

GOVERNMENT INSURANCE (AMENDMENT) ACT.

Act No. 62, 1941.

George VI.
No. 62, 1941. An Act to provide for the incorporation of the Government Insurance Office of New South Wales; to authorise the corporation to carry on the general business of insurance; to validate certain matters; to amend the Government Insurance Act, 1927-1941; and for purposes connected therewith. [Assented to, 25th November, 1941.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Government Insurance (Amendment) Act, 1941."

(2) The Government Insurance Act, 1927-1941, as amended by this Act, may be cited as the Government Insurance Acts, 1927-1941.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. (1) The Government Insurance Act, 1927-1941, is amended by omitting sections two, three and 3A and by inserting in lieu thereof the following sections:—

No. 62, 1941.

Amendment
of Act No.
18, 1927.

Subst. secs.
2, 3, 3A and
new secs. 3B,
3C.

Definitions.

2. In this Act, unless the context or subject-matter otherwise requires—

“General Manager” means the person for the time being holding the office of General Manager of the Government Insurance Office of New South Wales.

“Insurance” includes assurance, additional insurance, counter insurance, treaty and internal insurance, and re-insurance, guarantee and surety.

“Office” means the Government Insurance Office of New South Wales established by this Act.

“Prescribed” means prescribed by this Act or the regulations.

“Regulations” means regulations made under this Act.

3. (1) There is hereby established a Government Insurance Office of New South Wales.

Incorporation of
Government
Insurance
Office of
New South
Wales.

(2) The Government Insurance Office of New South Wales shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of purchasing, holding, granting, demising, disposing of and otherwise dealing with real and personal property and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

cf. Act No.
18, 1911
(Cwth.),
ss. 5, 6.

(3) The corporate name of such body corporate shall be the “Government Insurance Office of New South Wales.”

(4) The Office shall hold all real and personal property whatsoever vested in it under this Act for and on behalf of the Government of New South Wales, and all moneys so vested in or held by it, whether the same be accrued due or not, are hereby declared to be public moneys belonging to His Majesty,

cf. Act No.
13, 1913,
s. 19.

No. 62, 1941.

Majesty, and the property of the Crown, and, in addition to all other remedies, shall be recoverable accordingly as from debtors to the Crown.

cf. Act No.
18, 1911
(Cwth.),
s. 11.

(5) The Office shall be managed by the General Manager.

(6) The common seal of the Office shall not be affixed to any instrument except in the presence of the General Manager, and he shall attest by his signature the fact and date of the seal being so affixed.

(7) All courts and persons having by law or consent of parties authority to hear, receive and examine evidence shall take judicial notice of the seal of the Office affixed to any document, and shall, until the contrary is proved, presume that such seal was properly affixed thereto.

Powers and
authorities
of the
Office.

3A. (1) The Office is hereby authorised and empowered—

- (a) to undertake and carry on the general business of insurance, including any class or form of insurance which is, at the commencement of the Government Insurance (Amendment) Act, 1941, being undertaken or carried on, whether in New South Wales or elsewhere, by any person engaged in the business of insurance, or which may be considered necessary or desirable;
- (b) to undertake and carry on such general business of insurance, or any class or form of insurance, according to the practice, usage, form and procedure which is, for the time being, followed by other persons engaged in the like business or to undertake and carry on such business in such manner and form and according to such procedure as may be considered necessary or desirable;
- (c) to do anything necessary or incidental to the powers and authorities conferred by this Act.

(2)

(2) The powers and authorities conferred by subsection one of this section shall be in addition to any other power or authority conferred on the Office by this or any other Act. No. 62, 1941.

3B. (1) The General Manager shall be appointed by the Governor, and shall be paid such remuneration as may be determined by the Governor. General Manager.
cf. Act No.
69, 1915,
s. 8A.

A person who is of or above the age of sixty-five years shall not be appointed as General Manager.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to the appointment of the General Manager, and the General Manager shall not be subject to any of such Acts during his term of office.

(3) The General Manager shall, subject to this Act, be appointed for a term of seven years, and be eligible for reappointment from time to time for a like term.

(4) (a) A General Manager shall be deemed to have vacated his office if he—

- (i) engages in New South Wales during his term of office in any paid employment outside the duties of his office;
- (ii) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary or estate for their benefit;
- (iii) absents himself from duty for a period of more than twenty-one consecutive days except on leave granted by the Governor;
- (iv) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898;
- (v) is convicted of any felony or misdemeanour;
- (vi) resigns his office by writing under his hand addressed to the Governor;
- (vii) is removed from office by the Governor.

(b) A General Manager shall be deemed to have vacated his office on the day upon which he attains the age of sixty-five years.

(5) The Governor may, for any cause which appears to him sufficient, remove the General Manager from office.

(6)

No. 62, 1941.

(6) (a) A General Manager who at the date of his appointment is an officer of the Public Service shall, in the event of his office as General Manager being discontinued or abolished, be entitled if he is under the age of sixty years to be appointed, upon the recommendation of the Public Service Board, to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as General Manager.

(b) Nothing in this Act shall affect the rights accrued or accruing under the Public Service Act, 1902, or the Superannuation Acts, 1916-1940, or any Act amending such Acts, to any officer of the Public Service appointed as General Manager.

(c) Any officer of the Public Service appointed as General Manager shall continue to contribute to any fund or account and be entitled to receive any deferred or extended leave, payment, pension or gratuity as if he were an officer or employee within the meaning of the Public Service Act, 1902, or the Superannuation Acts, 1916-1940, as the case may be.

(7) A deputy may be appointed by the Governor to act for the General Manager during his illness or absence; and every such deputy shall, during the time he acts as deputy, have the powers, duties and liabilities of and be entitled to the same immunities as the General Manager, and shall receive such salary or remuneration as the Governor may direct.

No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising such deputy so to act, or as to the necessity or propriety of such appointment, and all acts or things done or omitted by such deputy shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the General Manager.

(8) The General Manager may, from time to time, delegate all or any of his powers (other than this power of delegation), authorities, duties and functions to any officer or employee appointed or employed in connection with the conduct of the business of the Office.

Any

Any such delegation may be revoked at any time and no delegation shall prevent the exercise or discharge of any power, authority, duty or function by the General Manager. No. 62, 1941.

3c. (1) Subject to subsection two of this section all officers and employees of the Office (other than the General Manager) shall be persons appointed under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts; and every such officer and employee shall continue to be subject to the said Acts during his tenure of office or employment. Officers and employees.
cf. Act No. 20, 1940,
s. 46.

(2) The General Manager may from time to time employ and dismiss such casual employees (being members of the field staff other than inspectors) as he deems necessary.

(3) For the purpose of the conduct of the business of the Office, the Office may, with the approval of the Minister of the Department concerned and of the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

(2) No contract of insurance entered into by the Colonial Treasurer or on behalf of the Colonial Treasurer by any officer of the Treasury before the commencement of this Act shall be held to be invalid merely on account of the want of power or authority in the Colonial Treasurer to enter into such a contract, or on account of the manner and form in which such contract was entered into.

(3) (a) In this subsection "insurance business of the Colonial Treasurer" means any insurance business transacted by or on behalf of the Colonial Treasurer under the powers and authorities conferred by the Government Insurance (Enabling and Validating) Act, 1927, or by that Act as amended from time to time before the commencement of this Act, and includes any contract of insurance validated by section thirteen of that Act or by subsection two of this section, and also includes any arrangement made, before the commencement of this Act between the Colonial Treasurer and any Government Department for an indemnity or cover in respect of any liability

No. 62, 1941. liability under any Act or at common law or for insurance or cover in relation to any matter contingency or event.

(b) All moneys which, immediately before the commencement of this Act, were in credit in any account, being an account for or in connection with the insurance business of the Colonial Treasurer (other than the Treasury Fire Risks Account, the Treasury Guarantee Fund and the Treasury Guarantee Fund—General Reserve Account) in the Special Deposits Account, together with all interest accrued and due thereon, and all stock inscribed in the name of the Government Insurance Office of New South Wales (other than stock inscribed Government Insurance Office of New South Wales, No. 4 Account and stock inscribed Government Insurance Office of New South Wales Treasury Guarantee Fund) and stock inscribed in the name of the Colonial Treasurer and held on behalf of the Government Insurance Office of New South Wales for the purpose of deposit under the provisions of section eighteen of the Workers' Compensation Act, 1926-1938, and all assets of the Government Insurance Office of New South Wales at such commencement, shall become vested in the body corporate constituted by section three of the Government Insurance Acts, 1927-1941 (in this section hereinafter referred to as "the body corporate"), and shall be available for all purposes of the body corporate.

(c) All moneys liquidated or unliquidated claims which immediately before such commencement are payable to or recoverable by the Colonial Treasurer in connection with the insurance business of the Colonial Treasurer shall be payable to and be recoverable by the body corporate.

(d) All contracts, agreements and undertakings entered into with and all securities lawfully given to or by the Colonial Treasurer in connection with the insurance business of the Colonial Treasurer and in force immediately before such commencement shall be deemed to be contracts, agreements and undertakings entered into with and securities given to or by the body corporate.

(e) All suits, actions and proceedings pending immediately before the said date at the suit of the
Colonial

Colonial Treasurer in connection with the insurance business of the Colonial Treasurer shall be suits, actions and proceedings pending at the suit of the body corporate. **No. 62, 1941.**

(f) The body corporate may pursue the same remedies for the recovery of any such moneys and claims and for the prosecution of such suits, actions and proceedings as the Colonial Treasurer might have done but for this Act.

(g) The body corporate may enforce and realise any security or charge existing immediately before such commencement in respect of such moneys and claims as if such security or charge were existing in favour of the body corporate.

(h) All debts due and moneys payable by and all claims liquidated and unliquidated recoverable against the Colonial Treasurer in connection with the insurance business of the Colonial Treasurer shall be debts due and moneys payable by and claims recoverable against the body corporate.

(i) Any contract of insurance, reinsurance or indemnity which before the commencement of this Act was entered into in the name of the Government Insurance Office of New South Wales shall be deemed to have been entered into by the Colonial Treasurer in the exercise of the authority and powers conferred on him by section two of the Government Insurance (Enabling and Validating) Act, 1927, as amended from time to time before such commencement.

(j) A reference in any Act, regulation, by-law, ordinance or insurance policy or other instrument to the Colonial Treasurer, where such reference is in relation to the insurance business of the Colonial Treasurer, shall, as from such commencement, be construed as a reference to the body corporate.

A reference in any Act, regulation, by-law, ordinance, insurance policy or other instrument to the Government Insurance Office constituted under the Government Insurance (Enabling and Validating) Act, 1927, shall, as from such commencement, be construed as a reference to the body corporate.

No. 62, 1941.

Further amend-
ment of Act
No. 18, 1927.

Sec. 5.

(Disposal
of surplus
funds.)

3. The Government Insurance Act, 1927-1941, is further amended—

(a) (i) by omitting from subsection one of section five the word “shall” where secondly occurring and by inserting in lieu thereof the word “may”;

(ii) by inserting at the end of the same section the following subsection:—

(3) This section shall not apply to or in respect of the life insurance business of the Office.

New sec.
5A.Funds of
life insur-
ance
business.

(b) by inserting next after section five the following new section:—

5A. (1) The funds for the time being of the Office in respect of the life insurance business of the Office shall be available only for the purposes of such life insurance business and shall not be liable for any contracts of the Office for which it would not be liable if the insurance business of the Office were life insurance business only.

(2) The funds for the time being of the Office in respect of any other insurance business of the Office shall not be available for the purpose of the life insurance business of the Office except under such arrangements and conditions for the internal transfer of funds of the Office by way of loan from one account to another as may at any time upon the recommendation of the Office be approved by the Colonial Treasurer.

(3) The Office may invest and re-invest any of the funds of its life insurance business—

(a) in any Commonwealth Government security;

(b) on loan on the security of land;

(c) in fixed deposits with the Commonwealth Bank of Australia, or with any bank approved by the Colonial Treasurer;

(d) in securities of statutory authorities in New South Wales;

(e)

- (c) in any other manner recommended by No. 62, 1941.
the Office and approved by the Colonial
Treasurer,
and any such securities and investments held
by the Office may at any time be realised,
hypothecated or otherwise disposed of for the
purposes of the life insurance business of the
Office.
- (c) by omitting section seven and by inserting in Subst.
lieu thereof the following section:— sec. 7.
7. Separate and distinct accounts shall be Separate
kept by the Office in respect of each class of accounts.
insurance business undertaken by the Office:
Provided that a miscellaneous account may be
kept in which shall be entered particulars of
transactions in respect of any class of insurance
business which is of an individual or isolated
character or which is such that only a nominal
amount of business is transacted.
- (d) by omitting from section nine the words “The Sec. 9.
Colonial Treasurer may appoint any person as (Agents.)
his” and by inserting in lieu thereof the words
“The Office may appoint any person as its”;
- (e) by inserting next after section nine the following New sec. 9A.
new section:—
9A. The Office may establish branches in any Branches.
part of the State.
- (f) by omitting from section ten the words “the Sec. 10.
Colonial Treasurer for any reason which he” (Power to
and by inserting in lieu thereof the words “the decline
Office for any reason which it”; insurance.)
- (g) by omitting section 10A and inserting the follow- Subst.
ing new sections:— sec. 10A and
10A. (1) Whilst any Act relating to income tax new secs. 10a
shall not apply to the Office, the Office shall and 10c.
from time to time pay to the Colonial Treasurer Contributions
such sums as the Colonial Treasurer deems to in
be the equivalent of the amounts which would lieu of
be payable by the Office if the Office in respect of stamp duty,
its insurance business were liable as an insurance etc.
company for payment of income tax and other
taxes under the provisions of any Act or
Commonwealth Act.

No. 62, 1941.

(2) The provisions of the Stamp Duties Act, 1920-1940, shall apply to and in respect of policies of insurance issued by the Office in the same manner and to the same extent as they apply to and in respect of policies of insurance issued by other persons engaged in the business of insurance in New South Wales.

(3) The provisions of the Fire Brigades Act, 1927-1941, shall apply to and in respect of the Office in the same manner and to the same extent as they apply to other persons engaged in the business of insurance in New South Wales:

Provided that the Office shall not be liable to make any contribution under that Act in respect of premiums received by or due to it during any year earlier than the year ending on the thirty-first day of December, one thousand nine hundred and forty-two.

Power to
act as
agents.

10B. The Office, or with the consent of the Minister, the General Manager or any officer or employee of the Office nominated by the General Manager may, subject to the control of the General Manager, act as the agent of any person carrying on insurance business in or outside of Australia.

Application
of Life,
Fire and
Marine
Insurance
Act, 1902.

10C. The provisions of the Life, Fire and Marine Insurance Act, 1902, as amended by any other Act, shall so far as applicable extend and apply to all contracts of insurance made or granted by the Office under this Act.

Subst.
sec. 11.

(h) by omitting section eleven and by inserting in lieu thereof the following section:—

Accounts
and audit.

11. (1) The Office shall cause to be kept proper books of account, and shall, as soon as practicable after the thirtieth day of June in each year, prepare and transmit to the Minister for presentation to Parliament statements of accounts in a form approved by the Auditor-General, exhibiting a true and correct view of the financial position and transactions of the Office.

(2)

(2) The accounts of the Office shall be audited by the Auditor-General, who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit of public accounts; and the Audit Act, 1902, and Acts amending the same, shall apply to the Office, the General Manager and the officers and employees concerned in the administration of this Act in the same manner as it applies to accounting officers of public departments.

No. 62, 1941.

- (i) by inserting after section fourteen the following new sections:—

New secs.
15-18.

15. (1) For the purposes of this section there shall be a committee which shall consist of the General Manager, the Auditor-General and the Government Actuary.

Surplus
reserves and
profits.

(2) The committee shall, as soon as practicable after the commencement of the Government Insurance (Amendment) Act, 1941, determine the amount reasonably required as reserve funds for any purpose under this Act.

Any reserve funds held by the Office in excess of the amount so determined shall be paid into a special account to be opened by the Colonial Treasurer in the Special Deposits Account.

(3) The Committee shall, as soon as practicable after the close of the financial year ending on the thirtieth day of June next after the commencement of the Government Insurance (Amendment) Act, 1941, and of each succeeding financial year, determine how much of the funds shown in the accounts of the Office for that financial year which would but for this subsection have been carried to the General Reserve Accounts pursuant to section five of this Act, is reasonably required for any of the purposes of this Act.

Any part of such funds which exceeds the amount so determined shall be paid into the special account referred to in subsection two of this section.

(4)

No. 62, 1941.

Execution
of contracts.
cf. Act No.
18, 1911
(Cwth.),
s. 31.

(4) The special account shall be applied for the purpose of making advances to the Hospitals Fund to be utilised for the provision of new buildings, improvements, additions, new equipment and furnishings for incorporated hospitals and separate institutions within the meaning of the Public Hospitals Act, 1929-1940.

16. Contracts on behalf of the Office may be made, varied or discharged as follows:—

- (a) any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied or discharged, in the name and on behalf of the Office, in writing under the common seal of the Office;
- (b) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged, in the name and on behalf of the Office, in writing signed by any person acting under the express or implied authority of the Office;
- (c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made, varied or discharged by parol, in the name and on behalf of the Office, by any person acting under the express or implied authority of the Office;

And all contracts made according to the provisions contained in this section shall be effectual in law, and shall be binding upon the Office and on all other parties thereto, their heirs, executors or administrators as the case may be:

Provided that nothing in this section shall invalidate any contract executed on behalf of
the

the Office by any duly appointed attorney of the Office if the contract would be valid if executed by the attorney on his own behalf. No. 62, 1941.

17. No person carrying on insurance business of any kind within the State, and no person granting cover or receiving premiums, proposals or requests in respect of insurance business on behalf of or for transmission to any company, person or association of persons outside of the State, shall refuse to allow additional insurance with the Office in respect of any insurable risk, and any such company refusing to allow such additional insurance with the Office shall be liable to a penalty not exceeding fifty pounds for every such offence. Additional insurance.

Provided that this section shall not be held to prohibit the cancellation of a policy of insurance by any such person for prudential reasons provided that such person allows the insured a return premium in respect of the unexpired term of the policy calculated pro rata as to time and without reference to any customary short period ratings.

18. No matter or thing done and no contract entered into by the General Manager and no matter or thing done by any person whomsoever acting under the direction of the General Manager shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever. General manager not personally liable.

(j) by omitting from the Schedule the words "Treasury Guarantee Fund." Schedule.

4. Contingent liability reserves made since the first day of July, one thousand nine hundred and thirty-three, in respect of insurance premiums due from but unpaid by Government departments or Government instrumentalities shall be utilised by the Office to discharge in the books of the Office the indebtedness in respect of the unpaid premiums against which such reserves have been made on account of any financial year during the period commencing on the first day of July, one thousand nine hundred Application of certain contingent liability reserves.

No. 62, 1941. hundred and thirty-three, and ending on the thirtieth day of June next following the commencement of this Act.

The Colonial Treasurer, his predecessors in office, the officers of the Treasury for the time being and all persons whosoever concerned in the non-payment and non-collection of the aforementioned unpaid premiums are hereby indemnified and held harmless in respect thereof.

Nothing in this section shall be construed as authorising the Office to grant any insurance after the commencement of this Act without charging and recovering the appropriate premium therefor.

Indemnity. **5.** The Colonial Treasurer, his predecessors in office, the officers of the Treasury for the time being, and all persons whosoever concerned or engaged in making any withdrawal or payment from any account in Special Deposits Account in the Treasury made before the commencement of this Act in satisfaction of or in connection with claims arising under any contract of insurance or indemnity entered into by or on behalf of the Colonial Treasurer by any officer of the Treasury or of a sub-department of the Treasury are hereby indemnified and held harmless for and in respect of such withdrawals or payments.
