

**BISHOPSGATE INSURANCE AUSTRALIA LIMITED
(AMENDMENT) ACT, 1984, No. 18**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 18, 1984.

An Act to amend the Bishopsgate Insurance Australia Limited Act, 1983, in relation to the payment of claims against and liabilities incurred by Bishopsgate Insurance Australia Limited in respect of policies of insurance or indemnity under the Workers' Compensation Act, 1926; to validate certain payments; and for certain other purposes. [Assented to, 6th June, 1984.]

Bishopsgate Insurance Australia Limited (Amendment).

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:—

Short title.

1. This Act may be cited as the "Bishopsgate Insurance Australia Limited (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Bishopsgate Insurance Australia Limited Act, 1983, is referred to in this Act as the Principal Act.

Amendment of Act No. 81, 1983.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Validation.

5. Any payment made by the Government Insurance Office out of the general fund kept by that Office for the purposes of the Government Insurance Act, 1927, being a payment—

- (a) which was made after the commencement of the Principal Act and before the day appointed and notified under section 2 (2); and

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- (b) which that Office could have made out of the fund established under section 3 of the Principal Act had this Act been enacted at the time of the payment,

is validated.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 2 (1), definition of "employer"—

After the definition of "Contribution Fund", insert:—

"employer" has the same meaning as it has in the Workers' Compensation Act, 1926;

- (b) Section 2 (1), definition of "policy of insurance issued by the Company"—

Omit the definition of "policy of insurance", insert instead:—

"policy of insurance issued by the Company" means a policy of insurance or indemnity under section 18 (1) of the Workers' Compensation Act, 1926, issued by the Company and includes a policy of insurance or indemnity under that subsection issued by—

- (a) Harvey Trinder (N.S.W.) Proprietary Limited or Bain Dawes Proprietary Limited between 16th July, 1957, and 30th June, 1968, both dates inclusive;
- (b) Bishopsgate Insurance Company Limited of London between 31st July, 1971, and 30th June, 1977, both dates inclusive;
- (c) Neptune Insurance Company Proprietary Limited between 15th June, 1948, and 30th June, 1978, both dates inclusive; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) any other company prescribed for the purposes of this paragraph between such dates as may be so prescribed;

(2) (a) Section 3 (1)—

Omit the subsection, insert instead:—

- (1) There shall be a fund—

- (a) into which shall be paid—

- (i) the contributions required by section 4 or the regulations to be paid by licensed insurers;
- (ii) all income accruing from the investment or re-investment of money under subsection (3), or otherwise accruing to the fund;
- (iii) any amounts received by the Government Insurance Office in the exercise of the rights, or the discharge of the obligations, referred to in section 7 (1) (c) (other than an amount required by section 30L of the Workers' Compensation Act, 1926, to be paid into the Contribution Fund);
- (iv) any amounts payable to the Government Insurance Office pursuant to section 30K of the Workers' Compensation Act, 1926, as a result of the application of that section, in accordance with section 9 (2), to a payment made by the Government Insurance Office; and
- (v) any amounts payable to the Government Insurance Office pursuant to section 11; and

- (b) out of which shall be paid such amounts as may be authorised by this Act to be paid thereout.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (4), (5)—

Omit the subsections.

(3) Section 4 (1)—

After “Company”, insert “and to provide for the payment of any other amounts required by this Act to be paid from the fund during that year”.

(4) Sections 7–13—

Omit the sections, insert instead:—

Appointment of G.I.O. as agent and attorney of employer.

7. (1) Where an employer is insured under a policy of insurance issued by the Company, the Government Insurance Office, as manager of the fund, is by this Act appointed the agent and attorney of the employer and as such may, in the name of the employer or in its own name, exercise the rights, or discharge the obligations, of the employer for the purpose of—

- (a) dealing with and finalising any claim against which the employer is indemnified under the policy of insurance;
- (b) satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance; or
- (c) to the extent that any such claim, judgment or award has been satisfied by the Government Insurance Office as agent and attorney of the employer—
 - (i) proving in the winding-up of the Company;
 - (ii) receiving any dividends or other money payable to the employer in the winding-up of the Company;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (iii) recovering any money which the employer is entitled to recover under section 64 of the Workers' Compensation Act, 1926; or
- (iv) recovering any money which the employer is entitled, under the policy of insurance, to recover from a company referred to in paragraphs (a)–(c) of the definition of “policy of insurance issued by the Company” in section 2 (1) or from a company prescribed for the purposes of paragraph (d) of that definition,

or for any other prescribed purpose.

(2) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations—

- (a) arising from or pertaining to a policy of insurance issued by the Company to an employer; and
- (b) which may or shall be exercised or discharged for the purpose of—

- (i) dealing with and finalising any claim; or
- (ii) satisfying any claim, judgment or award,

against which the employer is indemnified under the policy, are hereby vested in or imposed on the employer.

(3) Subsection (2) shall not be construed so as to vest in or impose on an employer, or to affect in any other way, a right of an insurer to be indemnified by a reinsurer or an obligation of an insurer to indemnify an employer or any other prescribed right or obligation.

(4) Where the Government Insurance Office is, under subsection (1), empowered to exercise any rights, or to discharge any obligations, of an employer as the employer's agent and attorney, the employer is not entitled, without the consent of the Government Insurance Office, to exercise those rights or discharge those obligations.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) The appointment effected pursuant to subsection (1) may be revoked only by an Act.

Payments to employer or liquidator.

8. (1) Where an employer insured under a policy of insurance issued by the Company has satisfied (whether before or after the commencement of Schedule 1 to the Bishopsgate Insurance Australia Limited (Amendment) Act, 1984) any claim, judgment or award in respect of which the employer has not been indemnified under that policy, the Government Insurance Office, as manager of the fund, may pay from the fund to the employer an amount equal to the whole or any part of the amount paid by the employer in satisfaction of the claim, judgment or award.

(2) Where the liquidator of the Company has satisfied (whether before or after the commencement of Schedule 1 to the Bishopsgate Insurance Australia Limited (Amendment) Act, 1984) any claim, judgment or award in respect of which an employer is entitled to be indemnified under a policy of insurance issued by the Company, the Government Insurance Office, as manager of the fund, may pay from the fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim, judgment or award.

(3) Where—

- (a) a payment is made under subsection (1) to an employer in respect of a claim, judgment or award, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer; or
- (b) a payment is made under subsection (2) to the liquidator of the Company in respect of a claim by or on behalf of any person or a judgment or award for the benefit of any

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

person, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer of that person.

(4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Government Insurance Office and neither those subsections nor the exercise of any of those powers operates to confer, directly or indirectly, any right on any person to whom a payment is made under those subsections or on any other person.

Operation of certain provisions of Act No. 15, 1926.

9. (1) Section 18BA of the Workers' Compensation Act, 1926, applies in relation to an employer insured under a policy of insurance issued by the Company as if the Government Insurance Office were the insurer liable to indemnify the employer under the policy.

(2) Section 30K of the Workers' Compensation Act, 1926, applies to and in respect of a payment made by the Government Insurance Office (as agent and attorney of an employer) pursuant to a policy of insurance issued by the Company in the same way as it would have applied to and in respect of the payment had it been made by the Government Insurance Office as the insurer under the policy.

(3) Where the Government Insurance Office receives as agent and attorney of an employer a payment from the Contribution Fund in accordance with section 30K of the Workers' Compensation Act, 1926, section 30L of that Act applies to and in respect of that payment as if the Government Insurance Office were an insurer which had received that payment in respect of compensation paid by it.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Sections 53B and 53E of the Workers' Compensation Act, 1926, apply in relation to a claim being dealt with by the Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by the Company as if a reference in those sections to an insurer included a reference to the Government Insurance Office.

(5) The Governor may make regulations, not inconsistent with this Act, for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of the Workers' Compensation Act, 1926 (including the provisions referred to in subsections (1)–(4)) in relation to the dealing with or finalising of claims, or the satisfying of judgments or awards, by the Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by the Company.

Application of fund.

10. (1) Out of the fund, the Government Insurance Office as manager of the fund—

- (a) shall pay the amount of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, being a claim, judgment or award that it proposes to satisfy as agent and attorney of an employer, and any other amounts required by this Act to be paid from the fund;
- (b) shall pay to the general fund kept by the Government Insurance Office for the purposes of the Government Insurance Act, 1927—
 - (i) an amount equivalent to the sum of the payments made by that Office out of that general fund, being the payments validated by section 5 of the Bishopsgate Insurance Australia Limited (Amendment) Act, 1984; and

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- (ii) interest on the amount referred to in subparagraph (i) at a rate agreed upon by the Attorney General and the Treasurer; and

(c) is entitled—

- (i) to be paid 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 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.

(2) A payment made by the Government Insurance Office to or in respect of a worker, being a payment validated by section 5 of the Bishopsgate Insurance Australia Limited (Amendment) Act, 1984, shall be deemed to have been made by the Government Insurance Office under subsection (1) (a) as agent and attorney of the employer of that worker.

(3) Where a payment is made by the Government Insurance Office as agent and attorney of an employer, being a payment authorised by this Act, the Government Insurance Office shall not be entitled to recover the amount of that payment from the employer.

Recovery of amounts under contracts or arrangements for reinsurance.

11. To the extent that any amounts are paid out of the fund in respect of a claim, judgment or award pursuant to section 10 (including the costs of the Government Insurance Office), the Government Insurance Office shall, where the Company (if it had provided indemnity to that extent under a policy of insurance) would have been entitled to recover any sum under a contract or arrangement for reinsurance, be entitled to the benefit of and may exercise

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the rights and powers of the Company under that contract or arrangement so as to enable the Government Insurance Office to recover from the reinsurer and pay into the fund the amount due under that contract or arrangement.

(5) Section 14—

Before “awards”, insert “judgments or”.

(6) (a) Section 15 (1A)—

After section 15 (1), insert:—

(1A) When the fund has been closed and a person has an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company, being an amount—

- (a) which has not been paid out of, or for which provision has not been made from, the fund; and
- (b) which is payable by a company referred to in paragraphs (a)–(c) of the definition of “policy of insurance issued by the Company” in section 2 (1) or by a company prescribed for the purposes of paragraph (d) of that definition,

the person shall be entitled to payment of the amount out of the Contribution Fund.

(b) Section 15 (2)—

After “subsection (1)”, insert “or (1A)”.

(c) Section 15 (2)—

Omit “that subsection”, insert instead “either of those subsections”.

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(d) Section 15 (3)—

Omit the subsection, insert instead:—

(3) The Government Insurance Office, as manager of the Contribution Fund, is entitled to deal with and finalise a claim made under subsection (2) to the same extent as it would have been entitled to do so—

(a) as manager of the fund; and

(b) in the case of a claim arising under or pertaining to a policy of insurance issued by the Company in respect of which the Company is the insurer—if the Company had not been dissolved.

(e) Section 15 (4) (a)—

Omit “the Company would have had but for its dissolution”.

(7) Sections 16, 17—

Omit the sections, insert instead:—

Final application of money in fund.

16. If, after the Government Insurance Office has paid out, or made provision for paying out, 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—

(a) to the extent that that money is attributable to contributions to the fund—repay that money to the contributors; and

(b) to the extent that that money is not attributable to contributions to the fund—pay that money—

(i) where the Company is still in liquidation—to the liquidator; or

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- (ii) where the Company has been dissolved—into the Contribution Fund.

Application of money received after closure of fund.

17. Any money received by the Government Insurance Office from the liquidator of the Company by way of dividend as agent and attorney of an employer after the fund is closed 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 by whom contributions to the fund have been paid in the same proportions as the contributions were made.
