

**GOVERNMENT INSURANCE (AMENDMENT) ACT, 1985, No. 95**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 95, 1985.**

An Act to amend the Government Insurance Act, 1927, with respect to the financial and organisational structure of the Government Insurance Office of New South Wales; and for certain other purposes. [Assented to, 12th June, 1985.]

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See also Motor Vehicles (Third Party Insurance) Amendment Act, 1985; Public Finance and Audit (Amendment) Act, 1985; Public Service (Government Insurance Office) Amendment Act, 1985.

*Government Insurance (Amendment) 1985*

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**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 "Government Insurance (Amendment) Act, 1985".

**Commencement.**

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedule 1, and section 5 in its application to those provisions, shall commence on such day or days 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 Government Insurance Act, 1927, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Amendment of Act No. 18, 1927.**

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

**Savings, transitional and other provisions.**

6. Schedule 3 has effect.

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*Government Insurance (Amendment) 1985*

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## SCHEDULE 1.

(Sec. 5.)

## AMENDMENTS TO THE PRINCIPAL ACT.

## (1) Section 2 (1), definition of "affiliate"—

Before the definition of "Board", insert:—

"affiliate" means a company in which the Office has a controlling interest by virtue of its shareholding in the capital of the company;

## (2) (a) Section 3 (3A), (3B)—

After section 3 (3), insert:—

(3A) The Office shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

(3B) Subject to this Act, the Office, in addition to the rights, the powers and the privileges conferred upon it pursuant to subsection (2), shall have the rights, the powers and the privileges of a natural person and, without limiting the foregoing, has the capacity to exercise its powers in any place outside New South Wales.

## (b) Section 3 (5)—

After section 3 (4), insert:—

(5) The moneys referred to in subsection (4) shall not form part of the Consolidated Fund.

## (3) Section 3A—

Omit the section, insert instead:—

**Functions of the Office.**

3A. (1) The functions of the Office are—

- (a) to undertake and carry on the general business of insurance and any class or form of insurance which is, at any time, 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 by the Board to be necessary or desirable;

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) to undertake and carry on any business or activity which is—

(i) associated with, complementary to, supplementary to, incidental to or compatible with the general business of insurance, or any class or form of insurance; or

(ii) undertaken and carried on by any other person who undertakes and carries on the general business of insurance, or any class or form of insurance, or by a person who is associated, within the meaning of the Companies (New South Wales) Code, with that other person or, where that other person is a corporation, by a corporation which is deemed for the purposes of the Companies (New South Wales) Code, to be related to that corporation;

(c) to undertake or carry on any business or activity referred to in paragraph (a) or (b) according to the practice, usage, form and procedure which is, for the time being, followed by other persons engaged in the same or any similar business or to undertake and carry on any business or activity so referred to in such manner and form and according to such procedure as may be considered by the Board to be necessary or desirable; and

(d) to exercise such other functions as are conferred or imposed on the Office by or under this or any other Act.

(2) Without limiting the generality of subsection (1), the functions of the Office include—

(a) the investment, re-investment and other use and employment of the funds for the time being of the Office in accordance with section 5C or any other power conferred upon the Office under this or any other Act or any other law;

(b) the provision of all forms of financial accommodation, including, but not being limited to, the provision of credit and being a money lender or guarantor;

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) borrowing, raising and securing the payment of money from persons, including the public, on such terms and conditions as the Office may think fit, including, but not being limited to, the accepting of money on deposit;
- (d) the provision of advice and services relating to risk management;
- (e) the provision of advice and services relating to the investment of money in stocks, shares, notes, drafts, bonds, unit trusts and other forms of investment, including, but not being limited to, the provision of advice and services relating to portfolio management;
- (f) the promotion, establishment, control and management of unit trusts and services to investors in connection therewith;
- (g) the acquisition of and dealing in computer hardware and the provision of computer hardware services to other persons by means of sharing, partnership, renting, licensing or the granting of other rights;
- (h) the development and marketing of and other dealing in computer software, word processing and business systems and the taking of such measures as may be necessary or desirable for the protection of property and other rights with respect thereto;
- (i) the promotion, establishment, control and management of schemes, funds and arrangements under which superannuation benefits, retirement benefits or any similar or associated benefits may be provided to employees of the Office and their dependants; and
- (j) the promotion and publicising, by advertising and otherwise, of the functions of the Office.

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) The Office may undertake and carry on any business or activity of any kind (whether being the business of insurance or otherwise) which is—

- (a) determined by the Board pursuant to an authority granted to the Board by the Minister; or
- (b) approved by the Minister.

(4) The Office may do all such things and engage in all such activities, including the doing of all such supplemental, incidental or consequential acts, as may be necessary for it to exercise its functions under this or any other Act or any other law or as may be expedient or convenient for the exercise of those functions.

(4) Section 3c—

Omit the section, insert instead:—

**Employees.**

3c. (1) The Office may appoint and employ such persons as may be necessary to enable the Office to exercise its functions.

(2) A person employed under this section shall, subject to the terms of appointment of the person, continue in the service of the Office at the will of the Office only.

(3) A person employed under this section shall be subject to the sole control and governance of the Office which may fix wages and conditions of employment where they are not otherwise fixed in accordance with law.

(4) A person employed under this section shall be entitled to such rights concerning the making, conduct and determination of appeals in respect of decisions relating to the promotion and discipline of the person as may be specified in the terms of appointment of the person or any arrangement or agreement between the person (or any class or description of persons of which that person is a member, or any person or body on behalf of that person) and the Office or in the regulations referred to in subsection (5).

(5) The regulations may make provision for or with respect to—

- (a) the control and governance of persons employed under this section; and

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency in the service of the Office of such employees or classes of employees as are employed under this section.

(6) The Office may, with the approval of the Minister and of the Minister administering a government department or administrative office, arrange for the use of the services of any staff or facilities of the department or office.

(5) Section 4—

Omit the section, insert instead:—

**Banking arrangements.**

4. (1) The Office may from time to time open and operate such bank accounts as it may consider expedient with such bank or banks as it may determine.

(2) All money collected or received by the Office shall be paid into a bank account referred to in subsection (1).

(6) (a) Section 5B (1) (b)—

Omit the paragraph, insert instead:—

(b) insurance funds administration business, being business comprising the administration of any insurance funds which may from time to time be managed or administered by the Office on behalf of the Government of New South Wales, a public authority or any other person or body;

(b) Section 5B (3)—

Omit the subsection, insert instead:—

(3) Nothing in subsection (2) limits any power of investment of the Office with respect to the funds referred to in that subsection.

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 5C (1)—

Omit the subsection, insert instead:—

(1) Subject to such directions, if any, as may be given from time to time by the Treasurer, the Office may invest and re-invest or otherwise use or employ the funds for the time being of the Office in respect of any division of the insurance business of the Office in such investments as may be determined from time to time by the Board, or as may be determined in accordance with any rules, directions, procedures or other arrangements made, given or approved from time to time by the Board, and any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part.

(8) Section 6—

Omit the section.

(9) Sections 7B, 7C—

After section 7A, insert:—

**Capital.**

7B. (1) The transfer, on 1st July, 1985, of the sum of \$25,000,000 from the Governmental Workers' Compensation Account of the Office for the purposes of subsection (2) is hereby authorised.

(2) On and from 1st July, 1985, the Office shall have a subscribed capital of \$25,000,000 distributed between the divisions of the insurance business of the Office as follows:—

- (a) the life insurance business division—\$8,000,000;
- (b) the insurance funds administration business division—\$1,000,000;
- (c) the general insurance business division—\$16,000,000.



*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

**Dividends.**

7C. The Office is hereby authorised to pay into the Consolidated Fund dividends as follows:—

- (a) in respect of the year ended 30th June, 1983—a dividend in the sum of \$8,000,000 from the general insurance business division;
- (b) in respect of the year ended 30th June, 1984—a dividend in the sum of \$1,000,000 from the life insurance business division and a dividend in the sum of \$9,000,000 from the general insurance business division;
- (c) in respect of the year ending on 30th June, 1985, and each subsequent year ending on 30th June—such dividends, if any, from such divisions of the insurance business of the Office as are determined by the Treasurer, after consultation with the Board, and after ensuring that sufficient profits are retained by the Office to maintain adequate solvency margins and to make such other provisions as may be considered necessary or desirable.

(10) Section 8—

After “Act”, insert “, every contract entered into in respect of the insurance funds administration business of the Office and every contract of such class or description of contracts, if any, as may be approved from time to time by the Treasurer”.

(11) (a) Section 10A (1)—

Omit “in respect of its insurance business were liable as an insurance company”, insert instead “were liable”.

(b) Section 10A (1B)—

Omit the subsection.

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) Sections 10D–10F—

After section 10C, insert:—

**Affiliates, partnerships, joint ventures, etc.**

10D. Any of the functions of the Office may be exercised—

- (a) by the Office itself;
- (b) by an affiliate; or
- (c) by the Office or an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.

**Acquisition of shares by the Office.**

10E. (1) For the purpose of exercising its functions, the Office may—

- (a) join in the formation of any company to be incorporated in New South Wales; and
- (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company incorporated in New South Wales.

(2) An affiliate formed for a commercial purpose is not and does not represent the Crown.

**Guarantee by the Office.**

10F. For the purpose of the exercise of the Office's functions pursuant to section 10D (b) or (c), the Office may guarantee the due performance of any covenants, promises, obligations or liabilities (including the repayment of loans, bank overdrafts or other financial accommodation and the payment of interest thereon) undertaken by or imposed upon—

- (a) an affiliate; or
- (b) any person or body acting for or on behalf of a partnership, joint venture or other association referred to in section 10D (c).

*Government Insurance (Amendment) 1985*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (13) Schedule 1—  
Omit the Schedule.
- (14) (a) Schedule 2, clause 3 (1), definition of “employee”—  
Omit the definition, insert instead:—  
“employee”, in relation to the Office, means a full-time employee of the Office appointed and employed under section 3C.
- (b) Schedule 2, clause 11 (1) (c)—  
Omit “14”, insert instead “30”.
- (c) Schedule 2, clause 13 (1), definition of “statutory body”—  
After “means”, insert “the Office and”.
- (d) Schedule 2, clause 14 (1), definition of “statutory body”—  
After “means”, insert “the Office and”.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

- (1) Long title—  
Omit “to validate certain contracts of insurance effected through that agency; to indemnify the Colonial Treasurer and all officers of the Treasury in respect of any payments made out of certain accounts in Special Deposits Account in connection with insurance;”.
- (2) Section 4A—  
Omit the section.
- (3) Section 5B (6)—  
Omit the subsection.
- (4) Section 8—  
Omit “Revenue”.

*Government Insurance (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(5) Section 10A (3), proviso—

Omit the proviso.

(6) Section 11B—

Omit the section.

(7) Sections 13, 14—

Omit the sections.

## SCHEDULE 3.

(Sec. 6.)

## SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

1. (1) In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2) in respect of Schedule 1 (3) and this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act;

“transition period”, in relation to a person who became an employee of the Office by virtue of clause 2 (1), means the period of 3 years immediately following the appointed day.

(2) Expressions used in this Schedule have the same meanings as in the Principal Act.

**Officers and employees—public servants.**

2. (1) The persons who, immediately before the appointed day, were officers or employees of the Office appointed as referred to in section 3C (1) of the Principal Act, as in force immediately before that day, shall, on that day, become employees of the Office and shall be deemed to have been appointed and employed under section 3C (1) of the Principal Act, as amended by this Act.

(2) A person to whom subclause (1) applies ceases, on the appointed day, to be employed under the Public Service Act, 1979.

**Casual employees.**

3. The persons who, immediately before the appointed day, were casual employees of the Office appointed as referred to in section 3C (2) of the Principal Act, as in force immediately before that day, shall, on that day, become employees of the Office and shall be deemed to have been appointed and employed under section 3C (1) of the Principal Act, as amended by this Act.

*Government Insurance (Amendment) 1985*

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Salary and wages.**

4. (1) A person to whom clause 2 (1) applies (other than a person who, immediately before the appointed day, was employed under section 80 of the Public Service Act, 1979) shall in respect of his or her service with the Office on and from the appointed day be paid salary or wages, and allowances, at a rate not less than that at which the person would have been paid salary or wages, and allowances, if the position in which the person was employed immediately before the appointed day had continued to be a position in the Public Service and the person had continued to be employed in that position until—

- (a) the expiration of the transition period; or
- (b) the person's salary is, or the person's wages or allowances are, varied or altered by an award of a competent tribunal, an industrial agreement or the Office or otherwise in accordance with law,

whichever is the later.

(2) A person to whom clause 2 (1) applies who, immediately before the appointed day, was employed under section 80 of the Public Service Act, 1979, shall in respect of his or her service with the Office during the transition period be paid salary or wages, and allowances, at a rate not less than that which was payable to the person immediately before the appointed day.

(3) During any period, during the transition period, in which the salary or wages in relation to the position in which a person referred to in subclause (2) is employed has or have been fixed by an award of a competent tribunal, an industrial agreement or the Office or otherwise in accordance with law at a rate which is less than that payable to the person under subclause (2), no adjustment to give effect to a fluctuation in the basic wage for adult males, or adult females, as the case may be, for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, is required to be made to the minimum salary or wages payable to the person by virtue of subclause (2).

(4) Subclauses (1), (2) and (3) do not apply to or in respect of a person who has applied for, and been appointed to, another position in the service of the Office after the appointed day.

**Superannuation.**

5. (1) Subject to subclause (2), where a person to whom clause 2 (1) applies was, immediately before the appointed day, a contributor to a superannuation scheme, he or she—

- (a) shall retain any rights accrued or accruing to him or her as such a contributor; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the appointed day,

*Government Insurance (Amendment) 1985*SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

as if he or she had continued to be an officer or employee of the Office appointed under and subject to the provisions of the Public Service Act, 1979, during his or her service with the Office on and from the appointed day, and—

- (c) his or her service in the employment of the Office on and from the appointed day shall be deemed to be service with the Office as an officer or employee of the Office appointed under and subject to the provisions of the Public Service Act, 1979, for the purposes of any law under which those rights accrued or were accruing or under which he or she continues to contribute; and
- (d) he or she shall be deemed to be an officer or employee of the Office appointed under and subject to the provisions of the Public Service Act, 1979, for the purposes of any superannuation scheme to which, by the operation of this subclause, he or she is entitled to contribute.

(2) If a person would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme, the person shall not be so entitled upon becoming a contributor to any other superannuation scheme, and the provisions of subclause (1) (d) cease to apply to or in respect of the person in any case where he or she becomes a contributor to another superannuation scheme.

(3) Subclause (2) does not prevent the payment to a person, upon his or her ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be a contributor.

(4) Where, pursuant to subclause (1) (b), a person who continues to be employed under section 3C (1) of the Principal Act, as amended by this Act, continues to contribute to a superannuation scheme, the Office shall contribute to that superannuation scheme the same amount as would have been payable by it if the person had continued to be employed under the Public Service Act, 1979.

**Leave entitlements.**

6. (1) A person to whom clause 2 (1) applies shall, during the transition period, be entitled—

- (a) to such sick leave, annual leave, long service leave and leave in the nature of long service leave as he or she would have been entitled to if the position in which the person was employed immediately before the appointed day had continued to be a position in the Public Service and the person had continued to be employed in that position; or
- (b) on termination of his or her services, to payment by the Office of such gratuity or other benefit as the person would have been entitled to if the position in which the person was employed immediately before the appointed day had continued to be a position in the Public Service and the person had continued to be employed in that position.

*Government Insurance (Amendment) 1985*SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) After the expiration of the transition period in relation to a person to whom clause 2 (1) applies—

(a) the maximum period of sick leave in relation to the person at any time during his or her service with the Office shall be—

(i) the whole or, as the case may be, that part not yet taken of the maximum period which would, immediately before the expiration of the transition period, have been calculable in relation to the person by reference to length of service by the person (being the length of service determined as if the person had continued to be employed in the Public Service during the transition period) plus the maximum period calculable at the time in relation to the person by reason of service after the expiration of the transition period; or

(ii) the maximum period which would be calculable at the time in relation to the person if service by the person with the Office before the appointed day were deemed to be service in the employment of the Office after the appointed day,

whichever is the greater; and

(b) where, immediately before the expiration of the transition period, the person would, pursuant to subclause (1), have been entitled to leave in the nature of long service leave or, on termination of his or her services, to a gratuity or other benefit, the person shall retain that entitlement.

(3) For the purposes of annual leave, long service leave or leave in the nature of long service leave, service by a person to whom clause 2 (1) applies with the Office before the appointed day shall be deemed to be service in the employment of the Office after the appointed day.

(4) For the purpose of calculating the entitlement of a person to whom clause 2 (1) applies to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the person would be entitled—

(a) any long service leave or leave in the nature of long service leave; and

(b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave,

taken or received by the person before that time.

(5) For the purpose of calculating the entitlement of a person to whom clause 2 (1) applies to any kind of leave as referred to in subclause (2) or (3), service by the person with the Office before the appointed day is the service to which, immediately before that day, regard would have been had for the purpose of calculating that entitlement.

*Government Insurance (Amendment) 1985*

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Appointment to Public Service.**

7. (1) A person who—

- (a) became an employee of the Office by virtue of clause 2 (1);
- (b) immediately before the appointed day was employed as an officer within the meaning of section 4 of the Public Service Act, 1979; and
- (c) during the transition period, applies for appointment, or is appointed, to a position in the Public Service,

shall, in relation to the application or appointment and any matter concerning the application or appointment, be deemed to be an officer within the meaning of that section employed in the Office.

(2) Subclause (1) does not apply to a person who applies for appointment, or is appointed, to a position in the Public Service if the person has, on a previous occasion in the transition period, been appointed to a position in the Public Service.

**Redundancy of employees.**

8. The employment of a person to whom clause 2 (1) applies may not be terminated by the Office on the ground of redundancy arising from the operation of this Schedule.

**Savings.**

9. Where an appeal by a person to whom clause 2 (1) applies to the Government and Related Employees Appeal Tribunal or the Public Service Board of New South Wales is pending or may be made—

- (a) immediately before the appointed day, the appeal may be continued, or made, and heard and determined as if the person had continued to be employed, after that day, in the position in the Public Service in which the person was employed immediately before that day; or
- (b) immediately before the expiration of the transition period, the appeal may be continued, or made, and heard and determined as if clause 7 continued to apply to and in respect of the person.

**Miscellaneous.**

10. (1) A person to whom clause 2 (1) applies is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

(2) Except as provided in this Schedule, nothing in this Schedule affects the operation of the Industrial Arbitration Act, 1940.

**Union representation.**

11. (1) This clause applies to the trade and industrial union registered under section 6 of the Trade Union Act 1881 and section 8 of the Industrial Arbitration Act, 1940, as the Public Service Association of New South Wales.



*Government Insurance (Amendment) 1985*

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SCHEDULE 3—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) The Public Service Association of New South Wales—

(a) may have, and shall be deemed always to have been authorised to have, employees of any affiliate of the Office as members; and

(b) may represent, and shall be deemed always to have been authorised to represent, the interests of employees of any affiliate of the Office in industrial matters under the Industrial Arbitration Act, 1940,

whether or not any such power or authority is, or at any time was, conferred by the rules of the Association or any Act or law.

**Regulations.**

12. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A reference in any provision of this Act (this clause excepted) to regulations does not include a reference to regulations made under this clause.

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