

**ASSOCIATED GENERAL CONTRACTORS
INSURANCE COMPANY LIMITED ACT,
1980, No. 38**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 38, 1980.

An Act to make provisions relating to claims against and liabilities incurred by Associated General Contractors Insurance Company Limited in respect of policies of insurance or indemnity under the Workers' Compensation Act, 1926. [Assented to, 23rd April, 1980.]

Associated General Contractors Insurance Company Limited.

BE it enacted by the Queen'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 :—

1. This Act may be cited as the “Associated General Contractors Insurance Company Limited Act, 1980”. Short title.

2. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“Company” means Associated General Contractors Insurance Company Limited;

“Contribution Fund” means the Insurers' Contribution Fund established under section 30H (1) of the Workers' Compensation Act, 1926;

“fund” means the fund established under section 3;

“Government Insurance Office” means the Government Insurance Office of New South Wales;

“licensed insurer” means an insurer, other than the Company, licensed under the Workers' Compensation Act, 1926, and a self-insurer within the meaning of that Act, as at 20th March, 1980;

“policy of insurance” means a policy of insurance or indemnity under section 18 (1) of the Workers' Compensation Act, 1926;

“Registrar” means the Registrar of the Workers' Compensation Commission of New South Wales;

“regulation” means a regulation made under this Act.

(2) So far as the legislative power of Parliament permits, the liquidator of the Company for Victoria, in addition to the liquidator of the Company for New South Wales (if any), shall have and may exercise the powers, authorities, duties and functions of the liquidator of the Company under this Act.

Associated General Contractors Insurance Company Limited.

Fund.

3. (1) There shall be a fund into which shall be paid the contributions required by section 4 or the regulations to be paid by licensed insurers, all income accruing from the investment or re-investment of money under subsection (3), or otherwise accruing to the fund, and any amounts required by section 13 to be paid into the fund and out of which shall be paid such amounts as may be authorised by this Act to be paid thereout.

(2) The fund shall, subject to this Act and the regulations, be under the direction, control and management of the Government Insurance Office.

(3) The Government Insurance Office may invest and re-invest any money in the fund in all or any one or more of the securities and investments mentioned in section 5C (1) of the Government Insurance Act, 1927, and any such securities and investments held by the Government Insurance Office pursuant to this subsection may at any time be realised, hypothecated or otherwise disposed of as the Government Insurance Office may from time to time determine.

(4) Full and accurate accounts shall be kept by the Government Insurance Office in respect of the fund.

(5) The accounts relating to the fund shall be audited by the Auditor-General.

Contributions to fund.

4. (1) Each licensed insurer shall from time to time pay to the Government Insurance Office for payment into the fund such amount as may be calculated, in accordance with subsection (2), by the Government Insurance Office as the appropriate contribution by that licensed insurer.

(2) The appropriate contribution in the case of a licensed insurer shall be an amount equivalent to that which bears the same proportion to the amount determined by the Government Insurance Office as necessary to meet claims, judgments and awards arising from or pertaining to policies of insurance issued by the Company as the amount which that licensed insurer is required

Associated General Contractors Insurance Company Limited.

by or under the Workers' Compensation Act, 1926, to contribute to the fund established by section 41 of that Act, in the year which commenced on 1st July, 1979, bears to the total amount required by or under that Act to be contributed by all licensed insurers to that fund in that year.

(3) An appropriate contribution, calculated in accordance with this section, not paid within the time specified by the Government Insurance Office in a notice to a licensed insurer requiring him to pay the contribution may be recovered as a debt in any court of competent jurisdiction.

(4) In any proceedings under subsection (3), a certificate purporting to be signed by the Registrar as to the amount of the appropriate contribution payable, pursuant to this section, by the licensed insurer, and as to the time within which the contribution should be paid, as specified by the Government Insurance Office, shall without proof of the signature or of the official character of the person by whom the certificate purports to have been signed be evidence of the facts stated therein.

5. The liquidator of the Company shall, on the receipt by him of any claim pertaining to any policy of insurance issued by the Company, forward that claim to the Government Insurance Office.

Liquidator to notify Government Insurance Office of claims.

6. The liquidator of the Company shall, whenever requested to do so by the Government Insurance Office, deliver to the Government Insurance Office all documents relating to policies of insurance issued by the Company and any claims, judgments or awards made in respect of any such policies in his possession and furnish to the Government Insurance Office any information in his possession relating to any such policies or any such claims, judgments or awards.

Delivery of documents, etc., to Government Insurance Office.

Associated General Contractors Insurance Company Limited.

Control of
Supreme
Court over
liquidator.

7. If any complaint is made to the Supreme Court by the Government Insurance Office or the Registrar with respect to the exercise or performance by the liquidator of the Company of any of his powers, authorities, duties or functions under this Act, the Supreme Court shall inquire into the matter and take such action as it thinks fit.

Claims
may be
finalised
etc., by
G.I.O. as
agent.

8. (1) Subject to subsection (2), the Government Insurance Office—

(a) may deal with and finalise any claim; and

(b) may exercise any right of the Company arising from or pertaining to any claim, judgment or award,

arising from or pertaining to any policy of insurance issued by the Company.

(2) Subsection (1) does not authorise the Government Insurance Office—

(a) to pay any amount for the purpose of satisfying any claim, judgment or award; or

(b) to recover any amount due to the Company.

(3) The Government Insurance Office shall, when it acts pursuant to this section, be deemed to be acting as the agent of the Company.

Liquidator
may borrow
money from
fund to
satisfy
claims, etc.

9. (1) For the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the liquidator of the Company may from time to time borrow from the fund such amounts as may be necessary for that purpose.

(2) The liquidator shall apply any amount borrowed from the fund in pursuance of subsection (1) for the purpose for which it was borrowed.

Associated General Contractors Insurance Company Limited.

10. Out of the fund, the Government Insurance Office— Application of fund.

- (a) shall, as manager of the fund, pay any amount that the liquidator of the Company wishes to borrow, pursuant to section 9, for the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company; and
- (b) is entitled—
 - (i) to be paid, as manager of the fund, the costs of administration of the fund; and
 - (ii) to be indemnified against all payments made by it and all costs and expenses that it may incur, as manager of the fund, in or in connection with the exercise or performance or the purported exercise or performance of its powers, authorities, duties and functions under this Act.

11. The powers of the liquidator of the Company with respect to any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company shall be exercised as though— Powers of liquidator of the Company.

- (a) the reference to the authority of the Court or of the committee of inspection in section 236 of the Companies Act, 1961, were a reference to the authority of the Government Insurance Office; and
- (b) the words “subject to the provisions of section 292” were omitted from section 236 (1) (b) of the Companies Act, 1961.

12. (1) The liquidator of the Company shall not be personally liable for or in respect of the exercise or performance or the purported exercise or performance by the Government Insurance Office of its powers, authorities, duties and functions under section 8 or any other provision of this Act. Exclusion of liability of liquidator.

Associated General Contractors Insurance Company Limited.

(2) Subsection (1) has effect notwithstanding anything to the contrary in section 237 (4) of the Companies Act, 1961.

Payment
into fund
of money
recovered
by
liquidator.

13. (1) Where the Company or Palmdale Insurance Limited is under a contract of re-insurance insured against liability in respect of policies of insurance issued by the Company and any such liability is incurred by the Company, then, if any part of that liability is met with money borrowed from the fund and an amount in respect of that part of the liability is received by the Company or by Palmdale Insurance Limited or by the liquidator of either of those companies from the re-insurer, the amount received shall, after deducting any expenses of or incidental to getting in that amount, be paid by the liquidator concerned to the Government Insurance Office for payment into the fund in priority to all payments in respect of the debts referred to in section 292 (1) of the Companies Act, 1961.

(2) Where the Company or the liquidator of the Company, pursuant to section 64 of the Workers' Compensation Act, 1926, or otherwise, recovers any amount due to the Company as a consequence of the satisfaction with money borrowed from the fund of any part of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the amount recovered shall, after deducting any expenses of or incidental to recovering that amount, be paid by the liquidator to the Government Insurance Office for payment into the fund in priority to all payments in respect of the debts referred to in section 292 (1) of the Companies Act, 1961.

(3) Where any amount is paid pursuant to section 30K of the Workers' Compensation Act, 1926, from the Contribution Fund to the Company or to the liquidator of the Company as a consequence of the satisfaction with money borrowed from the fund of any part of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the amount paid shall be paid by the liquidator to the Government Insurance Office for payment into the fund in priority to all payments in respect of the debts referred to in section 292 (1) of the Companies Act, 1961.

Associated General Contractors Insurance Company Limited.

(4) This section shall have effect notwithstanding any agreement to the contrary entered into whether before or after the commencement of this Act.

14. When the Company has been dissolved, the payments of compensation under awards pertaining to policies of insurance issued by the Company which would, but for the dissolution taking place, be payable by the Company shall continue and be paid out of the fund by the Government Insurance Office.

Continuance of payment of workers' compensation in certain cases.

15. (1) When the Company has been dissolved, a person who would have had, but for the dissolution of the Company, an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company, other than an entitlement to payment of an amount under section 14, shall be entitled to payment of that amount out of the Contribution Fund.

Entitlements payable after dissolution of the Company.

(2) A person referred to in subsection (1) may make a claim against the Government Insurance Office, as manager of the Contribution Fund, in respect of an entitlement to payment of an amount under that subsection.

(3) The Government Insurance Office, as manager of the Contribution Fund—

- (a) may in all respects deal with and finalise a claim made under subsection (2); and
- (b) may exercise any right the Company would have had but for its dissolution arising from or pertaining to that claim or any judgment or award made pursuant to that claim, as if the Government Insurance Office had been the insurer under the policy from which that claim arises or to which it pertains.

Associated General Contractors Insurance Company Limited.

(4) Out of the Contribution Fund, the Government Insurance Office—

- (a) shall, as manager of the Contribution Fund, satisfy any liability the Company would have had but for its dissolution arising from or pertaining to a claim made under subsection (2) or any judgment or award made pursuant to that claim; and
- (b) is entitled—
 - (i) to be paid, as manager of the Contribution Fund, the costs of administration of the Contribution Fund arising under this Act; and
 - (ii) to be indemnified against all liabilities met by it and all costs and expenses that it may incur, as manager of the Contribution Fund, in or in connection with the exercise or performance or the purported exercise or performance of its powers, authorities, duties and functions under this section.

Final
application
of money
in fund.

16. If, after payment out of the fund of all money authorised or required to be paid out of the fund by this Act, any money remains in the fund, the Government Insurance Office shall pay that money remaining in the fund into the Contribution Fund.

Recovery
of money
paid from
Fund.

17. (1) The Government Insurance Office shall prove as debts in the winding up of the Company—

- (a) the amount (if any) by which the total amounts paid out of the fund by the Government Insurance Office, or to which the Government Insurance Office or the Registrar is entitled, under the provisions of this Act exceed the total amounts paid into the fund pursuant to section 13; and

Associated General Contractors Insurance Company Limited.

(b) in respect of weekly payments to be paid out of the fund under section 14, the amount specified in a certificate by the Government Actuary as the then present value of those payments.

(2) The amount referred to in subsection (1) (a) shall be a debt provable in the winding up.

(3) The amount specified in a certificate by the Government Actuary under subsection (1) (b) shall be a debt provable in the winding up and the certificate shall be conclusive as to the matters stated therein.

(4) All money recovered by the Government Insurance Office by way of dividend pursuant to subsection (1) shall be paid into an account in a bank in New South Wales and shall from time to time be distributed among the licensed insurers from whom contributions to the fund have been paid in the same proportions as the contributions were made.

18. The liquidator of the Company shall, whenever requested to do so by a person authorised by the Minister, make any documents relating to policies of insurance issued by the Company and any claims, judgments or awards made in respect of any such policies in his possession available for inspection by that person. Inspection of documents, etc., by person authorised by Minister.

19. (1) Where—

(a) the liquidator of the Company applies to the Supreme Court for directions in relation to any particular matter arising under the winding up; Registrar may take certain legal proceedings.

(b) the exercise or performance by the liquidator of the Company of any of his powers, authorities, duties and functions, whether under this Act or not, is challenged, reviewed or called into question in proceedings before any court; or

Associated General Contractors Insurance Company Limited.

- (c) any other matter that concerns or may affect the operation of this Act is raised in proceedings before any court,

the Registrar may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

(2) In any case in which the Attorney General might take proceedings on the relation or on behalf or for the benefit of a person to whom the Company is liable in respect of a claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Act, any other Act or any rule of law, the Registrar shall be deemed to represent sufficiently the interests of the public and may take the proceedings in his own name.

(3) The Registrar is entitled to be paid, out of the fund, all the costs and expenses incurred by him in exercising the powers conferred by this section.

Regulations. **20.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) requiring licensed insurers (being insurers, other than the Company, licensed under the Workers' Compensation Act, 1926, and self-insurers within the meaning of that Act, as at a date specified in the regulations) to make further contributions to the fund;
- (b) the manner and method of determining any such further contributions; and

Associated General Contractors Insurance Company Limited.

- (c) varying in circumstances therein specified the periods with respect to which contributions are based or the basis on which such contributions are determined under section 4.
