16 and 24 of the Case Stated

and its amended return of income dated the 25th day of January 1957 and referred to in Paragraphs 18 and 25 of the Case Stated

the Appellant deducted from each of the amounts of surplus funds respectively declared therein the amount of £83,844.15.11—said to be dividends derived during the year ended 31st December 1955 by the New Zealand Branch of the Appellant from shares held by such Branch. These dividends are set out in the Schedule annexed to the Case Stated and marked "B".

6. Subsequently and at the request of the Respondent, on or about 11th February 1957 the Appellant furnished the Respondent with a list of dividends said to be dividends derived from New Zealand (i.e. derived from shares in companies incorporated in New Zealand or from shares listed on New Zealand share registers of companies incorporated elsewhere) by the Appellant during the year ended 31st December 1955. These dividends totalled £41,084.13.6 and are set out in the Schedule annexed to the Case Stated and marked "C".

7. Subsequently the Appellant ascertained that the list set out in the aforesaid Schedule marked "C" wrongly included an amount of £1363—being the amount of a bonus share issue made in 1954 by Ross and Glendining Ltd. out of a Share Premium Account reserve. Accordingly, on or about 12th March 1957 the Appellant furnished to

the Respondent an amended list purporting to contain dividends received by the Appellant from New Zealand companies during the year ended 31st December 1955. These dividends totalled £39,721.13.6 and are set out in the Schedule annexed to the Case Stated and marked "D".

8. Subsequently and as indicated in paragraph 31 of the Case Stated, the Respondent ascertained that certain of the dividends included in the list set out in the aforesaid Schedule marked "D" were derived from shares in companies incorporated outside New Zealand, such shares not being listed on New Zealand share registers. Dividends from such shares totalled £24,941.1.6, and accordingly, by deducting this sum of £24,941.1.6 from the aforesaid sum of £39,721.13.6, the Respondent calculated that the amount of dividends derived from New Zealand by the Appellant during the year ended 31st December 1955 was £14,780.12.0.

9. Subsequently and as indicated in paragraph 35 of the Case Stated, the Appellant ascertained that some of the amounts shown in the list set out in the aforesaid Schedule marked "B" were incorrect, and by a letter dated 15th December 1959 advised the Respondent of amended figures which had the effect of reducing to £79,843.18.4 the total of the said list of dividends derived during the year ended 31st December 1955 by the New Zealand Branch of the Appellant from shares held by such Branch. The said list, as so amended, is a true statement of dividends so derived and may be summarised as follows:—

	£	s	d
Dividends (other than bonus issues of shares)			
—derived from Companies incorporated in New Zealand	14,780	12	0
—derived from Companies incorporated in Australia	*56,308	11	11
Bonus issues of shares—derived from Companies incorporated in Australia	8,754	14	5
	£79,843	18	4

* All the abovementioned dividends (other than bonus issues of shares) derived from Companies incorporated in Australia, totalling £56,308.11.11, were remitted from Australia to the New Zealand Branch of the Appellant.

None of the abovementioned dividends (totalling £79,843.18.4) were derived from companies exempt from income tax in the country of their respective incorporation.

10. Dividends derived by the Appellant during the year ended 31st December 1955 from shares held by its Australian and United Kingdom Branches may be summarised as follows:

In the Magistrate's Court

No. 5

Appellant's Evidence Alfred Leslie Sinclair Examined

continued.

		N.Z. currency £
Dividends derived from shares held by Australian Branches		
Other than Bonus Issues	£A459,746 (complete £s)	
Bonus Issues*	£A 52,211	
	£A511,957	409,566
Dividends derived from shares held by United Kingdom Branch		
Other than Bonus Issues	£E 42,610 (to nearest £)	
Bonus Issues*	£E 9,910	
	£E 52,520	52,520
		£462,086

* i.e. bonus issues included in the term "dividends" as defined in the Land and Income Tax Act 1954.

All the above dividends totalling £NZ462,086 (comprising £NZ406,898 from companies incorporated in Australia and £NZ55,188 from companies incorporated in the United Kingdom) were derived from shares in companies incorporated elsewhere than in New Zealand —none of which shares were listed on New Zealand share registers. All of the companies from which the said dividends were derived were subject to income tax in Australia and/or the United Kingdom, and accordingly were not exempt from income tax.

11. I annex hereto, as Exhibit "A", a Statement regarding the Appellant's Australian Income Tax Return for the year 1955 and the resulting Assessment. Notes at the end of this Statement indicate the reasons for necessary differences between dividend figures shown in the Statement and dividend figures shown in Paragraph 10 hereof and/or Paragraphs 35 and 37 and Schedule "E" of the Case Stated. Subject to two minor errors in the Return which were subsequently discovered, all the Statements of fact and affecting the Return are true.

12. (a) I annex hereto, as Exhibit "B" extracts from the Australian Legislation (viz. the Commonwealth of Australia Income Tax and Social Services Contribution Assessment Act 1936-1956) governing the above taxation. A copy of this legislation is available for production if desired.

(b) In broad terms, the effect of sections 17, 25, 23 (q), 48 and 111 of the legislation just referred to is to tax a life insurance office on income from investments less allowable deductions—such income, other than dividends, being—

for all companies (whether resident or non-resident), that derived from sources in Australia, and (in addition)

for resident companies, that derived from sources out of Australia which is exempt from tax in the country where it is derived.

Section 44 provides that assessable income of resident companies is to include all dividends—whether derived from sources in or out of Australia and irrespective of whether such dividends are also taxable outside Australia; but that assessable income of a non-resident company is to include dividends to the extent to which they are paid out of profits derived from sources in Australia.

Allowable deductions (referred to earlier in this sub-paragraph) include, in addition to those (e.g. outgoings incurred in producing assessable income) generally allowable, certain deductions peculiar to life assurance companies, viz:—

by virtue of Section 113—part of the company's management expenses—other than those exclusively relating to assessable income and those exclusively relating to non-assessable income; and

by virtue of Section 115—an allowance for some of the interest which the office needs to earn in order to meet its liabilities under its policy contracts.

Tax is actually assessed on "taxable income" (i.e. on income from investments, less allowable deductions), and from the amount of tax so calculated are deducted certain rebates—the rebates affecting the Appellant's tax for the year ended 31st December 1955 being—

in pursuance of Section 46, the rebate due to a resident company in respect of that part of the dividends included in its taxable income; and

in pursuance of Section 160AB, the rebate due in respect of certain Commonwealth of Australia Government and certain other loan interest included in taxable income.

NOTE. This sub-paragraph (b) is not intended as a complete statement of the basis of Commonwealth of Australia taxation of life offices (for example, it makes no reference to the specific sections of the Act which bear on taxation of income from the Appellant's South Australia Land Development Scheme), but is presented as an outline of the general basis thereof.

In the Magistrate's Court

No. 5
Appellant's Evidence
Alfred Leslie Sinclair
Examined

continued.

EXHIBIT "A"

STATEMENT REGARDING THE APPELLANT'S AUSTRALIAN INCOME TAX RETURN FOR THE YEAR 1955 AND THE RESULTING ASSESSMENT.

In this Statement, references to "the Act" are to the Commonwealth of Australia Income Tax and Social Services Contribution Assessment Act 1936-1956.

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1. The Return of Income submitted by the Appellant to the Commonwealth of Australia Commissioner of Taxation in respect of the year ended 31st December 1955 may be summarised as follows—A copy of this Return is available for production, if desired.

		Australian Currency £
Dividends (including bonus share issues other than those arising wholly and exclusively from Revaluation of Assets and/or Share Premium Account Reserves).		
Derived by its Australian Branches		459,747
Derived by its New Zealand Branch	£NZ71,089	
Derived by its London Branch	£E 56,629	
	127,718	
Add 25% exchange	31,929	
		159,647
TOTAL (all of which is included in assessable income—by virtue of sub-sections 1, 1A and (2) (b) (iii) of Section 44 of the Act)		619,394
Other assessable income		9,784,362
ASSESSABLE INCOME		10,403,756
LESS SUNDRY DEDUCTIONS		7,698,218
TAXABLE INCOME		£2,705,538

The amount of £A7,698,218 shown above as "Sundry Deductions" comprises certain amounts (totalling £A58,186) of interest written off, certain other expenditure, and deductions claimed by virtue of Sections 113 and 115 of the Act.

2. The Commissioner made adjustments to some of the deductions claimed—the aggregate effect of such adjustments being to lower

Sundry Deductions by £A184,911 to £A7,513,307 and hence to increase Taxable Income to £A2,890,419.

3. Accordingly the Appellant was assessed for Income Tax and Social Services Contribution as follows:—

		Australian Currency £ s. d.
At 5/- per £1 on the first £A5000 of Taxable Income		1,250 0 0
At 7/- per £1 on the balance of Taxable Income		1,009,907 3 0
		1,011,157 3 0
Less		
Rebate on share dividends included in Taxable income—at average rate of Tax payable by the Appellant. (1,011,157 × 619,394) / 2,890,419 (By virtue of Section 46 of the Act)	216,680 14 0	
Rebate on certain Commonwealth of Australia Government and certain other Loan interest included in Taxable Income .... (By virtue of Section 160AB of the Act)	289,044 18 0	505,725 12 0
NET TAX AND CONTRIBUTION		£505,431 11 0

The Assessment is available for production, if desired.

NOTES:

(i) The term "London Branch" in paragraph 1 hereof is synonymous with the term "United Kingdom Branch" in paragraph 37 of the Case Stated.

(ii) The amount of £A459,747 shown in paragraph 1 hereof as dividends "Derived by its Australian Branches" differs from that of £A511,957 referred to in paragraph 37 and Schedule "E" of the Case Stated—by reason of the former figure being stated to the nearest £ and the latter figure in complete pounds and by reason of the inclusion in the latter figure of £A52,211 in respect of bonus issues of shares arising from Revaluation of Assets.

(iii) The amount of £NZ71,089 shown in paragraph 1 hereof as dividends "Derived by its New Zealand Branch" comprises £NZ14,781 in respect of shares in companies incorporated in New Zealand and £NZ56,308 in respect of shares in companies incorporated in Australia. The difference between this amount of £NZ56,308 and that (to the nearest £) of £NZ65,063 shown in paragraph 35 of the Case Stated arises from the inclusion in

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continued.

the latter figure of £NZ8,755 (to the nearest £) in respect of bonus issues of shares arising from Revaluation of Assets.

(iv) The amount of £E56,629 shown in paragraph 1 hereof as dividends "Derived by its London Branch" includes £E4,109 regarded by the Appellant as arising from what might be termed the Share Premium Account element of certain bonus issues of shares which did not arise wholly and exclusively out of Share Premium Account and/or Revaluation of Assets Reserves. Accordingly it exceeds by £E4,109 the amount of £E52,520 referred to in paragraph 37 and Schedule "E" of the Case Stated.

EXHIBIT "B"

EXTRACTS FROM COMMONWEALTH OF AUSTRALIA INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT ACT 1936-1956.

S6. (1) In this Act, unless the contrary intention appears—

.....

"assessable income" means all the amounts which under the provisions of this Act are included in the assessable income;

.....

"dividend" includes any distribution made by a company to its shareholders, whether in money or other property, and any amount credited to them as shareholders, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents a capitalization of profits; but does not include a return of paid-up capital or a reversionary bonus on a policy of life-assurance;

.....

"exempt income" means income which is exempt from income tax and includes income which is not assessable income;

.....

"income tax" or "tax" means—

(a) income tax and social services contribution imposed as such by any Act, as assessed under this Act; or

(b) income tax imposed as such by any Act, as assessed under the Income Tax Assessment Act 1936, or under that Act as amended at any time;

.....

"resident" or "resident of Australia" means—

.....

(b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia;

.....

"taxable income" means the amount remaining after deducting from the assessable income all allowable deductions;

.....

S17. Subject to this Act, income tax and social services contribution at the rates declared by the Parliament shall be levied and paid for the financial year which commenced on the first day of July, One thousand nine hundred and fifty, and for each financial year thereafter, upon the taxable income derived during the year of income by any person, whether a resident or a non-resident.

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continued.

S.18. (1) Any person may, with the leave of the Commissioner, adopt an accounting period being the twelve months ending on some date other than the thirtieth day of June.....

S.23. The following income shall be exempt from income tax:—

.....

(q) income derived by a resident from sources out of Australia, where that income is not exempt from income tax in the country where it is derived, ... Provided that this paragraph shall not apply to exempt any income unless—

(a) where there is a liability for payment of income tax in the country where that income is derived—the Commissioner is satisfied that the tax has been or will be paid; or

(b) where the outgoings incurred in producing that income exceed that income—the Commissioner is satisfied that the tax would have been paid in the country where it is derived if the income had exceeded the outgoings;

S.25 (1) The assessable income of a taxpayer shall include—

(a) where the taxpayer is a resident—
the gross income derived directly or indirectly from all sources whether in or out of Australia; and

(b) where the taxpayer is a non-resident—
the gross income derived directly or indirectly from all sources in Australia,

which is not exempt income.

S.26. The assessable income of a taxpayer shall include—

(a) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme;

S.44. (1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall, subject to this section—

(a) if he is a resident—include dividends paid to him by the company out of profits derived by it from any source; and

(b) if he is non-resident—include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

(1A) The operation of the last preceding sub-section shall not be affected by the provisions of paragraph (q) of section twenty-three of this Act.

(2) The assessable income of a shareholder shall not include dividends—

.....

(b) paid wholly and exclusively out of one or more of the following:—

.....

(iii) profits arising from the re-valuation of assets not acquired for the purpose of re-sale at a profit or from the issue of shares at a premium, if the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend;

S.46. (1) Subject to this section, a shareholder, being a company which is a resident, shall be entitled to a rebate in its assessment of the amount obtained by applying to that part of the dividends included in its taxable income the average rate of tax payable by the company.

(2) For the purposes of the last preceding sub-section, the average rate of tax payable by a company for a year of tax shall be deemed to be an amount per pound being the amount ascertained by dividing the amount of income tax which would be assessed in respect of the taxable income derived by the company in the year of income if—

(a) the company was not entitled to any rebate of tax or credit against its liability to tax; and

(b) the company was not liable to pay any tax under Division 7 of Part III of this Act,

by a number equal to the number of whole pounds in that taxable income.

(3) The part of the dividends so included in the taxable income of the shareholder shall be the amount remaining after deducting from the amount of dividends included in its assessable income deductions allowable to it under this Act from income from dividends.

(4) A shareholder in a company which is a co-operative company within the meaning of Division 9 of this Part shall not be entitled to a rebate in its assessment in respect of dividends paid to it by that Company.

S.48. In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions.

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continued.

Division 8—Life Assurance Companies.

S.110. In this Division—

"future premiums" means such premiums as, according to the rate of interest and the rate of mortality assumed in the company's actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition thereto for office expenses and other charges;

"life assurance company" means a company the sole or principal business of which is life assurance;

"mutual life assurance company" means a life assurance company the profits of which are divisible only among the policyholders;

"valuation of liabilities" means a valuation of the amount which, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company's actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in such valuation, the liabilities under policies in force on the date in respect of which the valuation is made.

S.111. The assessable income of a life assurance company shall not include premiums received in respect of policies of life assurance, or considerations received in respect of annuities granted. The total income shall include such premiums and considerations.

S.112. Expenditure incurred by a life assurance company exclusively in gaining such premiums or considerations shall not be an allowable deduction.

S.113. (1) So much only of the expenditure incurred in the year of income in the general management of the business of a life assurance company, as bears to that expenditure the same proportion as its assessable income bears to its total income, shall be an allowable deduction.

(2) For the purposes of this section, the expenditure exclusively incurred in gaining or producing assessable income, or exclusively incurred in gaining or producing income which is not assessable, shall be deemed not to be expenditure incurred in such general management.

S.114. (1) Where an actuarial valuation of liabilities is made as at the end of the year of income, the "calculated liabilities" at that date shall be—

(a) where the basis of the valuation is compound interest at the rate of four per centum per annum or over—the amount of that valuation;

(b) where such basis is compound interest at a rate less than four and not less than three and one-half per centum per annum—ninety-five per centum of that valuation;

(c) where such basis is compound interest at a rate less than three and one-half and not less than three per centum per annum—ninety per centum of that valuation;

(d) where such basis is compound interest at a rate less than three per centum per annum—eighty-five per centum of that valuation.

(2) Where an actuarial valuation of liabilities is not made as at the end of the year of income, a calculation shall be made of the proportion which the last preceding actuarial valuation of liabilities, as at some other date, bears to the value of all the assets of the company at that date. The amount which bears that proportion to the value of all the assets of the company at the end of the year of income shall be deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as that last preceding valuation.

S.115. An amount equal to three per centum of that part of the calculated liabilities of a life assurance company at the end of the year of income, which bears to such calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company, shall be an allowable deduction.

S.116. When the calculated liabilities at the end of the year of income exceed the value at that date of all the assets of the company, the company shall not be liable to pay income tax in respect of the income derived in that year from the business of life assurance.

S.160AB. A taxpayer shall be entitled to a rebate in his assessment of an amount of two shillings for every pound of interest which is included in his taxable income and which is derived from bonds, debentures, stock or other securities issued by—

(a) the Government of the Commonwealth, except securities to which section twenty of the Commonwealth Debt Conversion Act 1931 or sub-section (2) of section fifty-two B of the Commonwealth Inscribed Stock Act 1911-1940 applies;

(b) the Government of a State; or

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continued.

(c) any public or municipal trust, body, corporation or bank constituted under any State Act if, under the law of that State, the interest was, at the commencement of this section, exempt from tax imposed upon incomes by that law, irrespective of whether the interest was payable to a resident or a non-resident of that State, or, where the bonds, debentures, stock, or other securities are issued after the commencement of this section, if the prospectus or conditions of the loan provide that the interest shall be exempt from tax imposed by the law of that State irrespective of whether the interest is payable to a resident or a non-resident of that State.

ALFRED LESLIE SINCLAIR: Evidence read by Mr Morrison (attached). Mr Sinclair has sworn that it is true and correct.

Further examination by Sir Wilfred Sim:

Q. On the foot of page 2 of your evidence is set out the sum of £79,843.18.4 and in general terms that covers dividends earned, derived in Australia but upon shares held by the New Zealand Branch.

A. Yes Sir.

Q. Now follow on your paragraph. "All the abovementioned dividends (other than bonus issues of shares) derived from Companies incorporated in Australia, totalling £56,308.11.11, were remitted from Australia to the New Zealand Branch of the Appellant." (Counsel is referring to what is appearing at the top of page 3 of Mr Sinclair's evidence.) Other than the bonus issues of shares those shares I am instructed were continued to be held in Australia but for the New Zealand Branch.

A. That is so Sir.

Q. They became part of the property of the New Zealand Branch as much as the cash dividends which were actually transmitted.

A. Yes Sir.

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Appellant's Evidence Alfred Leslie Sinclair Cross-examined

Cross-examined:

Q. I want to ask you about the figure shown at the end of paragraph 8 of your evidence, £14,780.12.0. Does that represent the dividends received by the A.M.P. Society in the year ended 31st December 1955 from companies incorporated in New Zealand or listed on New Zealand Share Registers?

A. Yes it does.

Q. And is the total of the income received by the A.M.P. Society under that heading?

A. That is so.

Q. Referring to the answer, page 6, paragraph (b), the figure of £14,780.12.0 shown there is the same figure we have just referred to.

A. Yes Sir.

Q. Is it included in the sum of £65,063 mentioned in subparagraph 1?

A. No Sir. This sum of £65,063 is dividends derived from companies incorporated in Australia in respect of New Zealand.

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Appellant's Evidence

Alfred Leslie Sinclair

Cross-examined

continued.

Sir W. Sim:

Q. If you look at the Case Stated Mr Sinclair, Ex. B, where the shares are set out held by the New Zealand company, £83,000—that is shares owned by the New Zealand Company. That was reduced by an amended figure to £79, talking in round terms. The £65 represents the deduction of the £14,780 deducted from the £79. That is correct isn't it?

A. That is correct.

Mr Wild:

Q. And I think neither the £14,780 nor the £65,063 is included in the £462,086 that appears in subparagraph 2?

A. That is so, that is the residue.

Q. You heard Mr Oxby's evidence. You heard him say that a portion of the surplus funds shown in the Society's accounts was regarded by the Society as an internal reserve carried forward?

A. Yes Sir.

Q. Is that portion separately invested as a reserve fund?

A. Not separately Sir.

Re-examined:

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Appellant's Evidence

Alfred Leslie Sinclair

Re-examined

Q. Arising out of that question, you are not an Actuary are you Mr Sinclair?

A. No Sir.

Q. I take it you hesitate to express opinions on actuarial matters. Does it come within your range to confirm the statement of Mr Oxby that internal reserves created out of surplus does in reality bear double taxation? Can you speak to that?

A. I can only say that after hearing Mr Oxby's evidence and reading his notes I have formed the conclusion that it is subject to double taxation.

Q. Were you with the company in 1951 in your present position?

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Appellant's Evidence
Alfred Leslie Sinclair
Re-examined

continued.

A. I was Assistant Accountant at that time.

Q. Can you help us with the nature of the case they presented to the Taxation Committee in 1951 on the subject of double taxation? Can you confirm what Mr Oxby said on that subject?

A. Yes, I did have some slight connection with figures etc. that were supplied at that time by the then Actuary of the Society.

Q. Can you from memory help us whether this particular feature of the fraction of reserve in the surplus arising out of a net premium valuation was featured in your representation on double taxation?

A. My memory of it is Sir very strongly that it was. 10

Sir Wilfred Sim:

Subject to the reservation that there is anything required to fill in in any controversial data which I shall do later, that is all the evidence which it is proposed to tender on the deduction question. Now, as I understand it, my learned friend will address you upon the first leg and I shall reply shortly to that and then we will open out all the way on the deduction question.

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Determination of Hanna S.M. 30 May 1960

DETERMINATION OF J. S. HANNA, S.M.

Case Stated pursuant to Sec. 30 of the Land and Income Tax Act 1954.

PART I

In my view the Respondent, in making the assessment for the income year ended on 31st day of December 1955, as set forth in para. 32 of the Case Stated, acted correctly in treating the said amount of £1,752,083 as being the surplus funds allotted for the said year in respect of policies comprised in the New Zealand business of the appellant.

Sec. 149 of the Land and Income Tax Act 1954 reads as follows:—

"149. (1) Notwithstanding anything to the contrary in this Act, every company engaged in carrying on in New Zealand the business of life insurance shall for the purposes of this Act be deemed to have derived and to derive profits from that business in accordance with the following provisions of this section, and all such profits shall be deemed accordingly to be assessable income of the company.

(2) In the case of any such company which makes to its policyholders, or to any class or classes of its policyholders, an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of section eighty-six of this Act or otherwise howsoever), shall be deemed to be profits derived by the company in that year.

(3) . . . . . .

(4) . . . . . .

(5) From the assessable income of any company for any year computed as hereinbefore in this section provided there shall be deducted all special exemptions to which the company may be entitled under this Act, and the residue shall be the taxable income of the company for that year. No company to which this section applies shall, in respect of its business of life insurance, be assessable for income tax otherwise than as provided in this section.

(6) . . . . . .

(7) . . . . . .

(8) . . . . . ."

Appellant is such a company as is contemplated by that section.

The question is what are "the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company?

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Determination of Hanna S.M. 30 May 1960

continued.

So far as Appellant is concerned, there is first of all the total surplus funds so allotted for the whole business of the Appellant. Then there is the share attributable to the New Zealand business. It is the latter that the New Zealand Act taxes.

In the Appellant's annual report for 1955, which is signed by the Chairman for and on behalf of the Board of Directors, it is stated on page 3:—

> "**Bonus Distribution.** On the advice of the Chief Actuary, your Directors have decided to distribute £7,496,295 of surplus funds among the holders of participating Ordinary policies, thereby providing reversionary bonuses of more than £12,996,000. The corresponding surplus to be distributed to Industrial policy-holders is £1,242,484 providing reversionary bonuses amounting to £1,528,000."

What is there referred to are the surplus funds for the whole business of the Appellant, and the two items there referred to of £7,496,295 and £1,242,484 when added together total £8,738,779.

On pages 4 and 5 of the same Annual Report there is a Statement of Income for the year ended 31st December 1955 and on page 5, under the heading **Allocation of Surplus**, the same figures appear again thus:

	Ordinary	Industrial	1955
	£	£	£
Surplus Divided and allotted as Reversionary Bonuses to participating policies	7,496,295	1,242,484	8,738,779

On pages 6 and 7 of the same Annual Report there is a Statement of Assets and Liabilities, and on page 7 (Liabilities) the same figures appear again thus:

	Ordinary	Industrial	1955
	£	£	£
Surplus Divided for year 1955, and allotted as Reversionary Bonuses to participating policies	7,496,295	1,242,484	8,738,779

Then on page 18 (lower half) of the same Annual Report, there is the Chief Actuary's Certificate:—

Chief Actuary's Certificate

I hereby certify that:—

(a) . . . . . .

(b) . . . . . .

(c) . . . . . .

(d) . . . . . .

(e) The Reversionary Bonus allotted for the year 1955 to participat-

ing policies has required the distribution of £7,496,295 of this Surplus to Ordinary Policies, and £1,242,484 to the Industrial Policies.

(f) . . . . . .

L. G. OXBY,
Chief Actuary.

Sydney, 17th April, 1956.

The figures in para. (c) above are, of course, the same figures as before and total £8,738,779.

The same figures may be found in the Statutory Return made by Appellant to the Insurance Commissioner Commonwealth of Australia as at 31st December 1955. On p. 12, para. (8) deals with the Ordinary Department surplus and it is there stated:—

"The surplus was allocated as follows:—

(a) . . . . . .

(b) £7,384,762 divided among 1,142,796 policies with immediate participation insuring £739,362,590.

(c) £111,533 divided among 27,080 policies with deferred participation insuring £14,608,839.

(d) . . . . . .

(e) . . . . . .

(f) . . . . . ."

The two items (b) and (c) above total £7,496,295 for the Ordinary Department.

The figure for the Industrial Department is to be found on page 15 of the same Statutory Return in para. (8) towards the foot of page 15 thus:—

"The surplus was allocated as follows:—

. . . . . .

(b) and (c) £1,242,484 divided among 1,057,436 policies with participation insuring £79,276,590.

. . . . . ."

The total is, therefore, the same figure of £8,738,779 as shown in the Appellant's Annual Report for 1955.

That sum, therefore, is the total surplus funds allotted by way of reversionary bonuses for the whole business of Appellant. The question then is what portion of this is attributable to the New Zealand business? That figure comes from the Chief Actuary's evidence in this case, where at p. 16 of his evidence para. 18, the Chief Actuary stated:

> 18. Of the sums of £8,738,779 and about £14,524,000 mentioned in para. 17 hereof, amounts of £1,736,492 and £2,929,285 respectively related to policies comprised in Appellant's New Zealand Branch business.

That figure of £1,736,492 was the figure stated in Appellant's Chief Actuary's first Certificate of 26th June 1956—(See Case Stated para. 17). In his evidence, under cross-examination, the Chief Actuary con-

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continued.

firmed that figure, and it was on that figure that Respondent made his assessment—(See Case Stated para. 16).

Cash payments made in respect of policies terminated during 1955	£15,591
Cash value of reversionary bonuses	1,736,492
	£1,752,083

Up to the point of this first return being made and the Chief Actuary's first certificate of 26th June 1956 being given (Case Stated para. 17), all calculations had been made on what is called the "net premium method".

It then seems to have occurred to Appellant that, if the calculations had been made on what is called the "bonus reserve method", it would have been more advantageous to the Appellant, at all events, so far as New Zealand taxation was concerned.

Thereupon, the company recast its figures for its New Zealand business on the bonus reserve method, and, having arrived at figures more advantageous to it from a New Zealand taxation point of view, and before assessment of tax by Respondent on the first return, proceeded to lodge an amended return of income dated 25th January 1957, (See Case Stated para. 18) and annexed to such amended Return was the Chief Actuary's Certificate dated 22nd January 1957 which is set out in the Case Stated para. 19. In that Amended Return and that amended Certificate Appellant has gone over to the bonus reserve method. In the first Certificate (Case Stated para. 17) Appellant gave the cash value of the reversionary bonuses according to the rate stated in para. 8 of the Case Stated (i.e. following the net premium method), which was the rate stated in all the Appellant's public reports. In the second Certificate (Case Stated para. 19) Appellant reached the cash value of reversionary bonuses using an interest rate of $3\frac{3}{4}$ per cent, a rate not used in any of the Appellant's public reports. For the purpose of calculation of its New Zealand income in 1955, Appellant wishes to use a rate of interest it has not used anywhere else in its accounts for that year. Appellant is perfectly candid that that is the position. The interest rate of $3\frac{3}{4}$ per cent is higher than the rate used by Appellant for all other purposes. It is higher than the rate used in para. 8 of the Case Stated, which was the rate on which the first certificate was founded. The use of the higher rate produces a lower cash value of reversionary bonuses.

The figure of £1,393,619 shown in the Second Certificate (Case Stated para. 19) was calculated for New Zealand income tax purposes and not for any other purpose. Whilst it may appear in Appellant's own internal records, it appears nowhere else. If that figure be accepted, it means that the surplus allotted by way of reversionary bonuses to policyholders, in the year 1955, in respect of the New Zealand business would be smaller than the first certificate disclosed and, moreover,

inconsistent with Appellant's public records. It follows that there would be less income tax payable in New Zealand if the first certificate be not acted upon.

I accept that what Appellant seeks to do does not affect in any way whatever policyholders' bonuses, and it may be that the Chief Actuary has followed a course that is actuarily unassailable and that his second certificate is actuarily sound. No doubt also, the bonus reserve method is a perfectly legitimate method of calculation, and indeed, since 1955 it has been the method adopted.

Nevertheless, on the best consideration I have been able to give this matter, I have reached the conclusion that Respondent was correct in taking the course he did, when, after there had been lodged the Amended Return of Income of 25th January 1957 (Case Stated para. 18.) to which was annexed the Chief Actuary's certificate of 22nd January 1957 (Case Stated para. 19), he wrote under date 5th April 1957 as follows:—

Taxes Division,
Inland Revenue Department,
WELLINGTON.
5 April, 1957.

The Manager for New Zealand,
Australian Mutual Provident Society,
P.O. Box 1290,
WELLINGTON.

Dear Sir,

YOUR LETTERS OF 25 JANUARY 1957 AND 20 MARCH 1957

I acknowledge receipt of your above letters together with an amended return of income and actuary's certificate for the year ended 31 December 1955, and a formal notice of objection to the 1956 assessment dated 28 February 1957.

My Head Office has considered your application for the issue of an amended assessment based upon the above return and certificate. I have been directed to advise that, as the legislation does not prescribe the basis upon which the amount of the surplus funds allotted shall be determined, and moreover as the amount is necessarily factual, it is necessary to ascertain the amount from the available evidence. It appears that the only sources of evidence are the books and records of the Society wherein the surplus funds have been arrived at by an actuarial calculation using rates of interest of 2%, $2\frac{1}{2}$% and $2\frac{3}{4}$%. Your application has accordingly been declined.

. . . . . .
. . . . . .
. . . . . .

Yours faithfully,
(Sgd.) L. J. RATHGEN
District Commissioner of Taxes.

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continued.

The figures stated in the first certificate are properly regarded by Respondent as true and correct.

I, therefore, reach the conclusion stated at the outset.

PART II

The facts are set out in Part II of the Case Stated. In the first instance, Appellant claimed to deduct from the amount of surplus funds allotted for the year 1955 the sum of £83,844.15.11 representing dividends received and attributable to the New Zealand branch. At first, Respondent accepted that as a correct deduction. Subsequently, however, on being notified by Appellant that the total amount of the dividends, derived from New Zealand during the year 1955, was £41,084.13.6, only the latter sum was allowed as a deduction. Later, Appellant advised Respondent that the sum of £41,084.13.6 should really have been £39,721.13.6, representing dividends received from New Zealand companies for year ended 31st December 1955. Then it was discovered that certain of the dividends included in this sum of £39,721.13.6 were derived from shares in companies incorporated outside New Zealand, such shares not being listed on New Zealand share registers. These dividends totalled £24,941.1.6. Respondent, thereupon, from £39,721.13.6 deducted £24,941.1.6, and allowed the difference, £14,780.12.0 as a deduction as dividends derived from New Zealand. It then turned out that the original figure of £83,844.15.11 claimed as a deduction should have been £79,843.18.4, representing dividends received by Appellant's New Zealand branch in respect of shares held by such branch made up as follows:

(a) Dividends derived from Companies registered in New Zealand and allowed as a deduction by respondent	£14,780	12	0
(b) Dividends derived from Companies incorporated in Australia and **not** allowed as a deduction by respondent	£65,063	6	4
	£79,843	18	4

What Appellant contends for is stated in para. 12 (b) of its Answer as follows:

"(b) That the Respondent in making the said assessment did not act correctly pursuant to the Land and Income Tax Act 1954 in allowing a deduction against the said amount of surplus funds to the extent only of the amount of £14,780.12.0 and that the Respondent should have deducted further sums (as referred to in paragraphs 35, 36 and 37 of the Case Stated) namely,

(i) The sum of £65,063.6.4 being dividends derived from companies incorporated in Australia and received by the

Appellant's New Zealand Branch in respect of shares held by such Branch:

(ii) All other dividends derived by the Appellant from all sources, amounting to £462,086."

This second part of the Case Stated raises questions under Sec. 149 (2) of the Land and Income Tax Act 1954. Subsec. (2) reads as follows:

"(2) In the case of any such company which makes to its policyholders, or to any class or classes of its policyholders, an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of section eighty-six of this Act or otherwise howsoever), shall be deemed to be profits derived by the company in that year."

Then the last sentence of Subsec. (5) is not without importance. Subsec. (5) reads as follows:

"(5) From the assessable income of any company for any year computed as hereinbefore in this section provided there shall be deducted all special exemptions to which the company may be entitled under this Act, and the residue shall be the taxable income of the company for that year. No company to which this section applies shall, in respect of its business of life insurance, be assessable for income tax otherwise than as provided in this section."

What is now Sec. 149 of the Land and Income Tax Act 1954 first appeared as Sec. 9 of the Land and Income Tax Act 1930 (No. 8). Before that there had been Sec. 95 of the Land and Income Tax Amendment Act 1923 (No. 21) and a series of Acts, namely,—

The Land and Income Tax Act 1916 (No. 5) Sec. 96.
The Finance Act 1917 (No. 9) Sec. 36.
The Land and Income Tax Amendment Act 1920 (No. 35) Sec. 19.
The Finance Act 1921 (No. 5) Sec. 7.
The Finance Act 1921 (No. 25) Sec. 10.

I think it will be sufficient for me to state as shortly as I can the conclusions I have reached after having given the matter the best consideration I have been able to.

On the part of appellant it is contended that Sec. 149 (2) is ambiguous, and that, in construing it, certain well established principles should be followed. For my part, however, I do not consider Sec. 149 (2) to be ambiguous. As was stated by Rowlatt J. in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* (1921) 1 K.B. 64 at 71,—"It is urged " by Sir William Finlay that in a taxing Act clear words are necessary " in order to tax the subject. Too wide and fanciful a construction is " often sought to be given to that maxim, which does not mean that " words are to be unduly restricted against the Crown, or that there is

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" to be any discrimination against the Crown in those Acts. It simply " means that in a taxing Act one has to look merely at what is clearly " said. There is no room for any intendment. There is no equity about " a tax. There is no presumption as to a tax. Nothing is to be read in, " nothing is to be implied. One can only look fairly at the language " used." That is what, I think, has to be done in this case. Looking at the language used in Sec. 149 (2) what has to be done is this: From the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, there is to be deducted *"any income derived by the company in that year and exempt from taxation (whether by virtue of Sec. 86 of this Act or otherwise howsoever)."* The residue shall be deemed to be profits derived by the company in that year, and by virtue of Subsec. (1), all such profits shall be deemed to be assessable income of the company. Sec. 149 is, in my opinion, a complete code for ascertaining in an artificial way the liability to pay income tax in New Zealand of life insurance companies.

The question that immediately arises is: What income of the Appellant is exempt from taxation under Sec. 86 or otherwise howsoever? So far as Sec. 86 is concerned what is relied on is Subsec. (1) (i):—

Exempt Income

"86. (1) The following incomes shall be exempt from taxation:—

. . . . . .

(i) Dividends and other profits derived from shares or other rights of membership in companies, other than companies which are exempt from income tax."

The income that first comes under consideration is the sum of £14,780.12.0, referred to above. That is income that Appellant received from companies incorporated in New Zealand. New Zealand companies are not exempt from income tax. Therefore, the dividends received from New Zealand companies are exempt from taxation under the opening words of Sec. 86 and, the sum of £14,780.12.0, representing those dividends, is deductible under Sec. 149. All are agreed upon this.

The question that is raised by the Case Stated, para. 38 (b) is this:

"(b) Whether the Respondent, in making the said assessment, acted correctly in allowing a deduction against the said amount of £1,752,083 only to the extent of the said amount of £14,780.12.0 and, if not, in what respects should the amount of such deduction be varied."

Apart from the £14,780.12.0, the other category comprises all other dividends from all sources outside New Zealand, although, as we have seen, Appellant, by its Answer, para. 12 (b), would have it that this category should be divided into two amounts,—

(i) The sum of £65,063.6.4 being dividends derived from companies

incorporated in Australia and received by the Appellant's New Zealand Branch in respect of shares held by such Branch:

(ii) All other dividends derived by the Appellant from all sources, amounting to £462,086.

I think, however, Respondent is correct in regarding these two sums as in the same category, for the character of both sums is that they are dividends derived from companies outside New Zealand. The question is: Can these United Kingdom and Australian Companies be regarded as being "exempt from income tax" within the meaning of those words in Sec. 86 (1) (i) of the New Zealand Act. I think "exempt" as there used must be construed in the sense that before a company can be said to be exempt from income tax it must first of all be liable to or, as it is said, exigible to income tax. I think it is correct to say that a company cannot be exempt, unless, but for the exemption, it would have been liable. These United Kingdom and Australian Companies, from which Appellant derived income by way of dividends, were not in that sense exempt, for the New Zealand Statute does not extend to them. It does not seek to tax them. When Sec. 86 (1) (i) uses the expression *"exempt from income tax"*, I agree with the Solicitor-General that it must mean exempt from income tax imposed by the New Zealand Land and Income Tax Act 1954 and does not include income tax imposed by other legislatures in other parts of the world. I, therefore, hold that the United Kingdom and Australian companies from which Appellant derives the income in question are not "exempt from income tax", within the meaning of that phrase in Sec. 86 (1) (i). Sec. 149, however, does not stop at Sec. 86. The expression in Sec. 149 is "and exempt from taxation (whether by virtue of Sec. 86 of this Act or otherwise howsoever) . . ." There are various sections in the Act, other than Sec. 86, that do confer exemptions, e.g. Sec. 170. That applies only to income derived by a person resident in New Zealand, and Appellant is not resident in New Zealand.—See Sec. 166. Another example of a section conferring an exemption is Sec. 146 (4).

So far as the sum of £65,063.6.4 was concerned, Appellant contended that this stood on a different footing than the other sum of £462,086. (See Appellant's Answer. para. 12 (b)). As is stated in the Answer, this sum of £65,063.6.4 represents dividends derived from companies incorporated in Australia and received by Appellant's New Zealand branch in respect of shares held by such branch. It was suggested that Sec. 167 (a) to some extent assisted Appellant's argument; but I think that little help can be gained from that section or from *Hughes* v. *Bank of New Zealand* (1937 1 K.B. 419: 1938 A.C. 366).

That leaves for consideration Sec. 165 (3). on which a good deal of store was set by Appellant. Sec. 165 reads as follows:—

"165. (1) Subject to the provisions of this Act, all income derived by any person who is resident in New Zealand at the time when he

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derives that income shall be assessable for income tax, whether it is derived from New Zealand or from elsewhere.

(2) Subject to the provisions of this Act, all income derived from New Zealand shall be assessable for income tax, whether the person deriving that income is resident in New Zealand or elsewhere.

(3) Subject to the provisions of this Act, no income which is neither derived from New Zealand nor derived by a person then resident in New Zealand shall be assessable for income tax."

I think the Solicitor-General is right in his contention that Sec. 165 is purely declaratory. Sec. 165 (3) is what Appellant relies on as supporting its contentions. But Subsec. (3) is, as, indeed, is every subsection, expressly *subject to the provisions of this Act*. Not only that, but Sec. 149 (1) begins *"Notwithstanding anything to the contrary in this Act"*. My view is that, if there be a conflict, then Sec. 149 overrides Sec. 165 (3). Sec. 149 is a code governing the taxability of life insurance companies. If Sec. 165 (3) were an exempting provision, it could be invoked, but it is not an exempting provision.

For the reasons set out above, the contentions made on behalf of Appellant on Part II of the Case Stated fail.

In the result, as to the whole Case Stated, the questions raised for the determination of the Court are answered as follows:—

(a) The Respondent, in making the assessment for the income year ended on the 31st day of December 1955 as set forth in paragraph 32 of the Case Stated acted correctly in treating the said amount of £1,752,083 as being the surplus funds allotted for the said year in respect of policies comprised in the New Zealand business of the Appellant.

(b) The Respondent, in making the said assessment, acted correctly in allowing a deduction against the said amount of £1,752,083 only to the extent of the said amount of £14,780.12.0.

The Respondent is awarded £105.0.0. costs and disbursements against the Appellant.

J. S. HANNA,
Stipendiary Magistrate.

Decision of J. S. Hanna, S.M., delivered pursuant to Rule 211 (3) of the M.C. Rules 1948, this 30th day of May, 1960.

L. A. PARLANE,
Registrar.

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JUDGMENT OF BARROWCLOUGH C.J.

This is a case stated by way of appeal against a determination of the Magistrate's Court at Wellington on appeal from an assessment for income tax made by the respondent Commissioner in respect of profits derived by the appellant in the year ending 31st December 1955. The amount involved was substantial and counsel on both sides joined in a request that the appeal be argued before a Full Court. The case was presented in two Parts. In Part I the question in dispute related to the ascertainment of the "surplus funds allotted" in the year 1955 "by way of reversionary bonuses or otherwise" within the meaning of those expressions in section 149 of the Land and Income Tax Act 1954 and it will be convenient to consider Part I of the case before stating the questions involved in Part II. The two parts of the case are quite separate and distinct.

Subsections (1) and (2) of Section 149 of the Land and Income Tax Act 1954 are as follows:

> (1) Notwithstanding anything to the contrary in this Act, every company engaged in carrying on in New Zealand the business of life insurance shall for the purposes of assessing ordinary income tax under this Act be deemed to have derived and to derive profits from that business in accordance with the following provisions of this section, and all such profits shall be deemed accordingly to be assessable income of the company.
>
> (2) In the case of any such company which makes to its policyholders, or to any class or classes of its policyholders, an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of section eighty-six of this Act or otherwise howsoever), shall be deemed to be profits derived by the company in that year.

In the Land and Income Tax Act a company is defined as meaning any body corporate whether incorporated in New Zealand or elsewhere but not including a local or public authority. The appellant Society is a "company" within that definition and it was common ground that it was also "carrying on in New Zealand the business of life insurance" within the meaning of that phrase in subsection (1) of section 149 and that it was also a company which "makes to its policyholders an annual allotment of surplus funds by way of reversionary bonuses or otherwise". The first question for determination in this Court is, as it was with the Commissioner in making his assessment and with the Magistrate's Court on appeal against that assessment, "What surplus

funds were allotted to policyholders by way of reversionary bonuses for the year 1955 in respect of policies comprised in the New Zealand business of the Society?"

The reference in subsec. (2) to "surplus funds so allotted" is clearly a reference to funds allotted by the appellant Society. No one else could possibly allot them. One looks therefore for evidence of some corporate act which did so allot surplus funds and in that connection it is to be observed that since it is the duty of the appellant Society to furnish returns for income tax purposes it is for that Society to furnish evidence of that corporate act. No resolution of the directors of the appellant Society making any such allotment was in evidence; but there was in evidence a copy of a Return made by the appellant, in respect of the year 1955, to the Insurance Commissioner of the Commonwealth of Australia and a copy of the Annual Report of the appellant for that year. Both these documents were signed by the Chairman, two Directors, the General Manager and the Chief Actuary and there can be no doubt, and it was never disputed, that this was sufficient evidence of a corporate act on the part of the appellant. I need not quote the figures in detail: it is sufficient to say that the evidence unquestionably reveals that at some time before the 18th April 1956 (the date of the Annual Report) the appellant Society had out of its surplus funds allocated, allotted, divided or distributed as reversionary bonuses to policies in force at 31st December 1955 a total sum of £8.7 millions thereby providing reversionary bonuses which on maturity would be worth £15.5 million. (I state the millions here and elsewhere in this judgment to the first decimal point.) The words "allocated", "allotted", "divided" and "distributed" all appear either in the Return or in the Annual Report.

The appellant Society is incorporated in Australia and the Return was furnished to the Federal Insurance Commissioner pursuant to the requirements of an Australian Act. The Annual Report would be furnished for the information of policyholders not only in New Zealand but in all countries in which the appellant carried on life insurance business. It would not be right to say that the words enumerated at the end of the immediately preceding paragraph were chosen with particular reference to the words "so allotted" in subsec. (2) of section 149 of the New Zealand Statute. Nevertheless we start with the proved and undisputed fact that £8.7 millions was allocated, allotted, divided or distributed by way of reversionary bonuses to all the appellant's policyholders (including policyholders in New Zealand) thereby providing reversionary bonuses which would ultimately be worth £15.5 million.

In making its first income tax return to the New Zealand Commissioner of Inland Revenue the appellant was of course concerned, in terms of our section 149, with the amount of surplus funds "so allotted" in respect of policies comprised in its New Zealand business only. On 29th June 1956 it had certified by its Chief Actuary that:

"the surplus funds of the Society allotted to its policyholders for the

year ended 31st December 1955 in respect of policies comprised in the New Zealand business of the Company were as follows:

(a) . . . . . .

(b) Reversionary bonuses for a total face value of £2.9 million allotted to policies in force at 31st December 1955. The cash value of the reversionary bonuses of face value £2.9 million according to the respective bases employed by the Society in valuing its policies was £1.7 million at 31st December 1955."

This certificate was obviously prepared for the purposes of section 149 (2) of the New Zealand Act but surprisingly it certifies two matters which are not strictly relevant. The subsection makes no reference either to the face value or the cash value of reversionary bonuses. It is concerned with the surplus funds allotted in 1955 by way of reversionary bonuses in respect of policies comprised in the New Zealand business of the Society. But if the certificate is compared with the statements made in the Report to the Australian Commissioner and in the Annual Report for 1955 it may fairly be regarded as evidence that in respect of New Zealand policies the surplus funds allotted for the year 1955 by way of reversionary bonuses were £1.7 million. The fact that this allocation may have been the basis for the decision to declare bonuses which on maturity would be worth £2.9 million may have been interesting to policyholders but was not, of course, to the Commissioner. At all event that was, at that stage, the only evidence supplied by the appellant to show what "surplus funds" it had "so allotted" for the year 1955 "in respect of policies comprised in its New Zealand business". It was evidence which the Commissioner properly accepted. It should be noted here that the amount of reversionary bonuses actually declared by the appellant is determined by actuarial calculations from the sum which the appellant allocates or allots out of its surplus funds by way of reversionary bonus. The amount so allocated or allotted is determined first and the face value of the bonuses which the Society actually declares and which can be cashed for their face value only when the various policies mature is determined subsequently by an appropriate calculation which takes into account, no doubt with a margin of safety, what amount the sum allocated or allotted can be expected to yield as and when the policies mature. A realisation of the procedure followed is of fundamental importance; for New Zealand income tax is based on the amount of surplus funds allotted by way of reversionary bonuses for any particular year and not on the cash value or present value of the bonus certificates which are issued in respect of that year but which will realise their face value at some future time when the respective policies mature on death or by effluxion of time. The wording of the return to the New Zealand Commissioner for Inland Revenue seems to indicate that the appellant Society failed to appreciate that the only really relevant matter was the sum "so allotted" in respect of New Zealand policies and that the Com-

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missioner was not really concerned with the face value of bonuses which might actually be declared.

The evidence up to this stage is that the appellant Society having determined to allocate, allot, divide or distribute (I use its words) £8.7 millions it calculated that it could issue and it did in fact issue reversionary bonuses of a face value of £15.5 million. That was in respect of all its policies. In respect of its New Zealand business it was under an obligation to furnish evidence of the sum "allotted" (within the meaning of that term in subsec. (2) of section 149 of the New Zealand Statute) by way of reversionary bonuses in respect of policies comprised in the New Zealand business. The Chief Actuary's certificate does not precisely state what sum was so allotted. It states that reversionary bonuses for a total face value of £2.9 million were allotted to New Zealand policies. That was an irrelevant piece of information and I need not consider whether the word "allotted" in that part of the certificate is used in the sense in which it is used in sect. 149. The certificate goes on to say that the cash value of those reversionary bonuses at 31st December 1955 was, according to the method of calculation then used, £1.7 million. In view of the fact that £1.7 million bears to £2.9 million the same proportion as £8.7 million bears to £15.5 million the proper inference is that the sum allotted, allocated, divided or distributed (again I use the Society's words) for the year 1955 by way of reversionary bonuses in respect of policies comprised in the Society's New Zealand business was £1.7 million. In my view that is clearly established by the evidence. It remains to consider whether that £1.7 million was "so allotted" within the meaning of that expression in subsec. (2) of sec. (1) in the Land and Income Tax Act 1954.

It is clear that in one sense neither the £8.7 million nor the £1.7 million was in fact allotted at all. Neither sum has been paid out or divided or distributed to anyone or credited to any reserve or other account in the books of the appellant Society. All the appellant did was to ascertain or determine what were its surplus funds at the end of the year 1955. I need not state how they were arrived at. Part of that surplus fund was applied to various purposes, including a very large sum as a reserve for contingencies, and the balance (£8.7 million) was then regarded as the basis upon which the reversionary bonuses about to be declared could by actuarial processes be properly determined. Upon that basis bonuses of a face value of £15.5 million were in fact declared. In respect of New Zealand business the corresponding amounts were £1.7 million and £2.9 million. In the strict sense this is scarcely an allotment of £1.7 million by way of reversionary bonuses in respect of New Zealand policies. It is however a notional allotment and in my opinion it is such an allotment as it contemplated in subsec. (2) of section 149.

The appellant Society is a mutual insurance society. It has no shareholders and each year it applies its surplus funds to provide

reversionary bonuses for those of its policyholders who are entitled to participate therein. These surplus funds bear some resemblance to the distributable profits of a company engaged in ordinary commercial undertakings but they are not immediately payable as are dividends. The policyholder gets an annual bonus notice or certificate which evidences his right to a certain sum by way of bonus on maturity of his policy. It is not a dividend warrant and cannot be cashed at face value until maturity. But just as an ordinary commercial company must ascertain its profits before declaring a dividend so must a mutual insurance company ascertain its surplus funds for any particular year before declaring a bonus in respect of that year's surplus. As the bonus is not immediately payable there is no question of dividing or distributing the surplus immediately. The words "divide" and "distribute" as used by the appellant Society are much less apt than is the word "allot" as used in the Statute. Though the surplus is not divided or distributed it is ascertained as a prerequisite to the declaration of reversionary bonuses, it is apportioned and appropriated for that purpose and it is at least notionally "allotted by way of reversionary bonuses". The draughtsman of the statute must have been familiar with the manner in which mutual insurance companies carry on their business and in my opinion the reference in the statute to an allotment of surplus funds by way of reversionary bonuses must refer and can only refer to that which was done by the appellant Society when, to use its own words it allocated or allotted, divided or distributed in respect of New Zealand policies £1.7 millions of its surplus funds by way of reversionary bonuses for a total face value of £2.9 million. In making his assessment of tax payable by the appellant Society for the year 1955 the Commissioner of Inland Revenue treated the said amount of £1.7 as being the surplus funds allotted for the said year in respect of policies comprised in the New Zealand business of the appellant Society. If the matter rested solely on the evidence which I have so far considered and was not complicated by the rendering of an amended income tax return and an amended certificate by the chief actuary I would think the Commissioner was right in acting as he did.

But an amended return was rendered and a new certificate was furnished by the Chief Actuary and in the light of what was then revealed and of his views as to the proper interpretation of the subsection Sir Wilfrid Sim addressed to us an argument which I must now consider. Sir Wilfrid argued that a difficulty in the interpretation of the word "allotted" in subsec. (2) of section 149 arose from the fact that in one sense of that word no sum was allotted at all and he therefore submitted that the subsection should be read as referring to the cash value of the reversionary bonuses and not to an allotted fund. He put it this way: "the allotment contemplated by the subsection is an allotment by way of reversionary bonuses and not the allotment of funds". He argued that the Commissioner should have taken note of the fact that the reversionary bonuses actually declared were of the face value of £2.9 million but that their cash value, ascertained by fair and accept-

able atuarial methods, was only £1.3 million and that the Commissioner should therefore have treated £1.3 million as being, in the words of subsec. (2) of sec. 149, "the surplus funds so allotted".

That view of the matter had been reached by the appellant Society some time after the furnishing of the original income tax return and the Chief Actuary's original certificate, the relevant part of which I have already quoted. An amended return was accordingly made and in support of it the Chief Actuary supplied on the 22nd January 1957 an amended certificate in form similar to the certificate dated 26th June 1956 but with an important difference in the figures that were certified. Both documents certified that reversionary bonuses for a total face value of £2.9 million had been allotted to policies in force at 31st December 1955 but the second certificate differed from the first in that it said:

> "The cash value of the reversionary bonuses of face value £2.9 million according to the A1924-29 ultimate table of mortality and an interest rate of $3\frac{3}{4}\%$ per annum was £1.3 million at 31st December 1955."

There is no doubt that both certificates were mathematically correct. In the first certificate the cash value was determined by using an interest rate of $2\frac{1}{2}\%$ whereas in the second certificate the cash value was determined by using an interest rate of $3\frac{3}{4}\%$ per annum. That accounts for the different cash values which were arrived at. I accept that for the purpose of ascertaining the cash value of the bonuses declared the latter method is actuarially sound. That was not disputed. I accept also that the calculation of such cash value, whichever method be used, will have no effect on the total amount of the bonuses which the policyholders will ultimately receive. It was not disputed that the cash value of £1.7 million as determined by the first method is more than would be sufficient to produce, on maturity of the policies, the amount of the bonuses declared for the relevant year. Sir Wilfrid argued that there was therefore included in the £1.7 million an internal reserve which should be deducted from the £1.7 million in ascertaining the amount "allotted by way of reversionary bonuses" for that year. The amount of that internal reserve was the difference between the £1.7 million calculated by the first method and the £1.3 million calculated by the second method. These two methods were described as the net premium method and the bonus reserve method.

Sir Wilfrid argued that the Commissioner had misread the original certificate: that he ought to have known from the information it contained that the cash value as certified contained an internal reserve which might well be used up in other ways than in paying, as and when required, the reversionary bonuses declared for the year 1955 and which would not or might not reach the participating policyholders. It was said that the Commissioner had been unfair in making his first assessment; at all events unfair in not amending that assessment when the subsequent certificate was provided. I cannot see that the

Commissioner was under any duty to make such a critical examination as was suggested of the first return rendered by the appellant company; but, assuming for the sake of argument that when the second return was made the Commissioner ought to have realised that the cash value as then declared was fair and just and actuarially sound, how does that reveal unfairness in his insisting on his original assessment? Unless the subsection can be read as importing a reference to cash value (which is the very point now in issue) there could be no unfairness on the part of the Commissioner in refusing to concern himself with that value, however it ought to be calculated. The Commissioner may have been wrong but I cannot see that he was in the least degree unfair. It may be that the Act could be shown to be unfair in its operation but that is quite another matter. The Act might be thought to be unfair if it resulted in double taxation and it was in fact strongly urged by the appellant that the Commissioner's interpretation of it did result in double taxation.

That question was not raised in any of the negotiations between the parties before the matter was taken to the Magistrate's Court. It was not raised in the Answer filed by the appellant Society in the Magistrate's Court. It was first raised in the prepared statement tendered by the Chief Actuary in the course of his evidence. On that question the Solicitor-General replies that it has not yet been shown what in fact is the amount of double taxation, if any, involved for the year 1955. He points out that the appellant has not shown in its accounts what part of the internal reserve has been taxed in the past and that the Commissioner has therefore no information on which he can act. It is open to the appellant to supply the necessary information; but until that is done there is no ground for interfering with the present assessment. If the question of double taxation does arise it arises only in so far as the appellant Society has failed to render a proper return. It is in the same position as any other taxpayer who has failed to claim exemptions or has otherwise overstated his income. I do not think that the question of double taxation as it has been presented enables us to say that the Commissioner's assessment was wrong.

Sir Wilfrid's main submission was that the appellant should not be taxed in respect of the internal reserve as it represents a part of the surplus funds which have been allotted as a reserve and not by way of reversionary bonuses. If there has been in fact a transfer of £.4 million to an internal reserve there would be considerable weight in Sir Wilfrid's argument. My note shows that he contended in one place that the internal reserve "is available for future years" and in another that it "may be used up in other ways and does not reach the policyholder in the current year". That was no doubt founded on the evidence given by the Chief Actuary in the Court below. Mr Oxby stated (page 32 of the Case Stated) "such internal reserve is one set up for subsequent distribution in future years as part of the surplus being allotted as reversionary bonuses for those years". With the greatest respect for Mr Oxby's expert knowledge as an actuary I think he has rather mis-

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stated the position in saying that an internal reserve was in fact set up. The difference between £1.7 million and £1.3 million is £.4 million. But that £.4 million has not been transferred to any reserve account. In its books the Society has not differentiated it in any way from the £1.3 million. I think that the £1.3 million could equally well be regarded as being "set up for subsequent distribution in future years as part of the surplus being allotted as reversionary bonuses for those years". That might depend on whether by "allotment" he means a notional allotment and whether by "distribution" he means actual payment made in respect of bonuses which in the relevant year have become payable. At all events both the £1.3 million and the £.4 million remain undistinguished in the general funds of the Society. The facts are against the contention that £.4 million was allotted out of the surplus funds as an internal reserve. There is no evidence of any corporate act on the part of the appellant transferring such a sum to any reserve though there is the clearest possible evidence of what other funds were in fact transferred to reserve accounts. See, for example, para. 8 (e) on page 12 of the return furnished to the Insurance Commissioner of the Commonwealth of Australia. It is significant that that return was furnished in accordance with the requirements of the Federal Act and in accordance with a requirement that the appellant should state every reserve fund to which the total amount of surplus had been allocated. See para. 8 of the Second Schedule to the Federal Act. I can conclude only that it is not shown that the £.4 million was in fact severed from the £1.7 million which in my view was clearly allotted in respect of New Zealand policies.

I concede the difficulty that arises from the fact that no part of the surplus funds were allotted in the sense of being set aside in any particular account or otherwise earmarked for the payment on maturity of the bonuses declared in 1955. But that applies to the whole of the £1.7 million. If part of the £1.7 was "so allotted", and that was not disputed, then I think the whole of it must be regarded as having been "so allotted". I am confirmed in that view by the circumstance that in the case of a mutual insurance company such as the appellant Society, "there being no shareholders, the total divisible surplus is divided among policyholders entitled to share in the distribution". See para. 6 on page 12 of the Society's 1955 Return to the Federal Commissioner. In respect of New Zealand policies the divisible surplus was £1.7 million. It was not allotted in the sense that it was taken out of the general funds of the appellant Society; but there was a notional allotment and in my opinion the only "allotment" which section 149 of our Land and Income Tax Act could possibly contemplate was such a notional allotment. The appellant really accepts that a notional allotment is contemplated when it concedes that £1.3 million was "so allotted". The only relevant corporate act which is proved is an allotment of £1.7 million. The Society has amended its return of income and its Chief Actuary has amended his certificate; but there is no evidence of a corporate act amending the "allotment" if indeed it could be amended.

The evidence establishes no allotment in respect of New Zealand policies of any sum other than £1.7 million. I am therefore of opinion that the Commissioner was right in treating the said amount of £1,752,083 as being the surplus funds "so allotted" for the year 1955 in respect of policies comprised in the New Zealand business of the appellant and the learned Magistrate was right in upholding the Commissioner's decision in that regard. I think the appeal fails on the point raised in Part I of the Case Stated.

I turn now to Part II of the Case. It raises the question as to what income can be said to be "exempt from taxation" within the meaning of that expression in subsection (2) of section 149 of the Land and Income Tax Act 1954. It will be seen from that subsection and the subsection immediately preceding it that that which is deemed to be the profit derived by the Society and therefore its assessable income is:

> "the residue of the surplus funds so allotted for any year in respect of policies comprised in the N.Z. business of the company after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of sect. 86 of this Act or otherwise howsoever)."

The Society claimed that three items of income derived by it in the relevant year should be deducted from the funds "so allotted" because, in its submission, each of those three items was "exempt from taxation" either by virtue of section 86 or otherwise. The three items were:

(1) £14,780 being dividends received by the N.Z. branch of the Society from companies incorporated in N.Z.

(2) £65,063 being dividends received by the N.Z. branch from companies incorporated in Australia in respect of shares held by the Society in Australia but held for the N.Z. branch—the dividend being remitted from Australia to New Zealand.

(3) £462,086 being dividends from companies incorporated in Australia and the United Kingdom received by the Australian and United Kingdom branches in respect of shares held for those branches.

The Commissioner allowed the first deduction so claimed and no further reference need be made to it. The dividends totalling £14,780 are income derived from New Zealand but they are exempt from taxation by section 86 (1) (i). The Commissioner disallowed the claims for the second and third deductions and his rejection of them was upheld by the learned Magistrate in the Court below. The only question which arises in this Part of the Case Stated is whether the second and third items are "exempt from taxation" within the meaning of subsec. (2) and therefore deductible.

The income comprised in the second and third items is clearly not exempted by sections 170 or 146 (4) of the Act. In my opinion it is not

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exempted by section 86. I say that because, the appellant not being resident in New Zealand and the income not being derived in New Zealand it never was subject to New Zealand taxation and therefore cannot be regarded as being exempted. I shall have more to say later on on the question of exigibility. In the meantime I merely state my view that the income comprised in the second and third items is not exempted by section 86. Nor is it "specially exempted" by the provisions of such sections as section 80 (personal exemption), sec. 131 (exemption for dependent children), sec. 81 (exemption for married men), sec. 85 (exemption for life insurance premiums and contributions to superannuation funds) and others. These exemptions do not apply to companies.

No provision outside of the Land and Income Tax Act was cited as being an exempting provision. I mention that because of the wide meaning of the words "or otherwise howsoever". Is there then any other provision in the Act which can be said to exempt from taxation the income comprised in the second and third items?

In this connection we were referred to subsec. 3 of section 165 of the Act. It provides:

> "(3) Subject to the provisions of this Act, no income which is neither derived from New Zealand nor derived by a person then resident in New Zealand shall be assessable for income tax."

The income in items (2) and (3) above is not derived from New Zealand nor is it derived by a person resident in New Zealand for the appellant society is clearly not resident in this Dominion though it carries on some of its business in this country. The income referred to is "not assessable for tax"; but is that the same thing as "exempt from taxation (whether by virtue of section 86 or otherwise howsoever)"? In my opinion it is not. My reasons for that conclusion are as follows.

First the phrase "exempt from taxation" in subsec. (2) of section 149 is the same phrase as is used in section 86 which is the main exempting section. Sec. 86 begins with the words, "The following incomes shall be exempt from taxation". We have in section 148 (4) the same words: "shall be exempt from taxation" and in section 170 similar words "shall be exempt from income tax". In section 165 (3) no reference is made to exemption. There is by way of contrast a declaration that certain income shall not be assessable for income tax. I think this change in language indicates that section 165 (3) was not intended to be an exempting section but a section declaratory of what would in any event have been the law even if subsec. (3) had not been enacted. Apart altogether from the provisions of that subsection, unless there was the clearest indication of a contrary intention, our Act would not be interpreted as intending to tax non residents in respect of income not derived from this country. It would be interpreted as being applicable only territorially. *Jefferys* v. *Boosey* (1854) 4 H.L.C. 815; 10 E.R. 742; *In re Adams* 25 N.Z.L.R. 302; *Colquhoun* v. *Heddon* 25 Q.B.D. 129.

Accordingly I do not read section 165 (3) as an exempting provision and I do not think it can have been intended as a provision which made income "exempt from taxation" within the meaning of that expression in section 149 (2).

Secondly if subsec. 165 (3) was an exempting section it would apply not merely to the dividends mentioned in the second and third items and in respect of which deduction has been claimed; but to every single item of income received by the appellant from any source whatsoever other than New Zealand. It would apply to rents, interest and insurance premiums as well as to dividends. The revenue account of the appellant Society discloses that for the presently relevant year the premium income of the ordinary and industrial departments in Australia alone exceeded £27 million. If there is added to that the premium income earned in the United Kingdom and also all rents and interest received from Australia and the United Kingdom the total would far exceed £27 million. Is this huge sum to be deducted from surplus funds of £1.7 million allotted by way of reversionary bonuses in respect of policies comprised in the appellant's New Zealand business? The figures I have quoted are those of one company for one year but they must be fairly typical of every foreign insurance company carrying on life insurance business in New Zealand. To read section 165 (3) as a section under which income is made "exempt from taxation" would result in a manifest absurdity. There is another way of reading 165 (3) which involves no such absurdity: that is to read it as a declaratory and not as an exempting section and that in my opinion is how it ought to be read.

Sir Wilfrid Sim relied more strongly on a submission that in its context in section 149 (2) "exempt from taxation" meant "not liable or not subject to N.Z. taxation without any requirement of exigibility". The income comprised in items (2) and (3) of the claimed deductions, and a great deal of other income as well, is certainly not liable or subject to N.Z. taxation and the relevance of exigibility in the concept of "exempt" therefore became an important, and I think the most important, issue between the parties—the Solicitor-General contending strongly that income cannot be said to be "exempt from taxation" in the relevant context unless, but for the exemption, it would be liable for taxation in New Zealand. Upon this question a number of cases were cited to us. I have read them all but in none of them do I find it laid down as a general principle of universal application that there can be no exemption without exigibility. Conversely there is no rule of universal application that exigibility is never a prerequisite of exemption. The question must be decided on the language of the enactment and in the light of its intent and purpose.

Sir Wilfrid argued that if the language was capable of interpretation in two ways, this being a taxing enactment, that interpretation should be adopted which was most favourable to the taxpayer. That canon of construction may be invoked if the language is truly ambiguous but as

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was stated by Rowlatt J. in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* (1921) 1 K.B. 64 at p. 71.

> "Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Looking fairly at this enactment it seems to me that a construction which makes exigibility a prerequisite of exemption is much more in accord with the intention of the legislature than a construction which makes exigibility entirely irrelevant. The latter construction would render the enactment utterly futile and that obviously was not intended. It is a proper inference from the evidence that the surplus funds which can be allotted by way of reversionary bonuses in any year must come at least to some extent from the income of that year and that income must be applied for a number of purposes other than allocation by way of reversionary bonuses. It must be applied in payment of salaries and wages and other administrative expenses. At least some of it will be applied in payment of sums assured under policies that mature in that year and there will be other demands on the income as well. It follows that the income must always exceed the amount allotted by way of reversionary bonuses. In the case of the appellant company I have already shown by what a huge amount the income for the year ending 31st October 1955 exceeds the amount "so allotted" in that year. The "residue of the surplus funds so allotted . . . after deducting income derived by the company in that year and exempt from taxation" would, if the appellant't submission were sound, result in a minus amount and no taxation would be payable. No such absurd result would follow if the word "exempt" is construed as importing exigibility as a necessary ingredient in the concept. That construction should be adopted which brings about an effective result and not that which makes the enactment utterly fail to achieve its manifest purpose. In my opinion the Solicitor-General is right in his submission that income cannot be said to be "exempt from taxation" within the meaning of that expression in subsec. (2) of sec. 149 unless that income would but for an exemption, be subject to taxation in New Zealand. Quite apart from any exemption the income comprised in items (2) and (3) of the claimed deductions would not be taxable in New Zealand. It cannot therefore be said to be "exempt" and accordingly it is not deductible from "the residue of the surplus funds so allotted".

In reaching this conclusion I have not yet dealt with a further submission made by Sir Wilfrid in respect of item (2)—the claim deduction of £65,000 odd. That submission had relation only to the £65,000 and it requires separate consideration. It was argued that this sum was

"income derived from a business carried on in New Zealand" and was therefore by virtue of section 167 (a) of the Act "deemed to be derived from New Zealand", that it was therefore exigible for taxation by virtue of section 165 (2) and that, being exigible (if exigibility is a pre-requisite of exemption), it was expressly exempted by section 86 (1) (i). I have carefully considered this argument but in my opinion it is based on a misconstruction of section 167 (a). Subsec. (a) of section 167 clearly does not refer to all incoming receipts of a business. If it did then, in the case of an ordinary mercantile business, all sums received in respect of goods sold would be "income deemed to be derived from the business" and therefore assessable for income tax. That would be quite absurd. The subsection contemplates a profit such as is revealed in a profit and loss account in which incoming sums received in respect of sales will be balanced by the cost of purchasing the goods and the expenses of running the business and it is the profit (if any) which is the "income derived from the business"—not the total receipts from sales. To put it another way the receipts from sales might in one sense be regarded as income "received in the course of" the business; but they cannot possibly be regarded as "income derived from" the business. In the same way I am unable to see how it can be said that the £65,000 is "derived from a business" carried on in New Zealand within the meaning of that expression in para. (a) of section 167. The most that can be said of it is that it is income derived or received in the course of carrying on such a business; but that in my opinion is not enough to bring it within the ambit of section 167 (a). The major premise of the syllogism not being established the conclusion is not warranted and accordingly I think that the argument which was specially directed to the item of £65,000 must fail.

In reaching this conclusion I have made no reference to the case of *Hughes* v. *Bank of New Zealand* 1938 A.C. 366 which was so strongly relied on by Sir Wilfrid Sim in the course of his argument. I have read and re-read the speech of Lord Thankerton in the House of Lords and also all the judgments delivered in the Court of Appeal. I confess that, unfamiliar as I am with the provisions of the English statutes referred to in that case and of the various English Schedules, I have found great difficulty in following the judgments but there is no great difficulty in ascertaining the legal principles upon which those judgments were founded. They do not appear to lay down any principle of law which is at variance with the manner in which I have endeavoured to interpret the phrase "exempt from taxation" in the latter part of subsec. (2) of section 149 in *Hughes* v. *Bank of New Zealand* there were some special statutes to be considered—some of them statutes enacted to meet the peculiar problems of war time taxation. In the present case we have to consider statutory provisions which were enacted to meet the special case of mutual life insurance companies which do not earn profits or gains in the ordinary acceptation of those words. Section 149 recognises that fact when it says that they shall be deemed to derive profits in accordance with the provisions of that

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section. In this case as in *Hughes* v. *Bank of New Zealand* the task is to interpret the special statutory provisions in the light of the situation with which Parliament was confronted in enacting them. But in this case the situation is very different from the situation which had to be met in England and it is not surprising that in interpreting our section 149 the Court derives little assistance from what was said in *Hughes* v. *Bank of New Zealand*.

Accordingly I am of opinion, upon Part II of the Case Stated, that the learned Magistrate was right in allowing a deduction of £14,780.12.0 (Item I), and no more, from the amount of the surplus funds allotted by way of reversionary bonuses in respect of policies comprised in the appellant Society's New Zealand business.

On both parts of the Case I would dismiss the appeal with the usual consequences as to costs. Both my brethren being of the same opinion the appeal is dismissed with costs to the respondent which we fix at £210 with disbursements.

Solicitors:

Chapman, Tripp & Co., Wellington, for appellant.

Crown Solicitor, Crown Law Office, Wellington, for respondent.

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JUDGMENT OF McGREGOR J.

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PART I

I have had the opportunity of reading in advance the judgments prepared by the Chief Justice and by my brother McCarthy. The facts are therein fully stated and as I agree fully with their reasons and their conclusions in regard to Part I of the case, I desire in regard thereto to add only a few words.

The matter at issue seems to me to be entirely a question of fact, but it must be borne in mind that on the hearing and determination of all objections to assessments of income tax the burden of proof is on the objector (Land and Income Tax Act 1954, s. 32). The appellant is a company carrying on in New Zealand the business of life insurance, and the profits of the company to be treated as its assessable income are such as shall have been deemed to be derived by the company as stated in s. 149 of the Land & Income Tax Act 1954. The company is one which makes to its policyholders an annual allotment of surplus funds by way of reversionary bonus or otherwise, and consequently the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after a certain deduction therefrom which will be discussed later, shall be deemed to be profits derived by the company in the income year, and shall accordingly be deemed to be the assessable income of the company. In the present case there has been cogent evidence by the Chief Actuary of the Society as to the proper basis of estimate of the present value of the reversionary bonuses declared in respect of policies comprised in the New Zealand business of the company, and this evidence does carry substantial weight as to the lesser sum as stated in the Society's amended certificate to the Commissioner being a sufficient fund to provide the reversionary bonuses declared in respect of New Zealand policies for the year ending 31st December 1955, as and when such bonuses may become payable. On the other hand the Society has, by the adoption of what has been described as the net premium valuation basis, ascertained its true surplus in respect of its whole business in Australia, the United Kingdom and New Zealand by the net premium method, and has declared such surplus and the consequent allocations in its annual accounts, certified by its directors with supporting certificates from its auditors and actuaries. Such information was that given to policyholders. The same information covering the global activities has been furnished in its statutory return to the Insurance Commissioner of the Commonwealth of Australia.

On the 18th July 1956 the Society furnished a return and certificate to the Commissioner declaring its assessable income to comply with the requirements of s. 149 (2) of the Land and Income Tax Act 1954. It stated that the surplus funds allocated in respect of policies comprised in its New Zealand business amounted to £1,752,083. This certificate must be read as a certificate that such sum was the sum allocated by

way of reversionary bonuses or otherwise in respect of policies comprised in the New Zealand business of the company. It accords with the global information published to policyholders in the annual accounts and with the information given to the Insurance Commissioner of the Commonwealth of Australia. Such annual accounts to policyholders and the return to the Insurance Commissioner have not been amended in any way. There has been no re-declaration of a higher bonus in New Zealand if the sum originally calculated as the surplus allocated to New Zealand policyholders was more than sufficient to provide the declared bonus. If there was such an over-valuation of the sum necessary to declare this bonus, there is an actuarial undistributed surplus somewhere in the funds of the Society, but this is still a surplus, and it would seem to me to be a surplus resulting from the New Zealand business. The only question is whether such surplus was a portion of the surplus allotted by way of reversionary bonuses or otherwise. It seems to me, therefore, that it was open to the learned Magistrate to consider and weigh all the evidence before him. All the information published by the Society showed that the real New Zealand surplus was that originally declared by the Society, and as such was notionally appropriated by way of reversionary bonuses or otherwise in respect of policies comprised in the New Zealand business of the Society. The oral evidence of the actuary had to be weighed against this, but in view of the fact that the amended valuation of future liabilities in respect of reversionary bonuses by the actuary has never been brought into the books of the Society, has never been adopted in any way in respect of the Company's business other than in New Zealand, and has not been used for any purpose other than the amended return to the New Zealand Commissioner of Inland Revenue, it seems to me the learned Magistrate, in deciding whether it had satisfied the onus of proof required to support its objection, was justified in accepting what the Society had done rather than what it now says should or could have been done.

If the global surplus on which reversionary bonuses have been calculated is taken as the £8.7 million figure shown in the published accounts, there is no dispute that the New Zealand proportion of this global figure of £8.7 million is the figure in the first return of the company to the New Zealand Commissioner, namely £1.7 million. The question to my mind is purely one of fact. It depends entirely on estimates of the sum presently necessary to provide for future liabilities to estimate the true surplus. It is in essence a notional surplus, as forecasts or predictions as to the future are necessarily a matter of inference, or, to put it more accurately, inference based on scientific actuarial matters.

It is true that if the Society has over-estimated the present value of the sum which should necessarily be set aside at the end of the financial year to cover the reversionary bonuses declared, the result is that the Society has in effect an undistributed surplus or a secret internal reserve. In a future year, if the surplus is calculated on what the

Society now states is the more true method of estimating present value of future liabilities, this secret internal reserve created in the 1955 year will inflate the surplus in a future year or future years, and thus the Society will in effect be inflicted with double taxation in so far as this internal reserve is concerned when it is brought into the accounts in future years. This may well be unreasonable from the point of view of the Society, but it seems to me this has resulted from its own acts in ascertaining what it then thought was the true surplus for the 1955 year. It may be that this internal reserve can be treated as already taxed. There are two methods of estimating future liabilities placed before the Court. Both seem to be recognised actuarial methods. The Society adopted one, and in its returns to policyholders and in its declarations of reversionary bonuses for the year ended 31st December 1955 it has maintained this method or basis. I do not think that the Court, in view of the Society's published and certified returns, can now say that the alternative method resulting in lower taxation to the Society must be the one which the Commissioner should adopt. The whole of the facts must be weighed, and I do not think the learned Magistrate, taking the whole matter into consideration, was wrong in the result he adopted and the conclusions which he reached. It seems to me that the allotment of surplus funds by way of reversionary bonus or otherwise was the allocation or allotment of funds as such as the annual accounts and returns of the Society. In my view the Society made an allotment of surplus funds as a fund to provide for reversionary bonuses, and in the light of such fund reversionary bonuses to policyholders were declared in the accounts of the Society, and from such fund such reversionary bonuses will ultimately be paid. If the Society wisely erred in conservatively estimating the amount of reversionary bonuses which it declared, nevertheless the surplus was still applied as an allocation or allotment of a fund by way of reversionary bonuses or otherwise. It was a fund established from the Society's surplus to provide for the declared bonuses. What has been done by the Society as an allocation of its surplus funds in its accounts seems to me to be the vital matter rather than what might have been done if the Society had taken other calculations as to what would be sufficient to provide for the bonuses which it desired to declare. I therefore think the appeal in respect of this part of the case should be dismissed.

PART II

The appellant claims to deduct from its assessable income certain amounts which it claims are "exempt from taxation (whether by virtue of s. 86 of this Act or otherwise)" in accordance with the provisions of s. 149 (2) of the Act.

The deduction claimed comprises three amounts: First, the sum of £14,780.12.0 derived by the appellant as dividends from shares purchased by it in New Zealand companies. This deduction from the otherwise assessable income of the Society has been allowed by the

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Commissioner. Second, the sum of £65,063.6.4 being dividends derived from companies incorporated in Australia and received by the appellant's New Zealand branch in respect of shares held by such branch. Third, all other dividends derived by the appellant from all sources, amounting to £462,086. The last two claims for deduction have been rejected by the Commissioner.

Section 149 of the Act is a special provision regulating the incidence of taxation of every company carrying on in New Zealand the business of life insurance and exempts from ordinary tax in respect of its business of life insurance such a company (subs. 5). It is accepted that the appellant is a life insurance company within the meaning of s. 149.

The profits of the Society calculated in manner provided by s. 149 shall be deemed to be the assessable income of the Society. The profits are calculated by ascertaining the annual allotment of surplus funds by way of reversionary bonuses or otherwise, and deducting therefrom any income derived by the Society in that year, and exempt from taxation (whether by virtue of s. 86 of the Act or otherwise). It must be noted, therefore that each of two conditions must exist before a deduction can be allowed (1) the sum claimed as a deduction must be "income derived by the company in that year" and (2) it must be income of a class or nature exempt from taxation. A primary question for decision is, therefore, what is included in the expression "income derived by the company in that year."

By s. 78 of the Act income tax shall be assessed and levied on the taxable income of the taxpayer. "Taxpayer" means a person chargeable with income tax. In this case there is only one taxpayer "the company" which must mean the entity having its head office in Australia known as "The A.M.P. Society". The liability of the appellant arises from the fact that it is a company carrying on in New Zealand the business of life insurance and the basic figure for the calculation of its assessable income is the surplus funds allotted in any year in respect of policies comprised in the New Zealand business of the company. This recognises the general scheme of incidence of New Zealand taxation as having a territorial application. Ordinarily non-residents are taxable only on income derived from New Zealand (s. 165 (2)). Income derived from any business carried on in New Zealand is deemed to be derived from New Zealand.

Again this is in accordance with general principles of construction. In *In re Adams* 25 N.Z.L.R. 302 C.A. Stout C.J. delivering the judgment of the Court quotes with approval observations of Lord Esher H.R. in *Colquhoun* v. *Heddon* 25 Q.B.D. 129 on the principles of construction of general words in an Act of Parliament which observations seem to be applicable here:

> "It seems to me that, unless Parliament expressly declares otherwise (in which case, even if it should go beyond its rights as regards the comity of nations, the Courts of this country must obey the enactment), the proper construction to be put on general words

" used in an English Act of Parliament is that Parliament was dealing " only with such persons or things as are within the general words " and also within its proper jurisdiction, and that we ought to assume " that Parliament unless it expressly declares otherwise) when it uses " general words is only dealing with persons or things over which it " has properly jurisdiction. It has been argued that that is only so " when Parliament is regulating the person or thing which is men- " tioned in the general words. But it seems to me that our Parliament " ought not to deal in any way, either by regulation or otherwise, " directly or indirectly, with any foreign person or thing which is " outside its jurisdiction, and, unless it does so in express terms so " clear that their meaning is beyond doubt, the Courts ought always " to construe general words as applying only to persons or things " which will answer the description, and which are also within the " jurisdiction of Parliament."

What then is the meaning of the phrase "income derived by the company"? It would seem to me to have the necessary territorial restriction. The company, the A.M.P. Society, a non-resident company, derives certain income in New Zealand. There is a notional scheme in s. 149 (2) as to how that income is to be calculated. The basic figure in that calculation recognises it is limited to the New Zealand business of the company. Likewise it would seem to me there is the same territorial limitation in respect of the deduction, and the real meaning of the phrase regulating the deduction is "any income derived by the company in New Zealand and exempt from taxation" (i.e. New Zealand taxation). This, it seems to me, is a question of fact.

In *San Paulo (Brazilian) Railway Co.* v. *Carter* 1896 A.C. 31 Lord Halsbury says at p. 38:—

"Now, in this case the appellant company is an English company " residing (so far as that abstraction a corporation can reside at all) " in England. It has an office in London, and I am disposed to think " (though it is unnecessary for the purposes of this case to say so) " that its trade, if the word 'trade' is strictly construed, is wholly " carried on in England. It seems to me that, as was said by Cockburn " C.J. in the case of *Sulley* v. *Attorney-General*, 'it is probably a " question of fact where the trade is carried on', and it is probably " true to say that that phrase may be understood in two different " senses. It may mean where the goods in respect of which trading " is carried on are conveyed, made, bought, or sold; or, speaking of " land, where it is cultivated or used for any other purpose of profit. " That makes the locality of the goods or the land which are the " subjects of the trade to be in a certain sense the place where the " trade is carried on, because it is the place where the things cor- " poreally exist, or are dealt with. But there is another sense, in " which the conduct and management, the head and brain of the " trading adventure, are situated in a place different from that in " which the corporeal subjects of trading are to be found. It becomes,

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" therefore, a question of fact, and according to the answer to be " given to the question where is the trade in a strict sense carried " on, will the assessment be. My Lords, it is therefore necessary to " determine upon these principles where this appellant company " carries on its business. It deals, undoubtedly, with land in the " Brazils. In Brazil the payments are received, and in Brazil the pas- " sengers and goods are carried; but the form of trading can make no " difference. If it were a mine, as in the *Cesena Case,* or a jute mill, " equally with a railway, the person who governs the whole com- " mercial adventure, the person who decides what shall be done in " respect of the adventure, what capital shall be invested in the ad- " venture, on what terms the adventure shall be carried on, in short, " the person who, in the strictest sense, makes the profits by his skill " or industry, however distant may be the field of his adventure, is " the person who is trading. That person appears to me, in this case, " to be the appellant company. Every one of the tests I have applied " are applicable to its proceedings. A shipowner, or indeed a ship- " broker, may not have any one of the ships or the charterparties " which he negotiates in England; but by correspondence or by " agency he may have both charterparties and ships, not necessarily " British ships, all over the globe. But if he lives in London, and by " his direction governs the whole of this commercial adventure, could " it be properly said that he is not carrying on his trade in London? " So it appears to me that this appellant company is carrying on the " trade in London, from which it issues its orders, and so governs " and directs the whole commercial adventure that is under its " superintendence."

"To derive" is given a dictionary meaning of "to come from something as its source". The A.M.P. Society is liable in New Zealand for income tax as enacted by s. 149 of the Act because it is engaged in carrying on business in New Zealand and it is deemed to have derived and to derive profits from that business, the New Zealand business of the company. If my view of the territorial incidence in respect of taxable income is correct, such income is taxable because it is notionally deemed to have been derived from a New Zealand source. It would seem to me that the same territorial application should be given to the income or sum permissible as a deduction, namely, that it should be income derived by the company in New Zealand and emanating from a New Zealand source, and that it should be income otherwise exigible to income tax under the New Zealand statute, but exempted from taxation thereby.

Endeavouring to apply thereto the facts of this case, it would seem that the first sum of £14,780 is deductible. It is derived from New Zealand investments. The dividends are payable and are received by the company in New Zealand, and it is in effect part of the New Zealand business of the company, the New Zealand income of a non-resident taxpayer. Therefore it is exempt under the provisions of s. 86 (1) (i) of the Act.

But the second item of £65,063 is in a different category. It represents dividends and bonus issues of shares from investments by the company in shares in the Commonwealth of Australia. It is true that the New Zealand branch of the Company is said to have provided the funds for the purchase of the investments in Australian shares. But the shares are owned by the Society, which is domiciled in Australia. The sources from which the dividends are derived are the Australian companies. The dividends are payable in Australia and can be recovered at law only at the suit of the Society, an Australian entity, in Australian courts. Such dividends are derived by the Society in its corporate capacity, and it would seem to me cannot be said to be derived from its New Zealand business. They are derived from Australia and from the business of the Society as one single entire business.

Under s. 86 (1) (i) of the Act "dividends and other profits derived from shares or other rights of membership in companies are exempt from taxation". "Company" means any body corporate whether incorporated in New Zealand or elsewhere. But Australian dividends retain their Australian source, and are not ordinarily subject to the incidence of New Zealand taxation. They are outside the scope of New Zealand tax law, and are therefore not exempted from taxation by this section. They come within the scope of New Zealand taxation incidence only when they are received by a New Zealand resident and in that case and that case only become exempt. Here, as they are not derived by a New Zealand company and are not the fruit of a business carried on in New Zealand the exemption has no application.

The fact that the A.M.P. Society in Australia remits the dividends received from Australian investments to its New Zealand branch seems to me to have no bearing. It is under no legal obligation so to do and what is done is done purely as a matter of grace or convenience. It is a matter of internal management. There is no segregation of income in the accounts of the Society. The income is there treated as a global sum. It is Australian income of an Australian company.

The case of *Hughes* v. *Bank of New Zealand* (1938) A.C. 366 so strongly relied on by the appellant does not seem to me to assist. There the greater part of the sum claimed as assessable income was received from investments domiciled in England, and specifically exempt from United Kingdom taxation. It was decided by the Court that the exemption applied. The main contest turned on the converse question as to whether the London branch of the Bank could deduct the interest payable by it on moneys borrowed for the purpose of its investments, and it was held that this truly pertained to the London business of the bank.

I would therefore hold that the sum of £65,063 is not deductible and *a fortiori* the same reasoning would apply to the deduction of £462,086.

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I agree that the appeal should be dismissed, with costs to the respondent as indicated by the Chief Justice.

Solicitors for appellant: Chapman, Tripp & Co., Wellington.

Solicitors for respondent: Crown Solicitor, Wellington.

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JUDGMENT OF McCARTHY J.

I am in agreement with the answers given in the judgments of the other members of the Court. As, however, I wish to add certain observations of my own, it might be helpful if I introduce them with a short history of the background of the case stated.

The appellant, the Australian Mutual Provident Society, is a mutual insurance society incorporated in New South Wales and having its registered office in Sydney. Its business comprises ordinary life insurance and industrial insurance, and it carries on that business in Australia, New Zealand and the United Kingdom, except that industrial insurance is not part of its business in the United Kingdom. Being a mutual insurance society it has no shareholders; but it makes an annual allotment of surplus funds to such of its policyholders as are, according to its rules, entitled to share in that allotment. To arrive at these surplus funds in any year, it values its assets and then having made out of them sufficient provision for taxation, overdraft, outstanding accounts and the like, it arrives at what is known as "the insurance fund". This fund constitutes the backing for the society's insurance contracts. From this insurance fund it deducts, in turn, (1) the official reserves which are standing on its books, and (2) a figure representing its assessment of its total net liability under all its policies. In principle, the sum of its liabilities under its policies is arrived at by calculating an amount which on the basis of assumed future rates of mortality and interest and after allowing for the receipt of future premiums as they fall due, will enable the society to honour its obligations under all its policy contracts from time to time. The amount finally remaining after the deduction of the official reserves and this calculated net liability on insurance policies is called "the surplus funds" and is available for disposal in accordance with the society's rules and any relevant legislation. The practice followed by the society for many years is to absorb at each annual date the bulk of the surplus so arrived at by the distribution of reversionary bonuses to participating policyholders in the manner which I will later describe. This practice is followed by most, if not all, other mutual insurance offices operating in New Zealand.

When, then, at the balance date in each year the surplus funds are ascertained, the society decides exactly what part thereof will be absorbed in the distribution of reversionary bonuses to participating policyholders, and what the face value of those bonuses will be. It next, through its directorate, issues an annual report in which it announces the directors' decision on these matters. To this report it attaches a series of accounts embodying statements of income, of surplus funds, and of assets and liabilities, and finally a certificate by its Chief Actuary giving the bases of the method upon which the valuation of the liabilities of the society has been made, and certifying to the surplus revealed in the accounts accompanying the annual report.

For its financial year ended December 31, 1955, the society followed this procedure. In estimating its net liability under its policies it made, what has been called in this case, "a net premium valuation". It is unnecessary for me to describe in detail the arithmetical processes which are involved in this method of valuation. It is sufficient, I think, to say that it requires the employment of an artificially low interest rate and an assumption of the receipt of net premiums, that is premiums which would be just sufficient to provide the sum insured (without bonuses) if the interest rate earned during the whole existence of the policies concerned were the artificial interest rate only. This method results, according to the evidence called by the society, in an excessive calculation of the actual cost of providing the bonuses and in the inclusion in the figures finally arrived at of an additional amount having something of the character of an internal reserve against contingencies and future payments. This particular method of valuation had been adopted by the society in arriving at its figures for its published accounts over a period of many years prior to 1955. For the year with which we are concerned, namely that ended December 31, 1955, the society's insurance fund (assets less provision for taxation, overdraft, outstanding accounts, etc.) amounted to £312,694,241. It valued its net liabilities under its policies at £296,163,845, and after allowing for that and its reserve accounts of £5,500,000, it had the following surplus remaining:

Ordinary Department	£8,768,194
Industrial Department	£2,262,202
	£10,030,396

Its directors then decided to absorb £8,738,779 (£7,496,295 Ordinary Department and £1,242,484 Industrial Department) of this surplus in the distribution of reversionary bonuses. Having made certain computations akin to those employed in the net premium valuation of its liabilities, it decided that it could issue against this sum reversionary bonuses of a total face value of £14,524,000 (Ordinary Department £12,996,000 and Industrial Department £1,528,000). Those were issued.

Companies, which word for the purposes of income tax in this country is extended by the Statute sufficiently to embrace incorporated mutual societies carrying on in New Zealand the business of life insurance, are taxed in accordance with the provisions of s. 149 of the Land and Income Tax Act 1954, which, in ss. 3 and 4, declares (1) that such companies shall be deemed to have derived and to derive profits in accordance with the provisions of that section and (2) that in the case of any such company which makes to its policyholders an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of s. 86 of the Land

and Income Tax Act 1954 or otherwise howsoever) are to be deemed to be profits derived by the company in that year. Obviously this section applies to the appellant society insofar as its business in New Zealand is concerned.

For the purpose of returning its income in accordance with the provisions of s. 149, it had been the practice for the Chief Actuary of the society each year to submit to the Commissioner along with its return of income a certificate stating the surplus funds of the society allotted to its policyholders for the year concerned in respect of policies comprised in the New Zealand business of the society. On June 6, 1956, he gave such a certificate in which he stated (a) that payments totalling £15,591 had been made in respect of policies terminated in 1955 and (b) that reversionary bonuses of a total face value of £2,929,285 had been allocated to New Zealand policies in force at December 31, 1955. The certificate went on to say "The cash value of the reversionary bonuses of face value £2,929,285 according to the respective bases employed by the society in valuing its policies was £1,736,492 at December 31, 1955." The return of income accompanying this certificate was dated July 18, 1956, and related to the tax year ended March 31, 1956, but the Department accepted figures as at the society's balance date of December 31, for the purposes of assessment. The return declared the society's income as follows:

Surplus funds allocated in respect of policies comprised in its New Zealand business	£1,752,083	0	0
Less dividends received	83,844	15	11
Assessable income	£1,668,238	4	1

Subsequently, on January 25, 1957, the society submitted a new certificate of the Chief Actuary and an amended return of income. This second certificate declared the cash value of the reversionary bonuses which had, as previously stated, a face value of £2,929,285, to be £1,393,619 as at December 31, 1955. This figure was said to be ascertained by taking the A 1924/29 ultimate Table of Mortality and an interest rate of $3\frac{3}{4}\%$ per annum. It will be observed that it is less by some £342,873 than the corresponding figure contained in the certificate given earlier. It will also be observed that in arriving at this lower figure the Actuary used an interest rate of $3\frac{3}{4}\%$. This rate exceeded the rates previously employed by the society in valuing its liabilities under its policies and declared bonuses. According to the Actuary's explanation, this new rate of $3\frac{3}{4}\%$ was adopted because it gave a more correct estimate of the cash value of the bonuses at the date of their issue in December 1955, and eliminated that additional amount which I have referred to as being in the nature of a reserve and which was included in the valuation of the total bonus liability made on the net premium basis. The society was led, it would seem, to take this step as a result of hearing that some other company was adopt-

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continued.

ing this particular method of arriving at the cash value of reversionary bonuses, and it sought to do likewise. The Commissioner, however, refused to accept the figures supplied in the amended return and assessed the society for income tax on the basis of the earlier return of July 1956. The Commissioner later explained that there was no partiality in his treatment of the other company which the society had in mind, for it had used a common interest rate and arithmetical process in calculating the value of its total liabilities under its policies and in ascertaining its surplus funds; whereas the appellant society, on the other hand, had not done so but had used the net premium method with its appropriate interest rates when estimating its surplus funds and had then sought to apply a different interest rate in its valuation of bonuses issued in respect of the New Zealand policies.

The appellant society objected to the assessment and the present case having been stated the learned Magistrate in the Court below upheld the assessment. An appeal is now brought to this Court on fact and law pursuant to s. 35. As already mentioned, it is by way of case stated. The burden of proof lies on the appellant (s. 32), a matter of some importance when questions of fact arise, as they do here.

The first question posed by the case is whether the Commissioner acted correctly in treating the amount previously mentioned of £1,752,083 (the amount included in the first return of income and in the Actuary's certificate of June 26, 1956) as being the surplus funds allotted for the year ended December 31, 1955, in respect of the policies comprised in the New Zealand business of the appellant. In the lower Court and in this Court considerable time was devoted to a comparison of the actuarial methods employed by the Actuary in arriving at the figures in his two certificates. It is the appellant's case that the figure first certified, namely £1,752,083, was not the true cash value, at the date of the society's accounts, of the reversionary bonuses issued in respect of the New Zealand policies, because that figure included within it the additional provision or reserve to which I have already referred, and that the later calculation of the Actuary resulted in a more correct estimate of the cash value. It was contended, inasmuch as the society does not in fact set aside in any special account in its books the amounts allocated to bonuses in any particular year but instead leaves them in the global figures of the insurance fund, that any such reserve to the extent that it is not required to meet bonuses declared in that year but remains in the insurance fund, will be taken out again in later years as part of the then surplus funds and at that date will again be subjected to taxation. Such a reserve is not, it was urged, alloted to policyholders at the time of the bonus declaration because the policyholders do not then receive it in the shape of a bonus or otherwise. As the appellant would have it, it is the cash value of the bonuses when declared which constitutes the true allotment to policyholders for the year in respect of which the bonuses are declared.

With respect I consider that the appellant's case has been dominated excessively by its enquiry into the cash value of the bonuses declared.

For myself, I consider that not to be the matter with which the Commissioner was concerned. His task was to assess the society in respect of the actual allotment of surplus funds to policyholders by way of reversionary bonuses or otherwise made in respect of the New Zealand policies for the year in question. It is the amount of the allotment of surplus funds to the New Zealand policies which is to be taxed and, it seems to me, that that is not necessarily the same figure as the cash value of the total of the reversionary bonuses issued in respect of the same policies. The Commissioner was not concerned to enquire into the most efficient method of ascertaining the true cash value of bonuses declared at any particular date. It is apparent, I consider, that there could be more than one approach to that actuarial problem, and I have no doubt that as years go by various other methods of calculation or computation will be devised. In my view, the Commissioner's proper enquiry necessarily involved two steps. The first of these was to ascertain, as a question of fact, what for the year in question was the sum allotted to all the society's policyholders out of the surplus funds by way of reversionary bonuses or otherwise. As I see the facts of this case and bearing in mind the onus which lies upon the appellant, it cannot be said that it has been shown that the figure adopted by the Commissioner was incorrect. This puts the matter at its lowest. I would, if necessary, put it higher. The published accounts of the society for the year ended December 31, 1955, as issued to its policyholders are before us as also is the return made to the tax authorities of the Commonwealth of Australia pursuant to that Commonwealth's legislation. These documents have been discussed in some detail in the judgment of the Chief Justice, and as I am in agreement with his comments in relation to them, it is unnecessary for me to say more than that they alone are sufficient to satisfy me, as the Commissioner was satisfied, that the sum allotted in terms of the section was the previously mentioned figure of £8,738,779. The power to allot surplus funds was a power which, it was accepted in argument, lay in the directorate of the society. The acts of that directorate should be gathered from the official records. It is true, as the appellant stresses and I have already noted, that there was no allotment in the sense that funds were set aside physically or appropriated in special accounts appearing in its books. There was, at most, a notional allotment. What happened, in fact, was that the society, through its directorate and in its accounts, declared a certain amount to be surplus for a particular year and directed that out of that surplus a figure should be devoted to reversionary bonuses. However, I have no doubt that the legislature in enacting s. 149 and speaking of "an annual allotment of surplus funds" had in mind the taking by the directorate or management of such a society of the very steps which the directorate of the appellant society took in this case. No other step could reasonably be taken to be the "allotment" referred to in the section. In my view, the surplus allotted by the appellant company for the year in question was £8,738,779.

What then was the share of that sum allotted for that year to the

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continued.

New Zealand policies? This was the second step in the Commissioner's enquiry. Again that is substantially, if not wholly, a question of fact and again I consider that the figure taken by the Commissioner cannot be disturbed. He took the figure certified by the Chief Actuary in July 1956. It was the same proportion of £8,738,779 as the face value of the reversionary bonuses granted in respect of the New Zealand policies bore to the face value of the total of such bonuses granted by the society. That that figure, £1,736,492, may have included an amount which can now be shown to be in the nature of a reserve is, in my view, immaterial, for, as I see it, all of the sum allotted, whether or not part of it was in truth in the nature of a reserve, is caught by the words "by way of reversionary bonuses or otherwise". It was a sum allotted to policyholders for that year and it seems not to matter that that sum may have been more than was required to meet the immediate cash value of the total bonuses. Nor is it of consequence, in my view, that the method adopted by the company in assessing its liabilities and in deciding upon its surplus funds may result in some double taxation in the future. The Commissioner left it to the company to select the method by which it arrived at its surplus and declared its bonuses. It is of interest, in this connection, that since the particular year under review, the society has abandoned the net premium method of calculating its liabilities under participating policies on the New Zealand register and, instead, employs what it calls the "bonus reserve" method, a method which employs a higher interest rate. This course has received the approval of the Commissioner. No doubt the society could have taken this step at an earlier date if it had sought to do so. As I see it, it cannot be said that the Commissioner acted incorrectly in treating the said amount of £1,725,083 as being surplus funds allotted to the New Zealand policies and, therefore, the first question must be answered "Yes".

I should add before I leave this part of the case that I have adopted, and will adopt in considering the next question, the course taken in the preparation of the case stated of assuming, in the figures which I give, that an Australian pound is equal in value to a New Zealand pound.

The second question asked in the case stated is drawn to test the appellant's claim to deduct certain classes of income from the amount of the Commissioner's assessment of the society's income for the year ended December 31, 1955. It claims to do this pursuant to the words in s. 149 (2), "after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of s. 86 of this Act or otherwise howsoever)". Those classes of income, three in number, have been described in detail in the judgment of the Chief Justice, so I can refrain from doing so. Here again, I am of the opinion that the Commissioner's ruling against the appellant must stand.

I consider it important when interpreting and applying s. 149 (2) to bear in mind that the word "company" in the phrase which I have just quoted refers back to the company "engaged in carrying on in New

Zealand the business of life insurance". See subs. (1). In other words, in this particular case it refers to the Australian Mutual Provident Society, a company incorporated in Australia. It was suggested at one stage of the argument that the New Zealand branch of the society might be considered as being in the nature of a separate entity but I cannot accept that. It follows then that the deductions which can be claimed pursuant to the words quoted, include so much of the income derived by the society as a whole which can be said to be exempt from taxation within the context of that section and not merely so much of that income as in fact comes one way or another into the accounting of the New Zealand branch and is so exempted.

The combination of the words "derived by" may offend, but it is not unusual. The verb "to derive" normally means "to get" or "to obtain" and implies that the source is present in the thoughts of the person speaking. The preposition which more correctly accompanies "derive" is "from". However, in the context of this subsection the word cannot mean anything more than "received". Indeed, that seems to be the sense in which it is used in many places in the Act in association with the same preposition; see for example s. 165.

I come next to the words "exempt from taxation (whether by virtue of s. 86 of this Act or otherwise howsoever)". I agree with the view expressed by McGregor J. that generally speaking New Zealand taxation legislation is territorial in application. When a New Zealand taxing statute speaks, it speaks in relation to persons and income which fall within its operation, unless the context shows it to be speaking otherwise. Therefore, in my view the word "exempt" should *prima facie* be read as applying to income which is, first of all, subjected to taxation by the general provisions of the law of New Zealand and is later exempted by that same law whether by s. 86 of the 1954 Act or by other statutory provision. But is there anything in the context of this particular section which calls for a different interpretation? In my view, there is not. Indeed, as my brother McGregor has said in his judgment all the indicia are that the Legislature was speaking territorially when it used the particular words. That being so, the income which can be claimed as a deduction must first be caught by and later exempted by New Zealand legislation. To apply to the word "exempted" the meaning contended for by Sir Wilfrid, namely exempted either in New Zealand or in the country from which the income derives, would create consequences which could never have been intended by the Legislature, as the Chief Justice has demonstrated in his judgment. Those consequences emphasise the necessity to apply the restricted meaning which I have given the word.

It is necessary then to enquire what portions of the income of the society, a non-resident company, is subjected to taxation by our statute. To answer that enquiry one must turn first to s. 165. That is a declaratory section which, I speak broadly, declares that subject to any special exemptions provided for in the Act, the only classes of income which are subjected to New Zealand income tax are (a) income derived (which

word I read as "received") by a resident in New Zealand and (b) income derived from New Zealand whether the person deriving (receiving) is resident in New Zealand or elsewhere. The appellant society being resident in Australia and there being, as I have said, no justification for treating the New Zealand branch as a separate entity distinct from the society as a whole, the only income of this non-resident society which can be subject to New Zealand income tax is income derived from New Zealand. To determine next what income must for the purposes of the legislation be considered as derived from New Zealand, one turns to s. 167 which, in a number of paragraphs, enumerates the classes of income which fall within those words. If those paragraphs are applied to the society's income, it will be apparent, in the first place, that the profit on the society's operations in this country come within the grasp of paragraph (a), "income derived from any business carried on in New Zealand". The quantum of those profits is fixed, as already has been discussed, in accordance with the provisions of s. 149. Then, in the second place, there is income derived from investments in shares in or debentures issued by a New Zealand company or by a local or public authority in New Zealand and income from debentures or other securities issued by the Government in New Zealand. This is provided for in paras. (e) and (f). There may be other income which is also caught, but, if there is, nothing turns on it in this case. On the other hand, I am of the view that dividends or other income from investments of the society in Australia do not fall within the section. As I see it, such income cannot be deemed to be income derived from New Zealand, unless it can in some way be said to be "income derived from any business in New Zealand", para. (a). It is upon this paragraph that Sir Wilfrid particularly relies in relation to shares in Australian companies purchased with funds held by the New Zealand branch of the society. He contends that these shares having been purchased by funds in the hands of the New Zealand branch of the appellant society in the exercise of the society's normal powers of investment, the income arising on those shares formed part of the income of the business of the society carried on in New Zealand. Whether or not, in any case, any particular income is income derived from a business carried on in New Zealand is, I believe, a question of fact. Now, what are the facts here? The shares were purchased with moneys which legally belonged to an Australian organisation. That organisation, an Australian company with its head office in the Commonwealth, became registered as the owner of the shares. At all times the ownership of those shares was in the company resident in Australia. That company was the only person entitled to receive the income of the shares. In fact, it did receive it. The dividends were paid to the society in Australia. To my mind, the facts that the shares were bought with funds held, at the time of purchase, in New Zealand and that as a matter of internal accounting the head office of the society credited the New Zealand branch or forwarded to that branch the income arising from time to time on the shares does not outweigh the primary facts which are that

these shares were purchased out of funds belonging in law to an Australian society, that the society became the registered holder of those shares, and that the dividends were paid to the society in Australia from companies which are resident in Australia. It was against these facts that the Commissioner ruled, and the Magistrate later held, that the income from the Australian shares was not "derived from a business carried on in New Zealand". I think that that finding must be upheld. I emphasise that I am limiting my observations to the facts of this case. It may possibly be that there are special cases where the nature of the business carried on in New Zealand by a branch of a non-resident company and the manner in which that business is conducted render income received from foreign shares taxable as income derived by the parent organisation in New Zealand as part of the income of that company derived from New Zealand; but that certainly is not shown to be the position here.

So much, then, for the income of the society which is made taxable by our statute. How much of that is exempted by that statute? Section 86 details the classes of income which are exempt from income tax. Of these various classes it is necessary only to refer to:

(i) Dividends and other profits derived from shares or other rights of membership in companies, other than companies which are exempt from income tax.

That provision, when it is applied to the assessment of a New Zealand resident operates to exempt dividends, whether the paying company be incorporated in New Zealand or elsewhere. That is so, because the whole of that taxpayer's income falls within the jurisdiction of the statute. But when it is speaking in relation to income derived from New Zealand by a person not resident in this country, the paragraph can have application only to dividends from New Zealand companies, unless perhaps, as I have already mentioned, it can be shown that the receipt of the dividends from non-resident companies was part of the income derived by the company from a business carried on in New Zealand.

Applying then these general observations to the particular questions in this case, I deal with the three classes of income sought to be deducted by the appellant as follows:

(a) **£14,780. Dividends received by the New Zealand branch of the society from companies incorporated in New Zealand.**

These were allowed by the Commissioner and are, I think, clearly deductible, as also would be dividends on similar shares received by the head office, or, for that matter, any branch of the society.

(b) **£65,863. Dividends received by the New Zealand Branch from companies incorporated in Australia.**

I have already discussed those dividends and indicated why I consider that they cannot be deducted.

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No. 7

Reasons for Judgment McCarthy J. 21 February 1961

continued.

(c) **£462,068. Dividends from companies incorporated in Australia and the United Kingdom received by the Australian and United Kingdom branches.**

This income, in my view, was neither taxable nor exempted by our statute and so for the reasons I have given is not deductible.

I have not yet discussed *Hughes* v. *Bank of New Zealand* [1938] A.C. 366, the case strongly relied upon by Sir Wilfrid, particularly in relation to class (b) above. I confess that I have difficulty in understanding the principles applied in that decision. No doubt that is due to my lack of knowledge of English income tax law and practice. There is, admittedly, some similarity between the words of the United Kingdom schedule there under consideration and s. 167 (a) of our statute; but on the other hand it seems reasonably clear that what was really in issue in that case was whether certain special exemptions and deductions could be claimed. I cannot read it other than as a decision on the wording of the particular statutes and rules there under consideration and I see nothing in it which compels me to resile from the conclusions at which I have arrived independently of it.

I am for dismissing the appeal.

Solicitors for the Appellant: Chapman Tripp and Co., Wellington.

Solicitors for the Respondent: The Crown Law Office, Wellington.

No. 8

In the Supreme Court of New Zealand

No. 8

Formal Judgment 21 February 1961

FORMAL JUDGMENT

Before the Right Honourable the Chief Justice, the Honourable Mr. Justice McGregor, and the Honourable Mr. Justice McCarthy.

Tuesday the 21st day of February 1961.

THIS APPEAL coming on for hearing on 10th, 11th and 12th days of October 1960 UPON HEARING, Sir Wilfred Sim Q.C. and Mr. Stone of Counsel for the Appellant and Mr. Wild Q.C. and Mr. Winkel of Counsel for the Respondent IT IS ADJUDGED that the Appeal herein be and the same is hereby dismissed AND IT IS ORDERED that the Appellant do pay to the Respondent the sum of Two hundred and ten pounds.

By the Court

E. A. GOULD,

Deputy Registrar

No. 9

In the Supreme Court of New Zealand

No. 9

Order granting Final Leave to Appeal 31 May 1961

ORDER GRANTING APPELLANT FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Before the Right Honourable the Chief Justice, the Honourable Mr. Justice McGregor, and the Honourable Mr. Justice McCarthy.

Wednesday the 31st day of May 1961.

UPON READING the Notice of Motion filed herein for an Order granting Final Leave to the Appellant to Appeal to Her Majesty in Council and UPON READING the Affidavit of Richard John Murdoch Shaw filed in support thereof AND UPON HEARING Mr Morrison of Counsel for the Appellant and Mr Cornford of Counsel for the Respondent, This Court DOTH ORDER that the Appellant do have Final Leave to Appeal to Her Majesty in Council from the judgment of this Court delivered herein at Wellington on the 21st day of February 1961.

By the Court

E. A. GOULD,

Deputy Registrar

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

PART II

EXHIBIT A

FILE OF LETTERS BETWEEN APPELLANT AND RESPONDENT

Taxes Division,
Inland Revenue Department,
Wellington.
18th April, 1956.

The Manager for New Zealand,
Australian Mutual Provident Society,
P.O. Box 1290,
WELLINGTON.

Dear Sir,

Exempt Income

Your letters—13 Jan. and 29.3.56

In terms of Section 149 (2) of the Land and Income Tax Act, 1954 the taxable income of the Society is determined as "the residue of surplus funds .....allotted..... after deducting therefrom any income derived by the company in that year, and exempt from taxation (whether by virtue of Section 86 of the Act, or otherwise howsoever)."

It is considered that the words "any income derived by the company in that year and exempt from taxation....." refer to any income which is actually derived by a company during a particular year, and is exempt from taxation in New Zealand by the provisions of a New Zealand statute. Whilst the dividends derived by the Society in respect of its London and Australian business are exempt from New Zealand taxation such exemption arises not by virtue of New Zealand legislation, but because the income is not within the jurisdiction of the New Zealand legislature.

In view of the foregoing, the Society's objection to the assessment dated 16 December, 1955 is disallowed.

Yours faithfully,
(Sgd.) J. E. CURRAN
District Commissioner of Taxes.

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

A.M.P. Society,
P.O. Box 1290,
Wellington.
29th August 1956.

WITHOUT PREJUDICE.

The Commissioner of Taxes,
Department of Inland Revenue,
WELLINGTON.

Dear Sir,

Re : **EXEMPT INCOME.**

I thank you for your letter of the 18th April 1956 advising that the objection taken by the Society to the assessment of income derived during the accounting period ended 31st December 1954 has been disallowed, and explaining your interpretation of the relevant provisions of the Land and Income Tax Act, 1954.

In order to protect the rights of the Society, I enclose notice of appeal. Before any action is taken on this appeal, however, I should be glad if you would kindly give this matter your further consideration in the light of the following representations.

If the Society were a New Zealand resident, e.g. if its Head Office were in New Zealand, it would presumably be entitled to the deduction claimed and therefore it seems that the result of the interpretation in your letter is that Section 149 is to be applied differently in the case of a resident and a non-resident, although on the face of it, the section is applicable to residents and non-residents alike.

At the 31st December 1954 there was an estimated deficiency in the New Zealand funds of the Society amounting to £NZ.4,127,650. The Society carries on business in Australia, the United Kingdom and New Zealand and there was also a deficiency in the United Kingdom funds.

On an overall basis, there was no deficiency and the bonuses distributed on New Zealand policies were based on the overall results. The New Zealand deficiency was clearly represented by funds invested in Australia and Australian Income Tax was assessed and paid on the income which averaged £3.19.4 per centum on the mean assets in Australia during the year concerned. It is calculated therefore that on funds of £NZ.4,127,650, the income earned and taxed in Australia amounted to £NZ.163,730.

Furthermore the Society's contingency funds and surplus carried forward amounting to £A8,018,153 (at 31st December 1954) are located

In the Magistrate's Court

Exhibit A File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

at Head Office but are proportionately applicable to New Zealand. The New Zealand proportion would be £A1,396,145 equal to £NZ1,116,916 and on this amount the income applicable to New Zealand in respect of the said funds amounted to £NZ44,308 which income has been assessed for Australian Income Tax and the tax duly paid.

In your letter you say that dividends derived by the Society in respect of its London and Australian business are not exempt by reason of New Zealand legislation but because the income is not within the jurisdiction of the New Zealand legislature. Further that only income which is exempted by New Zealand legislation may be deducted under Section 149 (2) thereby giving the words "exempt from taxation" in Section 149 (2) a restricted or technical meaning.

I suggest that the word "exempt" merely means "free" or "not liable to", and it does not seem to have a technical meaning unless the law concerned so requires.

Section 86 of the Land and Income Tax Act 1954 deals with exemptions as such and in paragraph (x) adopts express exemptions provided in other (New Zealand) Acts, but the provision in Section 149 (2) it is submitted with respect is not intended to be interpreted in a technical sense because of the expression "or otherwise howsoever" which follows the words "exempt from taxation (whether by virtue of Section 86 or . . .)". As far as "technical" exemptions are concerned Section 86 (with paragraph (x) thereof) seems to be exhaustive, and on the view put forward in your letter the words "or otherwise howsoever" could have no meaning.

There is of course one provision of the Land and Income Tax Act, 1954 itself which grants "exemption" in the ordinary sense of the word. Thus the Act, which is New Zealand legislation, by Sub-Section (3) of Section 165 provides that certain income shall not be assessable to income tax, that is, that it shall be free from or exempt from income tax, and this seems to be so notwithstanding that this provision may be a recognition of the limitation of the jurisdiction of the New Zealand legislature.

The statement in your letter relating to the jurisdiction of the New Zealand legislature may be a generalisation but nevertheless it should be considered in relation to both Sections 149 and 165 (3) of the Land and Income Tax Act, 1954.

Section 149 provides, inter alia, as follows:

(a) Subsection (1): Notwithstanding anything to the contrary in this Act, every company engaged in carrying on in New Zealand the business of life insurance shall for the purposes of this Act be deemed to have derived and to derive profits from that business in accordance with the following provisions of this section, and all such

profits shall be deemed accordingly to be assessable income of the company.

(b) Subsection (2): In the case of any such company which makes to its policyholders, or to any class or classes of its policyholders, an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted for any year in respect of policies comprised in the New Zealand business of the company, after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of section eighty-six of this Act or otherwise howsoever), shall be deemed to be profits derived by the company in that year.

(c) Subsection (5): From the assessable income of any company for any year computed as hereinbefore in this section provided there shall be deducted all special exemptions to which the company may be entitled under this Act, and the residue shall be the taxable income of the company for that year. No company to which this section applies shall, in respect of its business of life insurance, be assessable for income tax otherwise than as provided in this section.

(d) Subsection (7): No company which carries on in New Zealand the business of life insurance shall be entitled to any exemption from income tax under paragraph (k) of subsection one of section eighty-six of this Act in respect of interest payable out of New Zealand.

Annual bonuses allotted by the A.M.P. Society in respect of policies comprised in its New Zealand business are allotted out of its overall surplus and not out of New Zealand funds. At the 31st December 1954, the latter funds were deficient and do not disclose a surplus. Bonuses cannot be allotted out of a deficiency, and, on the facts, were allotted out of Australian funds, and surplus.

As the bonuses are not allotted out of New Zealand funds, Section 149 apparently in this case is being read as applying to income derived outside New Zealand by a non-resident.

Subsection (3) of Section 165 provides:

Subject to the provisions of this Act, no income which is neither derived from New Zealand nor derived by a person then resident in New Zealand shall be assessable for income tax.

Accepting your statement as to the power of the New Zealand legislature, subsection (3) above is redundant, and in any event the underlined words "Subject to the provisions of this Act", cannot be applied to cut down the rest of Subsection (3) otherwise they are invalid.

Similarly Section 149 would be invalid to the extent to which it is

In the Magistrate's Court

Exhibit A File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

applied to include in the assessable income, income or profits derived out of New Zealand by a non-resident.

By subsection (1) of Section 149 profits are "deemed" to be derived in accordance with the provisions of the section, and further such (deemed) profits are "deemed" to be assessable income.

If the New Zealand legislature has no jurisdiction to Tax income of a non-resident derived out of New Zealand then a provision which "deems" some of that income to be assessable income in New Zealand must also be beyond the power of the New Zealand legislature otherwise there could be no limit, such as that mentioned herein, to the jurisdiction of the New Zealand legislature. Likewise where income of a non-resident is in fact derived out of New Zealand, the same reasoning must apply to any provision, e.g. such as Section 167, which "deems" such income to be derived in New Zealand.

As previously explained there is a deficiency in the New Zealand funds of the Society and a bonus cannot be allotted out of a deficiency. Therefore, it appears that Section 149 is being applied to the Society to an extent which is invalid.

If, however, section 149 which applies to residents and non-residents alike is being validly applied to include as assessable income bonuses allotted out of the Australian surplus funds of the Society, Australian dividends of the Society which are included in the Australian surplus are included in the assessable income and should therefore be exempt under Section 86 (i), and deducted under Section 149 (2).

As there is no surplus on the New Zealand business of the Society, there should not on an equitable basis be any New Zealand income tax assessment. The Society is not seeking to attain this result and irrespective of income tax consideration is endeavouring to eliminate the New Zealand deficiency.

Without prejudice, the Society suggests that a more equitable assessment would be arrived at, if the amounts of £NZ163,730 and £NZ44,308 total £NZ208,038 previously mentioned and explained herein were deducted from the assessment objected to, and if the assessments for the four preceding years were adjusted on similar principles but in accordance with the facts and figures relating to each year. Formal application is made for such adjustments.

Yours faithfully,

(Sgd.) O. L. BENNETT

ACTING MANAGER FOR N.Z.

A.M.P. Society,
P.O. Box 1290,
Wellington.
29th August 1956.

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

The Commissioner of Taxes,
Department of Inland Revenue,
WELLINGTON.

Dear Sir,

I refer to the letter from the District Commissioner of Taxes dated 18th April, 1956 advising that the objection to the Society's Assessment dated 16th December 1955 (accounting period ended 31st December 1954) has been disallowed.

As the Society is not satisfied with this decision I have been instructed to require that the objection be heard and determined by a Stipendiary Magistrate.

Yours faithfully,
(Sgd.) O. L. BENNETT
ACTING MANAGER FOR N.Z.

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

Taxes Division,
Inland Revenue Department,
WELLINGTON. C.3.
6 November, 1956.

The Manager for New Zealand,
Australian Mutual Provident Society,
P.O. Box 1290,
WELLINGTON.

Dear Sir,

Exempt Income.

I have your letter of 29 August 1956 asking for the objection to the assessment of 16 December 1955 to be heard and determined by a Stipendiary Magistrate and also your further letter of the same date containing representations regarding exempt income.

I have given careful consideration to the letter but I am not able to depart from the view already communicated to you that the income concerned must be exempted by the provisions of a N.Z. Statute. In this regard I do not agree that section 165 (3) is an exempting provision. Income which is "not liable to tax" does not answer the description of income which is "exempt from tax".

The N.Z. legislature can grant an exemption from taxation in respect only of income which is within its jurisdiction and in the case of a non-resident that income is restricted to income derived from New Zealand. The overseas dividends of a non-resident are not income derived from New Zealand and consequently cannot come within the scope of a statutory exemption in New Zealand.

Section 149 does not tax income (as such) whether derived by the Society from New Zealand or elsewhere nor is the section concerned with actual profits or deficiencies. What the section provides is an artificial basis for taxing life insurance organisations carrying on life insurance business in New Zealand. Once the connection with New Zealand is found to exist, it is for the Legislature to decide the mode of taxation.

The deduction permissible under section 149 (2) in respect of dividends is restricted to dividends derived by the Society from New Zealand but it is noted that in the lists forwarded of dividends received by the New Zealand Branch, there appears to be dividends derived out of New Zealand. Any such dividends cannot be included in the amount of the deduction. On the other hand, the Society as a single entity, and not the New Zealand Branch, is subject to tax in New Zealand in respect of income derived from New Zealand. The Society is entitled to

include in the amount of the deduction, any dividends derived from New Zealand by any part of its organisation whether in New Zealand or elsewhere. Kindly forward a list of dividends derived from New Zealand for each of the Society's years that ended on 31 December 1951, 1952, 1953, 1954 and 1955.

I have considered the alternative method of assessment submitted by you but such an assessment is not authorised by the Act. You will appreciate that it is the function of this Department to administer the taxation laws as they are enacted and it is not within my power to agree to any unauthorised method of assessment.

It seems likely that some, at least, of the assessments which have been made will require to be amended and after this is known I shall be glad to know if you desire to proceed with the hearing before a Magistrate. In the meantime, the preparation of the case stated is being deferred.

Yours faithfully,

(Sgd.) J. E. CURRAN

District Commissioner of Taxes.

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

A.M.P. Society,
P.O. Box 1290,
Wellington.
25th January 1957.

The District Commissioner of Taxes,
Taxes Division,
Inland Revenue Department,
WELLINGTON.

Dear Sir,

NEW ZEALAND INCOME TAX

The M.L.C. Assurance Company has informed the Society that it has been assessed for New Zealand Income Tax for the year ended 31st December 1955 (i.e. Taxation Year ended 31st March 1956) on the basis of a valuation of the Reversionary Bonuses distributed by it, ascertained by using the A1924-29 Ult. Mortality Table and $3\frac{3}{4}\%$ Interest.

This basis of valuation is not that used by the M.L.C. for determining its policy liabilities. It is, however, the basis used by the New Zealand Government Life Office for its valuation of policies at 31st December 1955.

This Society now wishes to amend its return for Taxation for the year ended 31st March 1956, by using the same basis of valuation of Reversionary Bonuses as these other Offices.

Accordingly I enclose an amended return and Certificate from the Chief Actuary on the A1924-29 Ult. $3\frac{3}{4}\%$ basis.

Yours faithfully,
(Sgd.) H. M. COLLIE
MANAGER FOR N.Z.

In the Magistrate's Court

Exhibit A
File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

Taxes Division,
Inland Revenue Department,
WELLINGTON.
5 April, 1957.

The Manager for New Zealand,
Australian Mutual Provident Society,
P.O. Box 1290,
WELLINGTON.

Dear Sir,

YOUR LETTERS OF 25 JANUARY 1957 AND 20 MARCH 1957

I acknowledge receipt of your above letters together with an amended return of income and actuary's certificate for the year ended 31 December 1955, and a formal notice of objection to the 1956 assessment dated 28 February 1957.

My Head Office has considered your application for the issue of an amended assessment based upon the above return and certificate. I have been directed to advise that, as the legislation does not prescribe the basis upon which the amount of the surplus funds allotted shall be determined, and moreover as the amount is necessarily factual, it is necessary to ascertain the amount from the available evidence. It appears that the only sources of evidence are the books and records of the Society wherein the surplus funds have been arrived at by an actuarial calculation using rates of interest of 2%, $2\frac{1}{2}$% and $2\frac{3}{4}$%. Your application has accordingly been declined.

YOUR LETTERS OF 12 MARCH 1957 AND 26 MARCH 1957

These letters, enclosing corrected lists of dividends and formal notices of objection, are also acknowledged.

It will be necessary to issue amended assessments for each of the years ended 31 March 1952 to 1956 inclusive. However, before doing so I shall be pleased if you will advise whether the following dividends derived, as shown in the corrected lists, were paid in respect of shares held by the Society and appearing on the New Zealand Registers of the companies in question:—

Commercial Bank of Australia Ltd.

Year ended 31 December 1951	£115	17	0
Year ended 31 December 1952	115	17	0
Year ended 31 December 1953	115	17	0
Year ended 31 December 1954	93	0	4
Year ended 31 December 1955	358	1	8

In the Magistrate's Court

Exhibit A File of letters between Appellant and Respondent April, 1956 to April, 1957

continued.

Kauri Timber Co. Ltd.

Year ended 31 December 1951	(two dividends)	£7906	19	2
Year ended 31 December 1952	,,	7906	19	2
Year ended 31 December 1953	,,	7906	19	2
Year ended 31 December 1954	,,	7826	15	8
Year ended 31 December 1955	,,	7826	15	8

Amalgamated Wireless (A/Asia) Ltd.

Year ended 31 December 1954	(two dividends)	1756	9	5
Year ended 31 December 1955		2633	13	2

Broken Hill Pty. Co. Ltd.

Year ended 31 December 1954		3534	10	8
Year ended 31 December 1955	(two dividends)	9049	1	2

Patons & Baldwins Ltd.

Year ended 31 December 1954	(two dividends)*	1987	7	0
Year ended 31 December 1955	,,	3489	14	10

* One of these dividends is shown as being paid by Patons & Baldwins (Aust) Ltd. It appears that no such company carried on business in New Zealand and I shall be pleased if you will advise whether the name is correct, or should be Patons & Baldwins Ltd.

Queensland Insurance Co. Ltd.

Year ended 31 December 1954		792	18	6
Year ended 31 December 1955		1583	15	0

I would advise that unless the shares, in respect of which the above dividends were paid, are listed on the New Zealand Share Registers the dividends cannot be regarded as derived from New Zealand, and therefore cannot be allowed as a deduction.

Since, as stated above, amended assessments in respect of each of the years ended 31 March 1952 to 1956 inclusive have yet to be issued, I would suggest that no action be taken meanwhile on your application of 29 August 1956 for the hearing of your objection before a Stipendiary Magistrate. The issue of the amended assessments will give rise to fresh rights. The simplest course would then appear to be for the Society to object to those assessments upon the grounds it wished. If and when the objections are disallowed, the Society could, assuming that it wishes to proceed further, require that the objections be heard by the Court, and no doubt all the grounds upon which the objections are based would be considered at the hearing.

Yours faithfully,

(Sgd.) L. J. RATHGEN

District Commissioner of Taxes.

In the Magistrate's Court

Exhibit B
Letter from Respondent to Solicitor General
26 February 1960

EXHIBIT B

LETTER FROM RESPONDENT TO SOLICITOR GENERAL

P.O. Box 2198,
INLAND REVENUE DEPARTMENT,
WELLINGTON.
26 February 1960

The Solicitor-General,
WELLINGTON

AUSTRALIAN MUTUAL PROVIDENT SOCIETY
CASE STATED

With reference to paragraph 10 (a) of the Answer to the Case Stated, I have to inform you that:

(a) the rate of interest used by the Government Life Insurance Office for the year ended 31 December 1955 for valuing its net liabilities was $3\frac{3}{4}\%$ and the Bonus Reserve method was used. The same rate of interest was used for ascertaining the present value of the bonuses allotted.

(b) One of the Life Insurance companies operating in New Zealand did submit a return of income using the rate of $3\frac{3}{4}\%$ for the purpose of calculating the cash value of the reversionary bonuses allotted by it for the year ended 31 December 1955 in respect of policies comprised in the New Zealand business. An assessment was issued to that company on that footing. Later, however, the Department discovered that the rate of $3\frac{3}{4}\%$ was not the rate used for the purpose of calculating its net liabilities for that year, and thereupon amended the assessment.

(c) The Department would not knowingly permit a Life Insurance Office to use a rate of interest to calculate the present value of the bonuses allotted different from the rate of interest used to calculate its net liabilities under policies as set out in its statutory returns and that is the Department's reason for its attitude in this case.

(Sgd.) F. R. MACKEN
Commissioner of Inland Revenue

EXHIBIT "C"

RETURN TO INSURANCE COMMISSIONER OF AUSTRALIA
BY APPELLANT

RETURN

OF THE

Australian Mutual Provident Society

TO THE

INSURANCE COMMISSIONER

COMMONWEALTH OF AUSTRALIA

31st DECEMBER, 1955

Australian Mutual Provident Society

REVENUE ACCOUNT FOR THE YEAR ENDED 31st DECEMBER, 1955.

ORDINARY DEPARTMENT

1954	PARTICULARS	Business in Australia	Business outside Australia	1955
£		£	£	£
224,504,712	Amount of Ordinary Department Fund at beginning of year	—	—	242,627,352
	Insurance Premiums—			
	Single Premiums	104,776	96,905	
	Other Premiums	22,092,783	6,250,189	
25,843,504				28,544,653
	Consideration for Annuities granted—			
	Single Premiums	115,875	14,582	
	Other Premiums	282,003	122,275	
492,071				534,735
			£	
	Interest, Dividends and Rents		10,560,808	
	Less Income and Land Taxes		785,648	
8,867,006				9,775,160
44,991	Surplus on Realisation of Assets			Nil
Nil	Transfer from Provision for Taxation			100,000
£259,752,284				£281,581,900

1954	PARTICULARS	Business in Australia	Business outside Australia	1955
£		£	£	£
	Claims under Policies paid and outstanding—			
	By Death—Sums Insured	3,015,899	975,489	
	Bonuses	1,489,721	469,275	
6,116,619				5,950,384
	By Maturity—Sums Insured	2,324,571	938,201	
	Bonuses	656,626	266,043	
3,852,427				4,185,441
2,259,932	Surrenders and Advances redeemed by surrender (including surrenders of bonuses)	2,412,966	535,154	2,948,120
191,784	Annuities	158,114	31,806	189,920
115,328	Bonuses in Cash	96,046	26,372	122,418
1,716,282	Commissions	1,526,208	382,687	1,908,895
			£	
	Expenses of Management (other than Commissions)—			
	Salaries		1,586,466	
	Directors' Fees (Head Office and Branches)		23,601	
	Auditors' Fees		7,345	
	Medical Fees		88,675	
	Legal Expenses		10,570	
	Office Rent		173,054	
	Advertising		30,678	
	Printing and Stationery		97,863	
	Postage		51,217	
	Travelling Expenses		64,085	
	General Expenses		112,580	
	Exchange		8,103	
1,938,760				2,254,237
	Taxes (other than Income and Land Taxes)—			
	Pay-Roll Tax		65,627	
	Government Licence Fees and Other Taxes		11,983	
	Stamp Duty		18,308	
83,366				95,918
181,196	Contributions to Officers' Provident Fund and Assisted Assurance Schemes (Staff and Agents)			216,573
17,790	Retiring Allowances			26,948
8,495	Special Payment to Retired Officers and Agents			6,771
Nil	Loss on Realisation of Assets			19,636
	Written Off Office Premises		66,323	
	Written Off Other Assets		159,047	
242,633				225,370
400,320	Exchange Adjustment			255,049
242,627,352	Amount of Ordinary Department Fund at end of year, as shewn in the Balance Sheet			263,176,220
£259,752,284				£281,581,900

All items in this Account are net of Re-Insurances.

Australian Mutual Provident Society

REVENUE ACCOUNT FOR THE YEAR ENDED 31st DECEMBER, 1955.

INDUSTRIAL DEPARTMENT

1954	PARTICULARS	Business in Australia	Business outside Australia	1955
£		£	£	£
45,787,697	Amount of Industrial Department Fund at beginning of year	—	—	47,883,410
5,387,174	Insurance Premiums	4,964,820	512,373	5,477,193
			£	
	Interest, Dividends and Rents		2,033,671	
	Less Income and Land Taxes		125,144	
1,821,957				1,908,527
9,022	Surplus on Realisation of Assets			Nil
£53,005,850				£55,269,130

1954	PARTICULARS	Business in Australia	Business outside Australia	1955
£		£	£	£
	Claims under policies paid and outstanding—			
264,491	By Death—including Bonus Additions	243,428	17,586	261,014
3,004,700	By Maturity ,, ,, ,,	3,151,210	409,693	3,560,903
301,409	Surrenders (including surrenders of bonuses)	302,450	20,622	323,072
611,039	Commissions	570,038	50,786	620,824
			£	
	Expenses of Management (other than Commissions)—			
	Superintendents' Salaries		226,187	
	Office Salaries		317,524	
	Directors' Fees (Head Office and Branches)		4,545	
	Auditors' Fees ,, ,, ,, ,, ...		3,672	
	Legal Expenses		1,031	
	Office Rent		33,325	
	Advertising		5,907	
	Printing and Stationery		24,257	
	Postage		13,226	
	Travelling Expenses		61,113	
	General Expenses		70,020	
	Exchange		2,629	
690,268				763,436
	Taxes (other than Income and Land Taxes)—			
	Pay-Roll Tax		27,951	
	Government Licence Fees and Other Taxes		2,330	
	Stamp Duty		2,258	
32,167				32,539
	Contributions to Officers' Provident Fund and Assisted Assurance Schemes (Staff and Agents) ..			79,081
77,337				
6,614	Retiring Allowances			9,180
8,909	Special Payment to Retired Officers and Agents ..			4,240
Nil	Loss on Realisation of Assets			3,781
45,232	Written Off Office Premises and Other Assets			43,925
80,274	Exchange Adjustment			49,114
47,883,410	Amount of Industrial Department Fund at end of year as shewn in the Balance Sheet			49,518,021
£53,005,850				£55,269,130

Australian Mutual Provident Society

BALANCE SHEET AS AT 31st DECEMBER, 1955.

1954	LIABILITIES		1955
£		£	£
	LIFE INSURANCE STATUTORY FUND—		
	Ordinary Department :		
	Insurance and Annuity Fund	258,676,220	
	Investment and Contingencies Reserve ..	4,500,000	
242,627,352	Total Ordinary Department Fund as per Revenue Account		263,176,220
	Industrial Department :		
	Insurance Fund	48,518,021	
	Investment and Contingencies Reserve ..	1,000,000	
47,883,410	Total Industrial Department Fund as per Revenue Account		49,518,021
290,510,762			312,694,241
	OTHER LIABILITIES—		
	Industrial Department Agents' Fidelity		
63,854	Guarantees	57,414	
351,931	Claim Investments	409,509	
950,000	Provision for Taxation	1,380,000	
3,528,203	*Claims admitted or announced but not paid ..	3,570,355	
1,386,016	Outstanding Accounts	2,154,007	
1,513,880	Bank Overdraft	1,202,942	
			8,774,227
£298,304,646			£321,468,468

1954	ASSETS		1955	Amount of Assets which are held in Australia (1955)
£		£	£	£
	FIXED ASSETS (at cost less depreciation)—			
6,055,313	Freehold and Leasehold Property and Associated Assets	7,919,678		6,845,378
Nil	Office Furniture	Nil		Nil
			7,919,678	
	LOANS—			
98,774,651	On Mortgage	117,632,912		86,202,211
12,919,642	On Policies of the Society, including advances of premiums	14,153,595		11,747,198
4,218	On Life Interests and Reversions	3,721		750
13,400	On Stocks and Shares	11,725		Nil
			131,801,953	
	INVESTMENTS—			
	Government Securities :			
102,739,992	Australia	99,535,538		97,166,035
14,071,038	New Zealand	12,605,027		Nil
1,690,450	Great Britain	1,533,706		Nil
4,473	Other	12,580		Nil
33,720,570	Securities of Local Government and Semi-Governmental Bodies	32,617,925		22,716,195
12,985,871	Debentures of Companies	18,962,999		16,592,673
4,373,481	Preference Shares	4,448,038		3,961,535
6,277,455	Ordinary Shares	6,862,183		5,162,281
			176,577,996	
	OTHER ASSETS—			
	*Outstanding Premiums :			
1,513,475	Premiums in the days of grace ..	1,751,461		1,387,478
36,182	Overdue Premiums	51,581		48,446
2,589,929	*Interest, Dividends and Rents accruing but not due	2,696,826		2,177,008
	*Outstanding Interest—Mortgages :			
14,584	Interest in arrear	19,328		11,100
79,916	Interest due and in the days of grace	181,146		36,884
425,875	Sundry Debtors	464,430		297,290
			5,164,772	
	CASH—			
14,131	On Deposit, and In Hand		4,069	3,827
£298,304,646			£321,468,468	£254,356,289

STATEMENTS PURSUANT TO THE COMMONWEALTH LIFE INSURANCE ACT 1945-1953.

Items marked * are, or have been, included in the corresponding items in the Revenue Accounts.

In this Balance Sheet New Zealand and English Pounds are included as and assumed to be equal in value to Australian Pounds.

The Society has deposited, as security for its policyholders, with the Australian Commonwealth Government £50,000 of Commonwealth Government Securities, and with the New Zealand Government £50,000 of New Zealand Government Securities.

Investments appear in the Balance Sheet at or under cost price with the exception that in the case of Redeemable Securities purchased at a discount or at a premium the book values are adjusted annually so as to attain to redemption value by maturity date.

We certify that, in our belief, the assets set forth in the Balance Sheet were, at 31st December, 1955, in the aggregate fully of the value stated in the Balance Sheet, less the Investment and Contingencies Reserve taken into account. No part of the assets of the Life Insurance Statutory Fund has been applied, directly or indirectly, in contravention of the provisions of the Life Insurance Act 1945-1953 relating to the application and investment of Statutory Funds.

L. D. HATCH, *Chief Accountant.*

CECIL H. HOSKINS, *Chairman.*

M. C. BUTTFIELD, *General Manager.*

W. A. MACKAY
S. G. ROWE } *Directors.*

AUDITORS' REPORT

We, the undersigned, hereby certify that we have examined the books of account, vouchers, accounts, deeds and securities of the Australian Mutual Provident Society in accordance with By-law 85 and compared them with the Balance Sheet, and have found them to be correct.

We further certify that we have obtained all the information and explanations we have required and, in our opinion, the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Society's affairs according to the best of our information and the explanations given to us and as shown by the books of the Society.

Pursuant to Sections 45 and 46 of the Commonwealth Life Insurance Act 1945-1953 we have also to report that in our opinion :

1. (*a*) The accounts and Balance Sheet are in accordance with the provisions of the Life Insurance Act 1945-1953 :
   (*b*) The Balance Sheet truly represents the financial position of the Society :
   (*c*) The Books of the Society have been properly kept and record correctly the affairs and transactions of the Society.

2. The apportionments made under Section 42 of the Life Insurance Act 1945-1953 have been made in an equitable manner.

We are satisfied that no part of the assets of the Life Insurance Statutory Fund has been applied directly or indirectly in contravention of the provisions of the Life Insurance Act 1945-1953 relating to the application and investment of Statutory Funds.

SYDNEY, 17TH APRIL, 1956.

E. S. WOLFENDEN
H. R. BEARDSMORE } *Auditors.*
Chartered Accountants (Aust.)

6

Summary and Valuation of the Policies of the Australian

DESCRIPTION OF TRANSACTIONS	PARTICULARS OF POLICIES		
	Number of Policies	Sums Insured	Bonuses
		£ s. d.	£ s. d.
INSURANCE POLICIES			
1.—**With Immediate Participation in Profits**			
For Whole Term of Life	450,277	314,979,237 0 0	74,790,194 18 0
For Whole Term of Life	12,919	13,830,967 0 0	..
For Whole Term of Life	5,752	35,671,512 0 0	..
Joint Lives Insurances	113	76,139 0 0	33,824 18 0
Endowment Insurances	661,432	396,245,216 0 0	31,109,328 0 0
Deferred Endowment Insurances with Return of Premiums	12,288	3,731,597 0 0	32,236 10 0
Joint Lives Endowment Insurances	15	15,115 0 0	2,568 8 0
Reserve for Subsequent Distribution of the Loading on Single and Limited Premium Insurances	..	..	..
Reserve to provide for Payment of Claims on Proof of Title	..	..	..
Reserve to provide for Payment of Claims on Proof of Disability	..	..	..
Extra Premiums Payable	..	..	..
Total Insurances with Immediate Participation	1,142,796	764,549,783 0 0	105,968,152 14 0
Deduct Re-insurances with Immediate Participation	..	25,187,192 10 0	1,637,349 0 0
Net Insurances with Immediate Participation	1,142,796	739,362,590 10 0	104,330,803 14 0
2.—**With Deferred Participation in Profits**			
Deferred Insurances for Whole Term of Life with Return of Premiums	117,477	122,428,263 0 0	1,438,266 16 0
Deferred Endowment Insurances with Return of Premiums	44,331	16,079,015 0 0	158,875 4 0
Reserve to provide for Payment of Claims on Proof of Title	..	..	..
Extra Premiums Payable	..	..	..
Total Insurances with Deferred Participation	161,808	138,507,278 0 0	1,597,142 0 0
Deduct Re-insurances with Deferred Participation	..	257,775 0 0	8,047 4 0
Net Insurances with Deferred Participation	161,808	138,249,503 0 0	1,589,094 16 0
TOTAL NET INSURANCES WITH PROFITS	**1,304,604**	**877,612,093 10 0**	**105,919,898 10 0**
3.—**Without Participation in Profits**			
For Whole Term of Life	1,846	977,088 0 0	..
Joint Lives Insurances	3	9,440 0 0	..
Contingent and Survivorship Insurances	2	2,250 0 0	..
Temporary Insurances	1,361	14,368,816 0 0	..
Endowment Insurances	1,153	554,453 0 0	..
Superannuation Group Insurances	8	25,854,652 0 0	..
Reserve to provide for Payment of Claims on Proof of Title	..	..	..
Extra Premiums Payable	..	..	..
Total Insurances without Profits	4,373	41,766,699 0 0	..
Deduct Re-insurances without Profits	..	73,569 0 0	..
TOTAL NET INSURANCES WITHOUT PROFITS	**4,373**	**41,693,130 0 0**	..
OTHER POLICIES			
4.—**Endowments**			
Endowments on Lives	14,311	17,844,816 0 0	..
Endowments Certain	3	92,666 0 0	..
Total Endowments	14,314	17,937,482 0 0	..
Deduct Re-insurances	..	193,915 14 0	..
TOTAL NET ENDOWMENTS	**14,314**	**17,743,566 6 0**	..
5.—**Annuities**			
Immediate Annuities on Lives	1,422	182,770 19 9	(p.a.) ..
Contingent Annuities on Lives	20	1,769 11 4	(p.a.) ..
Deferred Annuities on Lives	3,869	544,626 3 6	(p.a.) ..
Annuities Certain	70	6,513 17 9	(p.a.) ..
TOTAL ANNUITIES (RE-INSURANCES NIL)	**5,381**	**735,680 12 4**	(p.a.) ..
TOTAL OF THE RESULTS AFTER DEDUCTION OF RE-INSURANCES	**1,328,672**	**937,048,789 16 0** and **735,680 12 4**	**105,919,898 10 0** (p.a.)

Policies issued as Whole Life Insurances, being now payable on attainment of

Mutual Provident Society (Ordinary Department) as at 31st December, 1955.

FOR VALUATION		VALUATION					
		Basis A •A24-29 ultimate Table with 2% Interest; B A24-29 ultimate Table with 2½% Interest; C A49-52 ultimate Table with 2½% Interest; D A49-52 ultimate Table with 2½% Interest; E *a*(m) and *a*(f) Tables with 2½% Interest; F Interest Functions only with 2½% Interest					
Office Yearly Premiums	Net Yearly Premiums	Basis	Sums Insured	Bonuses	Office Yearly Premiums	Net Yearly Premiums	Liability
£ s. d.	£ s. d.		£	£	£	£	£
8,735,284 4 1	5,692,023 12 0	B	167,393,429	48,157,989	150,499,820	96,317,674	119,233,744
403,833 2 11	245,997 14 0	C	5,510,798	..	8,793,043	5,275,962	234,836
911,197 16 1	630,613 12 0	D	13,733,092	..	19,064,754	13,125,670	607,422
3,576 8 11	2,243 2 0	B	57,644	27,590	33,354	20,913	64,321
16,202,126 10 10	12,542,622 8 11	B	244,796,327	21,889,428	213,349,313	159,816,318	106,869,437
157,120 5 10	137,424 10 0	B	2,323,508	20,500	2,277,913	1,982,493	361,515
708 13 3	537 6 0	B	12,243	2,121	4,337	3,285	11,079
..	..	..	571,059	..	..	..	571,059
..	..	..	744,282	..	..	..	744,282
..	..	..	51,063	..	..	..	51,063
8,169 4 6	8,169 4 6	..	4,084	..	..	..	4,084
26,422,016 6 5	19,259,631 9 5	..	435,197,529	70,097,628	394,022,534	276,542,315	228,752,842
978,490 19 7	745,208 10 0	..	14,410,236	1,061,248	14,121,895	10,739,406	4,732,078
25,443,525 6 10	18,514,422 19 5	..	420,787,293	69,036,380	379,900,639	265,802,909	224,020,764
1,016,322 8 1	910,157 2 0	A	39,443,868	776,214	33,783,297	30,392,816	9,827,266
375,637 11 1	361,535 2 0	A	9,439,791	132,206	6,070,372	5,872,891	3,699,106
..	..	..	48,773	..	..	..	48,773
63 12 6	63 12 6	..	32	..	..	..	32
1,392,023 11 8	1,271,755 16 6	..	48,932,464	908,420	39,853,669	36,265,707	13,575,177
2,026 10 11	1,830 16 0	..	88,300	5,357	66,613	60,471	33,186
1,389,997 0 9	1,269,925 0 6	..	48,844,164	903,063	39,787,056	36,205,236	13,541,991
26,833,522 7 7	**19,784,347 19 11**	..	**469,631,457**	**69,939,443**	**419,687,695**	**302,008,145**	**237,562,755**
21,465 5 11	18,746 12 0	B	651,312	..	263,706	229,582	421,730
..	..	B	5,778	..	..	..	5,778
..	..	B	84	..	..	..	84
4,571 6 9	2,952 18 0	B	192,505	..	13,554	10,182	182,323
32,176 9 8	30,009 10 0	B	405,832	..	222,710	204,147	201,685
..	..	B	3,822,877	..	..	..	3,822,877
..	..	..	3,777	..	..	..	3,777
4 0 0	4 0 0	..	2	..	..	..	2
58,217 2 4	*51,713 0 0*	..	*5,082,167*	..	*499,970*	*443,911*	*4,638,256*
916 6 11	649 6 0	..	9,708	..	6,862	4,928	4,780
57,300 15 5	**51,063 14 0**	..	**5,072,459**	..	**493,108**	**438,983**	**4,633,476**
878,476 16 6	864,524 8 0	F	11,473,538	..	7,717,934	7,568,915	3,904,623
765 12 6	765 10 0	F	85,252	..	8,235	8,235	77,017
879,242 9 0	865,289 18 0	..	11,558,790	..	7,726,169	7,577,150	3,981,640
10,113 2 10	9,959 16 0	..	121,821	..	89,932	88,511	33,310
869,129 6 2	**855,330 2 0**	..	**11,436,969**	..	**7,636,237**	**7,488,639**	**3,948,330**
..	..	E	1,448,915	..		..	1,448,915
276 14 1	231 16 0	E	10,198	..	2,561	2,145	8,053
179,244 5 5	174,531 4 0	E	3,928,636	..	1,700,061	1,650,652	2,277,084
..	..	F	28,513	..	..	..	28,513
179,520 19 6	**174,763 0 0**	..	**5,416,262**	..	**1,702,622**	**1,652,797**	**3,763,465**
27,939,473 8 8	**20,865,504 15 11**	..	**491,557,147**	**69,939,443**	**429,519,662**	**311,588,564**	**249,908,026**

age 95, have been valued as Endowment Insurances maturing at that age.

Summary and Valuation of the Policies of the Australian Mutual Provident Society (Industrial Department)

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AS AT 31ST DECEMBER, 1955

DESCRIPTION OF TRANSACTIONS	PARTICULARS OF THE POLICIES FOR VALUATION					Valuation by A^M33 Table Interest at 2½ per cent.				
	Number of Policies	Sums Insured	Bonuses	Office Yearly Premiums	Net Yearly Premiums	Sums Insured	Bonuses	Office Yearly Premiums	Net Yearly Premiums	Liability
		£ s.	£ s.	£ s. d.	£ s.	£	£	£	£	£
INSURANCE POLICIES										
1. **With Participation in Profits.**										
*For Whole Term of Life, subject to Limited Premiums	55,425	4,456,805 18	202,189 14	202,424 11 11	155,272 6	2,665,989	147,233	1,691,150	1,318,977	1,494,245
Endowment Insurances	1,246,595	112,004,555 17	4,964,651 18	5,324,683 0 2	4,119,936 6	81,355,938	4,255,939	54,878,229	42,451,581	43,160,296
Deferred Endowment Insurances with Return of Premiums and Interest	29	1,908 16	346 10	34 2 4	31 16	1,684	316	144	138	1,862
TOTAL INSURANCES WITH PROFITS ..	**1,302,049**	**116,463,270 11**	**5,167,188 2**	**5,527,143 14 5**	**4,275,240 8**	**84,023,611**	**4,403,488**	**56,569,523**	**43,770,696**	**44,656,403**
2. **Without Participation in Profits.**										
*For Whole Term of Life, subject to Limited Premiums	3,472	85,104 12	..	6 19 9	5 18	60,425	..	86	74	60,351
Endowment Insurances	96,259	1,867,009 7	..	..	..	1,539,051	..	..	..	1,539,051
Deferred Endowment Insurances ..	1	18 8	..	..	..	14	..	..	..	14
TOTAL INSURANCES WITHOUT PROFITS	**99,732**	**1,952,132 7**	..	**6 19 9**	**5 18**	**1,599,490**	..	**86**	**74**	**1,599,416**
TOTAL OF THE RESULTS .. .. (Re-insurances nil)	**1,401,781**	**118,415,402 18**	**5,167,188 2**	**5,527,150 14 2**	**4,275,246 6**	**85,623,101**	**4,403,488**	**56,569,609**	**43,770,770**	**46,255,819**

* No Premiums on Whole Term of Life Policies are payable after age 75, and, since the Sum Insured is now payable at age 95, the Policies have been valued as Endowment Insurances.

Valuation Balance Sheet of the Australian Mutual Provident Society as at 31st December, 1955

FORM J

	Ordinary Life Insurance Business	Industrial Insurance Business	Total		Ordinary Life Insurance Business	Industrial Insurance Business	Total
	£	£	£		£	£	£
Net liabilities under policies—				Amount of Funds	263,176,220	49,518,021	312,694,241
On Australian registers	186,161,986	41,245,666	227,407,652				
Other policies	63,746,040	5,010,153	68,756,193				
Reserve Accounts	4,500,000	1,000,000	5,500,000				
Surplus	8,768,194	2,262,202	11,030,396				
	£263,176,220	£49,518,021	£312,694,241		£263,176,220	£49,518,021	£312,694,241

In the Magistrate's Court
Exhibit C
Return to Insurance Commissioner of Australia by Appellant
31 December 1955 *continued.*

FIRST SCHEDULE

ORDINARY DEPARTMENT

New Policies issued during the year ended 31st December, 1955. FORM E.

TYPE OF POLICY	POLICIES ON REGISTERS IN AUSTRALIA				POLICIES ON REGISTERS OUTSIDE AUSTRALIA			
	No. of Policies	Sum Insured	Single Premiums	Annual Premiums	No. of Policies	Sum Insured	Single Premiums	Annual Premiums
		£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
Whole Life Insurances	26,247	48,736,488 0 0	10,395 5 0	1,065,588 0 10	10,629	11,263,340 0 0	1,605 1 1	251,575 6 5
Endowment Insurances ..	48,572	47,406,098 10 0	41,124 9 9	1,881,443 13 5	10,163	9,238,237 0 0	24,203 10 1	380,867 10 5
Other Insurances	282	8,008,069 0 0	40,573 14 1	1,437 15 2	529	3,658,583 0 0	68,021 13 7	..
Endowments	1,983	3,539,755 4 0	12,682 15 5	184,190 8 1	413	577,790 0 0	2,474 9 3	23,169 14 6
Annuities	400	88,143 8 8 p.a.	115,874 17 8	10,593 14 6	284	43,644 11 6 p.a.	14,582 1 3	28,064 4 9
TOTAL	77,484	107,688,410 14 0 88,143 8 8 p.a.	220,651 1 11	3,149,253 12 0	22,018	24,737,950 0 0 43,644 11 6 p.a.	111,486 15 3	683,676 16 1

Policies Discontinued during the year ended 31st December, 1955. FORM F.

CAUSE OF DISCONTINUANCE	POLICIES ON REGISTERS IN AUSTRALIA			POLICIES ON REGISTERS OUTSIDE AUSTRALIA		
	No. of Policies	Sum Insured	Annual Premiums	No. of Policies	Sum Insured	Annual Premiums
		£ s. d.	£ s. d.		£ s. d.	£ s. d.
Insurance and Endowment Policies—						
Death	5,382	3,163,985 18 8	124,249 11 7	1,589	998,506 0 0	37,154 17 5
Maturity	8,611	2,299,546 18 8	175,753 2 8	2,438	936,453 0 0	56,497 10 0
Surrender	19,167	17,326,263 14 0	551,620 17 9	3,495	3,601,437 0 0	116,763 3 7
Forfeiture	4,648	3,818,994 6 0	105,136 5 0	944	730,449 0 0	20,365 17 1
Transfer	*12	*26,143 0 0	*2,225 5 9	12	26,143 0 0	2,225 5 9
Other Causes	6,827	1,549,167 16 0	193,366 5 0	2,309	361,638 0 0	73,541 16 9
Annuity Policies (All Causes)	307	31,457 15 0 p.a.	4,458 12 4	84	14,757 2 8 p.a.	9,201 18 7
TOTAL	44,990	28,131,815 13 4 31,457 15 0 p.a.	1,152,359 8 7	10,871	6,654,626 0 0 14,757 2 8 p.a.	315,750 9 2

* Net Increase in business.

Policies Existing on 31st December, 1955. FORM G.

TYPE OF POLICY	POLICIES ON REGISTERS IN AUSTRALIA			POLICIES ON REGISTERS OUTSIDE AUSTRALIA		
	No. of Policies	Sum Insured	Annual Premiums	No. of Policies	Sum Insured	Annual Premiums
		£ s. d.	£ s. d.		£ s. d.	£ s. d.
Whole Life Insurances	428,713	363,435,665 0 0	8,139,448 15 4	159,676	122,653,174 0 0	2,882,432 18 4
Endowment Insurances	587,129	317,325,168 10 0	12,634,133 5 5	132,090	76,331,498 0 0	3,230,767 6 7
Other Insurances	380	33,639,516 0 0	3,356 12 4	980	6,520,202 0 0	684 5 0
Endowments	12,159	15,154,748 6 0	757,220 16 11	2,155	2,588,818 0 0	111,908 9 3
Annuities	3,974	516,176 12 6 p.a.	54,081 9 3	1,407	219,503 19 10 p.a.	125,439 10 3
TOTAL	1,032,364	729,555,007 16 0 516,176 12 6 p.a.	21,588,240 19 3	296,308	207,493,692 0 0 219,503 19 10 p.a.	6,351,232 9 5

Re-insurances have been deducted.

INDUSTRIAL DEPARTMENT

New Policies issued during the year ended 31st December, 1955. FORM E.

TYPE OF POLICY	POLICIES ON REGISTERS IN AUSTRALIA				POLICIES ON REGISTERS OUTSIDE AUSTRALIA			
	No. of Policies	Sum Insured	Single Premiums	Annual Premiums	No. of Policies	Sum Insured	Single Premiums	Annual Premiums
		£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
Whole Life Insurances	3,514	690,643 2 0	..	31,471 3 6	387	124,485 0 0	..	4,151 19 0
Endowment Insurances ..	51,972	9,511,801 8 0	..	407,164 18 6	4,833	742,389 3 0	..	33,506 3 8
TOTAL	55,486	10,202,444 10 0	..	438,636 2 0	5,220	866,874 3 0	..	37,658 2 8

Policies Discontinued during the year ended 31st December, 1955. FORM F.

CAUSE OF DISCONTINUANCE	POLICIES ON REGISTERS IN AUSTRALIA			POLICIES ON REGISTERS OUTSIDE AUSTRALIA		
	No. of Policies	Sum Insured	Annual Premiums	No. of Policies	Sum Insured	Annual Premiums
		£ s. d.	£ s. d.		£ s. d.	£ s. d.
Insurance and Endowment Policies—						
Death	3,684	235,685 6 0	11,691 16 0	287	17,320 18 0	803 2 8
Maturity	51,027	2,833,533 1 0	152,067 13 2	6,314	363,655 10 0	18,324 8 4
Surrender	13,501	1,702,325 5 0	92,463 6 8	837	149,130 8 0	9,028 14 6
Forfeiture	8,910	1,777,847 4 0	71,816 12 10	994	174,658 0 0	6,908 19 4
Transfer	*1	459 1 0	24 19 4	1	*459 1 0	*24 19 4
Other Causes	..	16,777 5 0	21,744 16 8	20	999 10 0	2,582 9 3
TOTAL	77,121	6,566,627 2 0	349,809 4 8	8,453	705,305 5 0	37,712 14 9

* Net Increase in business.

Policies Existing on 31st December, 1955. FORM G.

TYPE OF POLICY	POLICIES ON REGISTERS IN AUSTRALIA			POLICIES ON REGISTERS OUTSIDE AUSTRALIA		
	No. of Policies	Sum Insured	Annual Premiums	No. of Policies	Sum Insured	Annual Premiums
		£ s. d.	£ s. d.		£ s. d.	£ s. d.
Whole Life Insurances	53,648	3,990,377 13 0	182,914 0 0	5,249	551,532 17 0	19,517 11 8
Endowment Insurances	1,210,487	103,117,226 14 0	4,831,640 6 0	132,397	10,756,265 14 0	493,078 16 6
TOTAL	1,264,135	107,107,604 7 0	5,014,554 6 0	137,646	11,307,798 11 0	512,596 8 2

Re-insurances Nil.

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ORDINARY DEPARTMENT.

SECOND SCHEDULE.

The numbers and letters of the following answers correspond with those of the items of Part II of the Second Schedule to the Act.

(1) The 31st December, 1955.

(2) The liability in respect of the policies was taken as the difference between the capitalized values as at the valuation date of :—

(i) the reversion in the sum insured, including any reversionary bonuses declared and still in force at the valuation date ; and

(ii) the future net premiums, less any reduction of those premiums which may have been obtained by the giving of any valuable consideration.

(a) The valuation has been made on the following principles, which are determined by the Board of Directors on the advice of the Actuary, and are such that the calculated liability is not less than it would have been if calculated on the Minimum Basis in accordance with the rules set forth in the Fourth Schedule to the Act.

(b) and (c)
The Net Premiums used in the valuation were calculated according to the tables of mortality and rates of interest set out in answer to question (3), the age at entry being taken as herein described. No additions were made to the amounts so calculated to provide for bonuses, office expenses or other charges. The net premiums have not been adjusted except as mentioned in answer (2) (f) (ii) and to ensure that in no case did the net premium exceed the actual premium charged.

Entry Ages were taken as follows :—

Endowment Insurances : the age at entry was found by deducting the term of the policy from the assumed maturity age, which was in general taken as the quinquennial age nearest to the age next birthday at maturity.

Whole Life and Other Insurances : the age next birthday at entry was used.

Annuities : the age last birthday at entry was used, except for policies under Group Pension Schemes where, in general, the age nearest birthday at entry was used.

Maturity Dates and Premium Terms. Account has been taken of the actual maturity dates and premium terms. For policies grouped according to calendar year of maturity it has been assumed that on the average the policies mature, and premiums emerge, on the 30th June. Other policies are assumed to mature, and premiums to emerge, on the 31st December nearest to the actual date of maturity or premium emerging date.

The Valuation Age was obtained by adding to the assumed entry age the duration of the policy calculated to the nearest number of years.

The Unexpired Term to Maturity for Endowment Insurances was taken as the difference between the assumed maturity and valuation ages, the grouping in effect being according to nearest unexpired term under each assumed maturity age. For Endowment Policies and certain Children's Deferred Endowment Insurances, where the grouping adopted was according to calendar year of maturity, policies with unexpired term between n and (n + 1) years were assumed to mature on the average $(n + \frac{1}{2})$ years after the valuation date.

Future Premium Terms. For policies classified according to calendar year of maturity it was assumed that n premiums remained to fall due when the unexpired term was between n and (n + 1) years. For other policies, where the future premium term was n years to the nearest year the assumption made was that $(n - \frac{1}{2})$ premiums on the average remained to fall due.

Superannuation Group Insurance contracts contain an option that, upon six months' notice, the contract may be terminated, and paid-up endowment insurance policies issued upon the individual lives concerned. These superannuation group insurances have been valued assuming the exercise of this option at the Valuation date.

(d) No definite provision has been made in the valuation for the maintenance of a specified rate of bonus.

(e) For the purpose of the valuation it has been assumed that premiums are payable annually, and that the next premium will on the average fall due six months after the date of the valuation.

(f) (i) A special reserve for early payment of claims has been made amounting to the interest at the valuation rate for one-quarter of a year, calculated on the net liability shown by the valuation summary in respect of whole life policies.

(ii) A special reserve has been made in respect of limited payment and paid-up policies with immediate participation in profits, to allow for future expenses and profits on these policies, the actual loading contained in the limited or single premium being in effect spread over the whole term of the policy. In the case of policies partly paid-up the additional reserve has, where practicable, been made by reducing the net premium valued. No special reserve has been made in respect of limited payment or paid-up policies with deferred profits or without profits.

(iii) Lapsed policies have been included in the valuation where the period from the date of lapse to the valuation date was less than three months. No specific reserve is made in respect of other lapsed policies, but any liability which may arise is covered by the surplus carried forward unappropriated.

(iv) The Society no longer issues policies securing continuous disability benefits for payment of an extra premium. In respect of a number of policies in force providing an additional benefit in event of accidental death or total disablement a reserve of £40, being one-half of the additional annual premiums in force, has been included with the reserves for Endowment Insurance policies. Certain other policies include an additional benefit, without extra premium, whereby the sum insured is payable in event of total disablement as defined in the policy. A special reserve of £51,063 has been made to cover the additional liability under these policies.

(g) Under the valuation method adopted no policy would be treated as an asset.

(h) Policies on under average lives are issued either at the premium rate applicable to an advanced age at entry or at the premium rate applicable to the true age at entry increased by an extra premium. Lives taken at an advance are for all purposes reckoned as being of the advanced age at entry. Where an extra premium other than that arising under an " age loading " is payable under a policy an amount equal to half the annual extra premium in force at the valuation date is reserved.

(i) The valuation has been made in Australian currency, Assets and Liabilities in currencies other than Australian being converted at par of exchange. In so far as liabilities in a particular currency are not covered by Assets in the same currency, reserves are available sufficient to cover any deficiency which would result from converting the balance represented by Assets in other currencies into the currency in question, at the rate of exchange ruling at the date of the valuation.

(3) The Tables of Mortality used in the Valuation were :—

" The Institute of Actuaries and Faculty of Actuaries A24-29 and A49-52 ultimate Tables " for Insurances.
" The Institute of Actuaries and Faculty of Actuaries a(m) and a(f) Tables " for Annuities on Lives.
Mortality was ignored

(a) Prior to age 21 under Children's Deferred Policies.

(b) Throughout the period of deferment under certain deferred annuities which provide for a return of premiums with interest in the event of death during that period.

(c) Throughout the whole term in the case of Endowments on Lives and also certain Children's Deferred Endowment Insurances maturing at young ages.

The rates of interest assumed in the calculations were 2 per cent for insurances with deferred participation, 2¾ per cent for certain insurances with immediate participation in bonuses on a reduced scale and 2½ per cent for all other classes of business.

Further details are shown in Form 1.

(4) The proportion of annual premiums reserved as a provision for future expenses and profits was—

Insurances with immediate profits	27.233 per cent.
Insurances with deferred profits	8.638 per cent.
Insurances without profits	10.885 per cent.

In calculating the annual premium income extra premiums are included and re-insurances excluded.

(5) The net effective rate of interest realised by the Society on its funds in each of the years 1951-1955 inclusive was as follows :—

1951	£3 9 9 per cent.
1952	£3 12 2 per cent.
1953	£3 14 6 per cent.
1954	£3 16 10 per cent.
1955	£3 18 1 per cent.

These rates were ascertained by dividing the interest receipts of the year (including rents) less taxes by the mean of the funds at the beginning and the end of the year, decreased by an amount equal to half the net interest for the year.

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(6) As there are no shareholders the total divisible surplus is divided among the policyholders entitled to share in the distribution.

(7)(a) The surplus is divided on the following principles which are determined by the Board on the advice of the Chief Actuary :—

By allotting compound reversionary bonuses as a percentage of the sum insured (actual or hypothetical) and bonuses previously declared and still existing. The percentage varies as between policies of different class and term. The use of a hypothetical sum insured applies mainly to whole life policies of an "old" series no longer issued in Australia or New Zealand.

(b) All policies with immediate participation which were in force at the date of the valuation share in the surplus. Policies with deferred participation are all effected on the lives of minors, and participation begins when the life insured attains an age specified in the policy, usually twenty-one years.

(c) A full year's bonus is allotted in each case.

(d) Bonuses vest when a policy has been in force, and the life insured has survived, for two complete years, and, in the case of Deferred Endowment Insurances with Immediate Participation, when the life insured attains the age of twenty-one years.

(8) The total amount of surplus arising in the year 1955 was :—

Surplus at 31st December, 1955	£8,768,194	
Paid during 1955 as Interim Bonus	46,368	
Exchange Adjustment charged through Revenue Account for the year 1955	255,049	
	9,069,611	
Less amount reserved at 31st December, 1954	1,128,116	
		£7,941,495

The surplus was allocated as follows :—

(a) Paid during 1955 as Interim Bonus, £46,368.
(b) £7,384,762 divided among 1,142,796 policies with immediate participation insuring £739,362,590.
(c) £111,533 divided among 27,080 policies with deferred participation insuring £14,608,839.
(d) Nil, there being no shareholders.
(e) £60,000 reserve for Interim Bonuses, and £1,000,000 reserve for Contingencies.
(f) £211,899 carried forward unappropriated.

(9) Specimen Bonuses in respect of the year 1955 allotted to Policies of £100 each, provided no bonuses previously allotted have been cashed.

(a) Policies originally issued for the Whole Term of Life, but now payable on attaining age 95, or at previous death.

Age at Entry	Premiums payable for Whole Term					Premiums payable for Limited Term				
	Reversionary Bonus allotted to Policies in force for					Reversionary Bonus allotted to Policies in force for				
	5 years	10 years	20 years	30 years	40 years	5 years	10 years	20 years	30 years	40 years
	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.
20	1 14	1 16	2 2	2 12	3 4	1 14	1 16	2 2	2 12	3 4
30	1 14	1 18	2 2	2 14	3 6	1 14	1 16	2 2	2 12	3 4
40	1 16	1 18	2 4	2 14	3 6	1 14	1 16	2 2	2 12	3 4

(b) Policies effected as Endowment Insurances, payable at the end of the Specified Term, or at previous death.

Age at Entry.	15 Year Term.		20 Year Term.			30 Year Term.			
	Reversionary Bonus allotted to Policies in force for		Reversionary Bonus allotted to Policies in force for			Reversionary Bonus allotted to Policies in force for			
	5 years	10 years	5 years	10 years	20 years	5 years	10 years	20 years	30 years
	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.	£ s.
20	1 0	1 2	1 2	1 4	1 6	1 6	1 8	1 10	1 18
30	1 4	1 6	1 6	1 8	1 10	1 10	1 12	1 16	2 4
40	1 8	1 10	1 10	1 12	1 16	1 14	1 16	2 2	2 12

Age at Entry.	40 Year Term.				
	Reversionary Bonus allotted to Policies in force for				
	5 years	10 years	20 years	30 years	40 years
	£ s.	£ s.	£ s.	£ s.	£ s.
20	1 10	1 12	1 16	2 4	2 14

(10) The full cash value by the HM Table with interest at 4½ per cent. is allowed in the case of policies which have been in force for two years and upwards.

(11) Specimen Surrender Values (exclusive of Cash Value of Bonuses) which are allowed per £100 Policy:—Values are calculated to pence, but actually paid to the nearest shilling.

(a) Policies originally issued for the Whole Term of Life, but now payable on attaining age 95, or at previous death.

Age at Entry.	Surrender Value of Policy at end of					
	5 years	10 years	20 years	30 years	40 years	50 years
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	3 10 . 0	8 1 11	18 9 0	31 9 11	46 10 1	61 11 3
30	5 1 2	11 6 4	25 11 7	41 19 8	58 8 11	72 2 9
40	7 6 10	16 3 10	34 16 4	53 10 1	69 0 11	79 17 7

(b) Policies effected as Endowment Insurances payable at the end of the Specified Term, or at previous death.

Age at Entry.	15 Year Term.		20 Year Term.		30 Year Term.		
	Surrender Value of Policy at end of		Surrender Value of Policy at end of		Surrender Value of Policy at end of		
	5 years	10 years	5 years	10 years	5 years	10 years	20 years
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	24 2 10	56 14 1	16 4 8	38 1 6	8 15 6	20 10 4	50 3 4
30	24 1 2	56 9 1	16 4 4	37 16 4	9 0 2	20 14 0	50 3 2
40	23 18 1	56 1 10	16 5 2	37 13 4	9 13 8	21 17 0	50 13 4

Age at Entry.	40 Year Term.			
	Surrender Value of Policy at end of			
	5 years	10 years	20 years	30 years
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	5 11 2	12 18 10	30 16 5	56 5 4

14.

INDUSTRIAL DEPARTMENT.

SECOND SCHEDULE.

The numbers and letters of the following answers correspond with those of the items of Part II of the Second Schedule to the Act.

(1) The 31st December, 1955.

(2) The liability in respect of the policies was taken as the difference between the capitalized values as at the valuation date of :—

(i) the reversion in the sum insured, including any reversionary bonuses declared and still in force at the valuation date ; and

(ii) the future net premiums, less any reduction of those premiums which may have been obtained by the giving of any valuable consideration.

(a) The valuation has been made on the following principles, which are determined by the Board of Directors on the advice of the Actuary, and are such that the calculated liability is not less than it would have been if calculated on the Minimum Basis in accordance with the rules set forth in the Fourth Schedule to the Act.

(b) and (c)
The Net Premiums used in the valuation were calculated according to the tables of mortality and rates of interest set out in answer to question (3), the age at entry being taken as herein described. No additions were made to the amounts so calculated to provide for bonuses, office expenses or other charges. The net premiums have not been adjusted except to ensure that in no case did the net premium exceed the actual premium charged.

Entry Ages were taken as follows :—

Whole Life Insurances and Endowment Insurances for Specified Terms : the quinquennial age nearest to the age next birthday at entry.

Endowment Insurances Maturing at Specified Ages : the age at entry was found by deducting the term of the policy from an assumed maturity age of 55.

Infantile Policies : an entry age of 5 was assumed.

Maturity Dates and Premium Terms. Actual Maturity dates and premium terms were taken into account (except as mentioned below), policies maturing, or premiums emerging, in any particular calendar year being assumed to mature, or emerge, on the average on the 30th June of that year. For certain Whole Life Limited Payment Insurances the premium term was taken as the difference between the actual premium emerging age and the assumed entry age.

The Valuation Age was obtained by adding to the assumed entry age the number of years the policy had been in force, every fraction of a year being treated as one-half.

The Unexpired Term to Maturity. It was assumed that policies having an unexpired term of between n and (n + 1) years would on the average mature in (n + $\frac{1}{2}$) years.

Future Premium Terms. When the future premium term, actual or assumed as the case may be, was between n and (n + 1) years, it was assumed that on the average (n + $\frac{1}{2}$) years' premiums remained to fall due.

(d) No definite provision has been made in the valuation for the maintenance of a specified rate of bonus.

(e) All premiums were assumed to be payable momently.

(f) (i) No special reserve is made as continuous functions are used in the valuation.

(ii) No specific reserve is maintained to meet future expenses and to provide future bonuses in the case of limited premium policies and paid-up policies in the Industrial Department, any provision necessary on these accounts being amply covered by the general reserves carried forward (see answer to question (8) (e) of this schedule).

(iii) No specific reserve is made in respect of policies which have lapsed, but any liability which may arise is covered by the Special Reserve for Increasing Sums Insured and Other Purposes.

(iv) The Society does not issue policies securing continuous disability benefits in the Industrial Department.

(g) Under the valuation method adopted no policy would be treated as an asset.

(h) Lives taken at an advance are for all purposes reckoned as being of the advanced age at entry.

(i) The valuation has been made in Australian currency, Assets and Liabilities in currencies other than Australian being converted at par of exchange. In so far as liabilities in a particular currency are not covered by Assets in the same currency, reserves are available sufficient to cover any deficiency which would result from converting the balance represented by Assets in other currencies into the currency in question, at the rate of exchange ruling at the date of the valuation.

(3) The Table of Mortality used in the Valuation was "The AM33 Australian Life Tables 1932-34." The rate of interest assumed in the calculations was 2½ per cent.

(4) The proportion of annual premiums reserved as a provision for future expenses and profits was—

Insurances with profits	22.650 per cent.
Insurances without profits	15.564 per cent.

(5) The net effective rate of interest realised by the Society on its funds in each of the years 1951-1955 inclusive was as follows :—

1951	£3 9 9 per cent.
1952	£3 12 2 per cent.
1953	£3 14 6 per cent.
1954	£3 16 10 per cent.
1955	£3 18 1 per cent.

These rates were ascertained by dividing the interest receipts of the year (including rents) less taxes by the mean of the funds at the beginning and at the end of the year, decreased by an amount equal to half the net interest for the year.

(6) As there are no shareholders, the total divisible surplus is divided among the policyholders entitled to share in the distribution.

(7) (a) The surplus is divided on the following principles, which are determined by the Board on the advice of the Actuary :—

By allotting simple reversionary bonuses.

(b) No policy is entitled to participate in the surplus until it has been five years in force, but a bonus is allotted at the end of the calendar year in which it becomes four years in force.

(c) A full year's bonus is allotted in each case in respect of the policy year in which the valuation date occurs.

(d) Bonuses vest immediately, provided the life insured has attained the age of ten years.

(8) The total amount of surplus arising in the year 1955 was :—

Surplus at 31st December, 1955	£2,262,202	
Paid during 1955 as Special Bonus	76,164	
Exchange Adjustment charged through Revenue Account for the year 1955	49,114	
	2,387,480	
Less amount reserved at 31st December, 1954	1,390,037	
		£997,443

The surplus was allocated as follows :—

(a) Paid during 1955 as Special Bonus, £76,164.

(b) and (c) £1,242,484 divided among 1,057,436 policies with participation insuring £79,276,590.

(d) Nil, there being no shareholders.

(e) £169,718 reserve for increasing sums insured and other purposes and £850,000 reserve for Contingencies.

(f) Carried forward unappropriated—nil.

(9) A simple reversionary bonus of £1 2s. 6d. per £100 sum insured was allotted to every policy which participated, and in addition reversionary bonuses allotted prior to 1955 and still in force were increased to the extent necessary to ensure that the total bonuses on any participating policy would not be less than £1 2s. 6d. per £100 sum insured for each year of participation.

(10) Bonuses cannot be dealt with separately from the policy.

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(11) Specimen Surrender Values (exclusive of Cash Value of Bonuses) which are allowed per £100 policy.

(a) Policies originally issued for the Whole Term of Life, but now payable on attaining age 95, or at previous death. No premiums are payable after the Life Insured has attained age 75.

Age at Entry.	Surrender Value of Policy at end of				
	5 years	10 years	20 years	30 years	40 years
					£ s. d.
20					39 0 6
30		Last Issued 1923			54 7 9
40					79 2 0

(b) Policies effected as Endowment Insurances payable at the end of the Specified Term, or at previous death.

Age at Entry.	20 Year Term.		30 Year Term.		
	Surrender Value of Policy at end of		Surrender Value of Policy at end of		
	5 years	10 years	5 years	10 years	20 years
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	..	27 18 0	..	11 18 3	37 8 10
30	..	28 1 8	..	12 8 5	38 3 3
40	..	28 12 5	..	13 13 0	39 12 0

Age at Entry.	40 Year Term.			
	Surrender Value of Policy at end of			
	5 years	10 years	20 years	30 years
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	..	6 2 5	18 12 8	42 18 8

M. C. BUTTFIELD, General Manager.

CECIL H. HOSKINS, Chairman.

I certify that I have satisfied myself as to the accuracy of the valuations made for the purpose of the abstract and of the valuation data.

L. G. OXBY, Chief Actuary.

30th May, 1956.

W. A. MACKAY
S. G. ROWE } Directors.

Wholly set up and printed in Australia by John Sands Pty. Ltd., Sydney.

EXHIBIT "D"

ANNUAL REPORT (PP. 1–8) OF APPELLANT

ANNUAL REPORT

to be presented at the

107th Annual Meeting of the Members

of the

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

ANNUAL GENERAL MEETING

Australian Mutual Provident Society

NOTICE is hereby given that the 107th Annual Meeting of the members of the Society will be held in the Society's Head Office building, 87 PITT STREET, SYDNEY, at 2.15 o'clock in the afternoon of FRIDAY, 8th June, 1956.

By Order of the Board

L. G. OXBY

Secretary

CONTENTS

1955 NJB

NEW SUM INSURED	£143,495,000
TOTAL SUM INSURED IN FORCE	£1,055,464,000
TOTAL ASSETS	£321,468,000
INCOME	£46,240,000
INTEREST RATE EARNED . . (After deduction of taxes)	£4·0·6 per cent
PAYMENTS TO POLICYHOLDERS	£17,541,000
SURPLUS DISTRIBUTED . . .	£8,738,000
which provides	
REVERSIONARY BONUSES . .	£14,524,000

DIRECTORS' REPORT

Your Directors have the pleasure to present their Annual Report for the year 1955

- **NEW BUSINESS.** New Business completed under Ordinary policies, after deducting reinsurances, comprised 99,502 policies insuring £132,426,360 and providing annuities for £131,788 per annum. The number of new Industrial policies issued was 60,706 insuring £11,069,318. The total sum insured of £143,495,678 is the largest amount completed by the Society in any one year of its history.

- **BUSINESS IN FORCE.** At the end of the year there were in force 1,328,672 Ordinary policies insuring £937,048,789 (after deduction of reinsurances) and providing annuities for £735,680 per annum. The number of Industrial policies in force was 1,401,781 insuring £118,415,402. The total sum insured, £1,055,464,191, has been increased to £1,166,551,277 by the addition of Reversionary Bonuses previously allotted and still in force.

- **INCOME.** The Society's total income for the year was £46,240,268. This comprised £34,556,581 for insurance premiums and purchase money for annuities, and £11,683,687 for investment income after deducting income and land taxes.

- **CLAIMS PAID.** Claims by death and maturity amounted to £13,957,742. The amount of claims paid by the Society now totals £276,700,000, being £150,600,000 of claims by death and £126,100,000 of claims by maturity.

- **EXPENSES.** Operating Expenses absorbed the following proportions of the premium receipts excluding purchase money for annuities:—

	1954	1955
Ordinary business	14.47 per cent.	14.92 per cent.
Industrial business	24.75 „ „	25.87 „ „

  In addition, provisions for Superannuation of Staff and Agents absorbed .96 per cent. of the premium receipts in 1954, and 1.00 per cent. in 1955.

- **INTEREST RATE.** The effective rate of interest realised on the Funds (excluding the Investment and Contingencies Reserve) was £4-6-11 per cent. and the corresponding rate after deduction of income and land taxes was £4-0-6 per cent.

- **FUNDS AND RESERVES.** The total policyholders' funds now amount to £312,694,241 and include the Investment and Contingencies Reserve of £5,500,000.

- **BONUS DISTRIBUTION.** On the advice of the Chief Actuary, your Directors have decided to distribute £7,496,295 of surplus funds among the holders of participating Ordinary policies, thereby providing reversionary bonuses of more than £12,996,000. The corresponding surplus to be distributed to Industrial policyholders is £1,242,484 providing reversionary bonuses amounting to £1,528,000.

- **ELECTION OF DIRECTORS.** The Directors retiring in terms of the By-laws are the Hon. T. A. J. Playfair, M.L.C., and Mr. C. G. Crane, both of whom are eligible for re-election and are the only persons who have given notice of candidature.

- **ELECTION OF AUDITORS.** Mr. Edgar Sydney Wolfenden, A.I.A., F.C.A. (Aust.), Auditor, retires in terms of By-law 83, but is eligible for re-election and has given the requisite notice.

For and on behalf of the Board of Directors,

Sydney, 18th April, 1956.

CHAIRMAN.

AUSTRALIAN MUTUAL

STATEMENT OF INCOME *for the Year ended 31st December, 1955.*

1954 £		Ordinary £	Industrial £	1955 £
	INCOME			
31,230,678	Insurance Premiums	28,544,653	5,477,193	34,021,846
492,071	Purchase Money for Annuities Granted	534,735	—	534,735
	Interest, Dividends and Rents	12,594,479		
10,688,963	Less Income and Land Taxes	910,792		11,683,687
42,411,712				46,240,268
	USE OF INCOME			
	Payments to Policyholders and Beneficiaries—			
6,381,110	Death Claims (including Bonuses)	6,211,398		
6,857,127	Matured Policies (including Bonuses)	7,746,344		
191,784	Annuities	189,920		
2,561,341	Surrenders (including advances redeemed by Surrenders)	3,271,192		
115,328	Bonuses taken in Cash	122,418		
				17,541,272
12,811,934	Set aside for Policyholders and Beneficiaries— Increase in reserves necessary to meet future payments under Policies			13,671,236
		Ordinary £	Industrial £	
	Operating Expenses—			
	Commissions	1,908,895	620,824	
	Salaries and Other Expenses of Management (*see note*)	2,254,237	763,436	
	Taxes, other than Income and Land Taxes	95,918	32,539	
5,071,882		4,259,050	1,416,799	5,675,849
300,341	Provisions for Superannuation of Staff and Agents			342,793
8,120,865	Surplus Income, for use as shown in Statement of Surplus on next page			9,009,118
42,411,712				46,240,268

PROVIDENT SOCIETY

STATEMENT OF SURPLUS *for the Year ended 31st December, 1955.*

1954 £		1955 £
	SURPLUS	
8,120,865	Surplus Income, as per Statement of Income on previous page	9,009,118
54,013	Surplus on Realisation of Assets	—
—	Transfer from Provision for Taxation	100,000
2,643,716	Surplus brought forward from previous year	2,518,153
10,818,594		11,627,271
	ALLOCATION OF SURPLUS	
287,865	To Write Down Book Values of Assets	269,295
—	Loss on Realisation of Assets	23,417
480,594	To meet Exchange Costs on transfers of funds between countries	304,163
		Ordinary £ / Industrial £
7,531,982	Surplus Divided and allotted as Reversionary Bonuses to participating policies	7,496,295 / 1,242,484 — 8,738,779
	Surplus Carried Forward—	
	Reserve for Contingencies	1,000,000 / 850,000
	Reserve for interim bonuses	60,000 / —
	Surplus not appropriated	211,899 / 169,718
2,518,153		1,271,899 / 1,019,718 — 2,291,617
10,818,594		11,627,271

NOTES:

- In these statements New Zealand and English pounds have been treated as though they were equal in value to Australian pounds.
- Expenses of Management include £28,146 Directors' Fees (Head Office and Branches).
- The certificates on page 8 are an integral part of these statements.

AUSTRALIAN MU

STATEMENT OF ASSETS AN

ASSETS *which assure fulfilment of liabilities*

1954 £		1955 £	1955 £
	FIXED ASSETS		
	Freehold and Leasehold Property and Associated Assets	7,919,678	
	Office Furniture	Nil	
6,055,313			7,919,678
	LOANS		
	On Mortgage	117,632,912	
	On Policies of the Society including advances of premiums	14,153,595	
	On Life Interests and Reversions	3,721	
	On Stocks and Shares	11,725	
111,711,911			131,801,953
	INVESTMENTS		
	Government Securities—		
	Australia	99,535,538	
	New Zealand	12,605,027	
	Great Britain	1,533,706	
	Other	12,580	
	Securities of Local Government and Semi-Governmental Bodies	32,617,925	
	Debentures of Companies	18,962,999	
	Preference Shares	4,448,038	
	Ordinary Shares	6,862,183	
175,863,330			176,577,996
	OTHER ASSETS		
	Outstanding Premiums including amounts in days of grace	1,803,042	
	Interest, Dividends and Rents accruing but not due	2,696,826	
	Outstanding Interest including amounts in days of grace	200,474	
	Sundry Debtors	464,430	
4,659,961			5,164,772
	CASH		
14,131	On Deposit, and In Hand	4,069	4,069
298,304,646			321,468,468

NOTES: ● In this statement New Zealand and English pounds have been treated as though they were equal in value to Australian pounds.

● The book values of Redeemable Securities purchased at a discount are adjusted annually so as to attain to redemption value by maturity date. Other investments appear in the statement at or under cost price.

● The certificates on page 8 are an integral part of this statement.

AP PROVIDENT SOCIETY

TEST AS AT 31st DECEMBER, 1955

LIABILITIES *to Policyholders, Beneficiaries and others*

1954 £		Ordinary £	Industrial £	1955 £
274,960,627	Policy Reserves *This liability, together with future premiums and interest, is the amount which is required to assure payment of future benefits under policies in force.*	249,908,026	46,255,819	296,163,845
7,531,982	Surplus Divided for year 1955, and allotted as Reversionary Bonuses to participating policies	7,496,295	1,242,484	8,738,779
2,518,153	Surplus carried forward	1,271,899	1,019,718	2,291,617
5,500,000	Investment and Contingencies Reserve	4,500,000	1,000,000	5,500,000
290,510,762	**POLICYHOLDERS' FUNDS**	263,176,220	49,518,021	312,694,241
3,528,203	Claims under Policies, in the process of settlement			3,570,355
351,931	Claim Investments, being Policy Proceeds left with the Society at interest			409,509
63,854	Industrial Agents' Fidelity Guarantees			57,414
950,000	Provision for Accrued Taxation			1,380,000
1,386,016	Outstanding Accounts			2,154,007
1,513,880	Bank Overdraft			1,202,942
298,304,646				321,468,468

We certify that, in our belief, the assets set forth in this statement were, at 31st December, 1955, in the aggregate fully of the value stated, less the Investment and Contingencies Reserve taken into account.

M. C. BUTTFIELD, *General Manager.* C. H. HOSKINS, *Chairman.*
L. D. HATCH, *Chief Accountant.* W. A. MACKAY, S. G. ROWE } *Directors.*

AUDITORS'. CERTIFICATE

We, the undersigned, hereby certify that we have examined the books of account, vouchers, deeds and securities of the Australian Mutual Provident Society in accordance with By-law 85 and compared them with the Statement of Assets and Liabilities and have found them to be correct.

We further certify that we have obtained all the information and explanations we have required and, in our opinion, this Statement is properly drawn up so as to exhibit a true and correct view of the state of the Society's affairs according to the best of our information and the explanations given to us and as shown by the books of the Society.

E. S. WOLFENDEN
H. R. BEARDSMORE } Auditors.
CHARTERED ACCOUNTANTS (AUST.)

SYDNEY, 17th April, 1956.

CHIEF ACTUARY'S CERTIFICATE

I hereby certify that:—

(a) A valuation has been made of the liability of the Society under its policy contracts as at 31st December, 1955.

(b) This valuation was made upon a net premium basis with 2% interest for Insurances with Deferred Participation, 2¾% for certain Insurances with Immediate Participation in bonuses on a reduced scale, and 2½% for other Policies. The basis of valuation is fully described in the Society's returns to the Insurance Commissioner, Commonwealth of Australia.

(c) The Policy liabilities revealed by this valuation are £249,908,026 under Ordinary Policies, and £46,255,819 under Industrial Policies. The total Policy liabilities, £296,163,845, represent an increase of £13,671,236 over the sum of the corresponding liabilities at 31st December, 1954, and the liability for the Reversionary Bonuses allotted for the year 1954.

(d) The valuation revealed a total Surplus of £11,030,396 prior to making the allocations set out in the Statement of Surplus.

(e) The Reversionary Bonus allotted for the year 1955 to participating policies has required the distribution of £7,496,295 of this Surplus to Ordinary Policies, and £1,242,484 to the Industrial Policies.

(f) In my opinion, this distribution of Surplus has been made upon a basis which is fair and equitable as between the policyholders holding participating policies.

L. G. OXBY
Chief Actuary

SYDNEY, 17th April, 1956.

CERTIFICATE OF REGISTRAR OF SUPREME COURT AS TO ACCURACY OF RECORD

I, GERALD RONALD HOLDER, Registrar of the Supreme Court of New Zealand at Wellington, DO HEREBY CERTIFY that the foregoing 166 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have relation to the matters of appeal, and also correct copies of the reasons given by the Judges of the Supreme Court of New Zealand in delivering judgment therein, such reasons having been given in writing: AND I DO FURTHER CERTIFY that the appellant has taken all the necessary steps for the purpose of procuring the preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said appellant to prosecute this Appeal.

AS WITNESS my hand and Seal of the Supreme Court of New Zealand this 22nd day of June, 1961.

G. R. HOLDER,

Registrar

L.S.

In the Privy Council.

No. of 1961

ON APPEAL FROM THE SUPREME COURT OF NEW ZEALAND

BETWEEN

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

Appellant

AND

THE COMMISSIONER OF INLAND REVENUE

Respondent

RECORD OF PROCEEDINGS

GREGORY ROWCLIFFE & CO.
1 Bedford Row,
London.

Agents for: CHAPMAN TRIPP & CO.
20 Brandon Street,
Wellington, N.Z.
Solicitors for the Appellant

MACKRELL & CO.
Inigo Place,
31 Bedford Street,
London.

Agents for: CROWN LAW OFFICE,
Wellington, N.Z.
Solicitors for the Respondent

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