

# Insurance Protection Tax Act 2001 No 40

[2001-40]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Financial Services Reform \(Consequential Amendments\) Bill 2002](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Insurance Protection Tax Act 2001 No 40



New South Wales

An Act to impose a tax on the total annual amount of premiums received by insurers for general insurance; to amend the [Taxation Administration Act 1996](#); and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Insurance Protection Tax Act 2001](#).

### 2 Commencement

This Act commences on 1 July 2001.

### 3 Definitions

In this Act:

**annuity** means a contract that satisfies the following requirements:

- (a) the contract provides for the periodic payment of money to the annuitant in fee for life or for a specified term of years as an annual or more frequent entitlement,
- (b) the periodic payment is a sum certain expressed as a dollar amount, but may be varied according to a predetermined formula,
- (c) the periodic payments are not derived from the money paid for the contract but are derived solely from the contract and comprise income and not the repayment of capital.

**Chief Commissioner** means the Chief Commissioner of State Revenue referred to in section 60 of the [Taxation Administration Act 1996](#).

**exempt insurance** means any of the following:

- (a) insurance covering only property of the Crown,
- (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements of work or labour used by any working mechanic, artificer, hand crafter or labourer,

- (c) insurance taken out by or on behalf of a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose,
- (d) insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
  - (i) the relief of poverty, or
  - (ii) the promotion of education, or
  - (iii) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the naval, military or air forces of the Commonwealth or their dependants or any other patriotic object, or
  - (iv) such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution,
- (e) insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of the *Duties Act 1997*,
- (f) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the *National Health Act 1953* of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided,
- (g) insurance effected under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*,
- (h) insurance of:
  - (i) the hull of a floating vessel used primarily for commercial purposes, or
  - (ii) goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air,or both,
- (i) redundancy insurance in respect of a housing loan where the sum insured does not exceed \$124,000,
- (j) reinsurance (being a contract or contracts between two parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance),
- (k) an annuity:
  - (i) issued, created or sold by a life company,

(ii) purchased by a person from a life company.

**general insurance** means:

(a) any kind of insurance that is applicable to:

(i) property in New South Wales, or

(ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales,

or both, and

(b) insurance that is effected by a third-party policy within the meaning of the *Motor Accidents Compensation Act 1999*,

but does not include life insurance, a life insurance rider or exempt insurance.

**insurance intermediary** has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

**insurer** means a person:

(a) who writes general insurance, and

(b) who does so otherwise than as an insurance intermediary, and

(c) who is registered under the Commonwealth *Insurance Act 1973*.

**life insurance** means insurance described in section 9 (1) (a)-(g) and 9A of the *Life Insurance Act 1995* of the Commonwealth in respect of:

(a) a life or lives, or

(b) any event or contingency relating to or depending on a life or lives,

of a person whose principal place of residence is, or persons whose principal places of residence are, in New South Wales at the time the policy that effects the insurance is issued.

**life insurance rider** means insurance that:

(a) is attached to a policy of life insurance, and

(b) adds specified events and contingencies to those insured under the policy, and

(c) is subject to the terms and conditions of the policy.

**Policyholders Protection Fund** means the Policyholders Protection Fund established under section 16B.

**premium**—see section 9.

**registered insurer** means an insurer that is registered under Part 4.

**year** means year commencing on 1 July.

## **Part 2 Imposition of tax**

### **Division 1 Insurers**

#### **4 Imposition of tax on insurers**

Tax is imposed by this Act on the total annual amount of all premiums received by insurers for general insurance as determined in accordance with this Act.

#### **5 Annual determination of total amount of tax to be collected from insurers**

- (1) The total amount of tax that is imposed by this Act on insurers for the year commencing on 1 July 2001, and for each subsequent year, is \$65 million, subject to this section.
- (2) The Governor, on the recommendation of the Treasurer, may determine that the total amount of tax imposed by this Act on insurers for a year commencing on or after 1 July 2002 is to be an amount that is specified in the determination and that is less than \$65 million.
- (3) A determination of the Governor under subsection (2) is to be made and notified in the Gazette before the year to which the determination applies.

#### **6 Insurers to notify Chief Commissioner of premium income for preceding financial year**

- (1) An insurer must, on or before 15 August in each year, lodge with the Chief Commissioner a return in a form approved by the Chief Commissioner specifying:
  - (a) the total amount of premiums received by it in relation to general insurance in the preceding year, and
  - (b) the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year.

Maximum penalty: 100 penalty units.

- (2) A single return for a year may be lodged on behalf of two or more insurers who are related bodies corporate within the meaning of the Commonwealth [Corporations Act 2001](#).

#### **7 Offence for lodging false or misleading particulars**

An insurer is guilty of an offence if it lodges a return under section 6 that is false or



misleading in a material particular.

Maximum penalty: 500 penalty units.

## **8 Apportionment of tax between insurance companies**

(1) On or before 1 September in each year, the Chief Commissioner must:

- (a) make an assessment of the liability of each insurer to pay the tax imposed by this Act for that year, and
- (b) issue a notice of assessment to the insurer of its liability.

(2) The liability of an insurer to pay the tax imposed by this Act for a year is to be assessed in accordance with the formula:

$$A = \frac{B}{C} \times D$$

where:

**A** is the liability of the insurer to pay the tax imposed by this Act for the year, and

**B** is the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and

**C** is the total amount of all premiums received by all insurers for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and

**D** is the total amount of tax imposed by this Act for the year as determined in accordance with section 5.

(3) If an insurer fails to lodge a return as required by section 6, the Chief Commissioner:

- (a) may make an estimate of:
  - (i) the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and
  - (ii) the total amount of all premiums received by all insurers for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and

(b) may use those estimates for the purposes of subsection (2).

(4) If a single return for a year has been lodged on behalf of two or more insurers who are related bodies corporate within the meaning of the Commonwealth [Corporations Act](#)

2001, the liability of those insurers to pay the tax imposed by this Act for the year is to be assessed as if those insurers were a single insurer.

- (5) Insurers who are assessed for tax in accordance with subsection (4) are jointly and severally liable for the tax.

## 9 Premiums

- (1) For the purposes of this Act, **premium**, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary.
- (2) For the purposes of this Act, **premium**:
- (a) includes a fire service levy paid or payable in connection with insurance by an insurer or any other person, and
  - (b) does not include:
    - (i) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee, or
    - (ii) an amount of duty under the *Duties Act 1997* or an Act of another Australian jurisdiction that corresponds to the *Duties Act 1997*.
- (3) It is immaterial where the amount is paid or received or where the insurance is effected.

## 10 Receipt and refund of premiums

- (1) A premium, or an instalment of a premium, is received for the purposes of this Act when the first of the following events occurs:
- (a) the premium or instalment is received directly by the insurer, or
  - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.
- (2A) A premium or instalment of a premium received by another person on an insurer's behalf is taken to have been received by the insurer when the premium or instalment (or any part of the premium or instalment) is paid to the insurer or credited in the insurer's accounts.
- (3) A premium, or an instalment of a premium, is refunded for the purposes of this Act

when the first of the following events occurs:

- (a) the premium or instalment is received by the person who paid it, or
- (b) the account of the person who paid the premium or instalment is credited with the amount of the premium or instalment, or
- (c) an entry crediting the account of a person with the payment of the premium or instalment is reversed because:
  - (i) the entry was made in error, or
  - (ii) a cheque by which the payment purported to be made is dishonoured.

### 11 Reassessment of tax liability of insurers

- (1) The Chief Commissioner must, on or after 15 March and before 15 May in each year, make a reassessment of the liability of each insurer to pay the tax imposed by this Act for that year in accordance with section 8 (2), subject to this section.
- (2) If the amount of the liability of an insurer for a year differs from the amount specified in the notice of assessment issued to the insurer for the year under section 8 (1) (b), the Chief Commissioner must issue a final notice of assessment adjusting, if necessary, the instalment of tax for the year that is payable by 15 June.
- (3) If, at any time before issuing the final notice of assessment for a year, the Chief Commissioner is satisfied that an insurer is unable to pay the full amount of the tax specified in the notice of assessment issued to the insurer for the year under section 8 (1) (b) (such an insurer being referred to in this section as the **defaulting insurer**), the Chief Commissioner, in making the reassessment under subsection (1), must make a reassessment of the liability of each insurer (other than the defaulting insurer) to pay the tax imposed by this Act for that year in accordance with the formula:

$$A = \frac{B}{C} \times D$$

where:

**A** is the reassessed liability of the insurer to pay the tax imposed by this Act for the year, and

**B** is the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and

**C** is the total amount of all premiums received by all insurers (other than the defaulting insurer) for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and

**D** is the total amount of tax imposed by this Act for the year as determined in accordance with section 5 less the amount (if any) of that tax paid by the defaulting insurer.

- (4) Part 10 of the *Taxation Administration Act 1996* does not apply to a reassessment made under this section.

## **Division 2 Insured persons**

### **11A Liability of certain insured persons**

- (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not an insurer.
- (2) A person to whom this section applies must, within 21 days after the end of the month in which the premium relating to the insurance is paid to a person (not being an insurer) or insurance intermediary:
- (a) lodge with the Chief Commissioner a return in a form approved by the Chief Commissioner containing such particulars and information as to the premium and the insurance as the Chief Commissioner may require, and
  - (b) pay to the Chief Commissioner as tax under this Act an amount equal to 1% of the premium.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

## **Division 3 Apportionment of premiums**

### **12 Apportionment of premiums between New South Wales and other places**

- (1) This section applies to a contract of insurance that insures:
- (a) property in New South Wales as well as property in another place, or
  - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales as well as within, or partly within, another place,
- or both.
- (2) It is the intention of this section to provide the means for apportioning premiums received in relation to a contract of insurance to which this section applies between New South Wales and another place.
- (3) The Chief Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums, or premiums received for specific classes of

insurance, in accordance with this section.

- (4) The Schedule of Apportionment may be developed in consultation with any person the Chief Commissioner considers suitable.
- (5) A premium is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section.
- (6) An insurer may apply in writing to the Chief Commissioner to apportion a premium on a basis other than that provided by the Schedule of Apportionment. The Chief Commissioner may apportion the premium on the other basis.
- (7) In particular, if the Chief Commissioner is not satisfied that a premium received in relation to a contract of insurance has been properly apportioned for each risk insured, the Chief Commissioner may determine the apportionment, reassess the liability to tax and charge tax accordingly.

### **13 Apportionment of premiums between different types of insurance**

- (1) This section applies to apportionment between different types of insurance that are relevant to determining liability for tax, such as general insurance, life insurance and insurance that is exempt from tax. It does not apply to the apportionment of a premium between New South Wales and another place. Section 12 deals with that kind of apportionment.
- (2) If the Chief Commissioner is not satisfied that a premium received in relation to a contract of insurance that effects different types or classes of insurance has been properly apportioned, the Chief Commissioner may determine the apportionment, reassess the liability to tax and charge tax accordingly.

## **Part 3 Payment of tax**

### **14 Relationship with [Taxation Administration Act 1996](#)**

This Act is to be read together with the [Taxation Administration Act 1996](#) which makes provision for the administration and enforcement of this Act and other taxation laws.

### **15 Payment of tax by quarterly instalments**

- (1) The tax payable under this Act by an insurer is to be paid by quarterly instalments.
- (2) Each instalment is to be a quarter of the tax, disregarding any remainder, together, in the case of the first instalment, with the remainder.
- (3) The instalments are payable by 15 September, 15 December, 15 March and 15 June.

## **Part 3A Policyholders Protection Fund**

## 16 Definitions

In this Part:

**Building Insurers' Guarantee Fund** means the Fund established under section 103P of the *Home Building Act 1989*.

**declared insolvent insurer** means an insurer to which an order of the Treasurer in force under section 16A relates.

**Guarantee Corporation** means the Building Insurers' Guarantee Corporation constituted under Part 6A of the *Home Building Act 1989*.

**Nominal Defendant** means the Nominal Defendant within the meaning of the *Motor Accidents Compensation Act 1999*.

**Nominal Defendant's Fund** means the Fund established by section 40 of the *Motor Accidents Compensation Act 1999*.

**third-party policy** means a third-party policy within the meaning of Part 7.3 of the *Motor Accidents Compensation Act 1999*.

### 16A Declaration of insolvent insurers

- (1) If the Treasurer is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Treasurer may, by order published in the Gazette, declare that the insurer is a declared insolvent insurer for the purposes of this Part.
- (2) The following insurers are taken to have been declared by order under this section to be declared insolvent insurers for the purposes of this Part on 15 March 2001 (the date on which a provisional liquidator was appointed in respect of those insurers):
  - (a) HIH Casualty and General Insurance Limited,
  - (b) FAI General Insurance Company Limited,
  - (c) CIC Insurance Limited.

### 16B Policyholders Protection Fund

- (1) There is established in the Special Deposits Account a Policyholders Protection Fund.
- (2) The following is to be paid into the Fund:
  - (a) money appropriated by Parliament to the Fund under section 16C,
  - (b) money required to be paid into the Fund from the Building Insurers' Guarantee Fund in accordance with section 16F,

- (c) money required to be paid into the Fund from the Nominal Defendant's Fund in accordance with section 16G,
- (d) any gift or bequest of money for the purposes of the Fund,
- (e) any money appropriated by Parliament for the purposes of the Fund,
- (f) any other money required by law to be paid into the Fund.

(3) The following is to be paid from the Fund:

- (a) money required to be paid from the Fund into the Building Insurers' Guarantee Fund in accordance with section 16D,
- (b) money required to be paid from the Fund into the Nominal Defendant's Fund in accordance with section 16E,
- (c) money to be paid from the Fund into the Consolidated Fund in accordance with section 16H,
- (d) any other money required by law to be paid from the Fund.

**16C Tax to be paid into Policyholders Protection Fund**

- (1) There is appropriated by this section for payment out of the Consolidated Fund into the Policyholders Protection Fund all amounts received in payment of tax under this Act.
- (2) There is payable out of the Policyholders Protection Fund such amounts as may become payable under this Act by way of refunds of tax.

**16D Application of Policyholders Protection Fund—claims under home building insurance contracts of insolvent insurers**

- (1) The Policyholders Protection Fund must be applied to meet expenditure from the Building Insurers' Guarantee Fund in connection with contracts of insurance entered into by declared insolvent insurers.
- (2) All payments made from the Policyholders Protection Fund under this section are to be made in the amounts, on the conditions and at the times determined by the Treasurer.

**16E Application of Policyholders Protection Fund—claims under third-party motor accident policies of insolvent insurers**

- (1) The Policyholders Protection Fund must be applied to meet expenditure from the Nominal Defendant's Fund in connection with third-party policies issued by declared insolvent insurers.
- (2) All payments made from the Policyholders Protection Fund under this section are to be

made in the amounts, on the conditions and at the times determined by the Treasurer.

#### **16F Repayments to Policyholders Protection Fund**

If the Treasurer determines that any money in the Building Insurers' Guarantee Fund is not needed for payments in connection with contracts of insurance entered into by declared insolvent insurers, the money is to be paid from that Fund into the Policyholders Protection Fund in accordance with arrangements made between the Treasurer and the Guarantee Corporation.

#### **16G Repayments to Policyholders Protection Fund—money recovered from motor accident insolvent insurers and re-insurers**

- (1) This section applies in relation to money recovered by the Nominal Defendant:
  - (a) from a re-insurer under section 191 of the *Motor Accidents Compensation Act 1999* in connection with a third-party policy issued by a declared insolvent insurer, or
  - (b) in connection with the winding up of a declared insolvent insurer.
- (2) If the Treasurer determines that any money to which this section applies is not needed for payments in connection with third-party policies issued by declared insolvent insurers, the money is to be paid from the Nominal Defendant's Fund into the Policyholders Protection Fund in accordance with arrangements made between the Treasurer and the Nominal Defendant.

#### **16H Policyholders Protection Fund to reimburse additional money advanced from Consolidated Fund**

If the Treasurer determines that money standing to the credit of the Policyholders Protection Fund is not needed for payments to the Building Insurers' Guarantee Fund or the Nominal Defendant's Fund in accordance with this Part, the Treasurer may pay an amount of money from the Policyholders Protection Fund (up to the amount advanced to the Policyholders Protection Fund by the Treasurer) into the Consolidated Fund.

### **Part 4 Registration of insurers**

#### **17 Insurers must be registered**

An insurer must be registered under this Part:

- (a) on or before 31 July 2001—if the insurer has commenced to write general insurance business in New South Wales before the date of commencement of this Act, or
- (b) within 30 days after the end of the month in which the insurer commences to write general insurance business in New South Wales—in any other case.

Maximum penalty: 100 penalty units.



### **18 Application for registration**

The Chief Commissioner must register an insurer that applies in a form approved by the Chief Commissioner for registration under this Part.

### **19 Cancellation of registration by Chief Commissioner**

- (1) The Chief Commissioner may, by written notice, cancel an insurer's registration under this Part:
  - (a) if the insurer's registration under the *Insurance Act 1973* of the Commonwealth is terminated, or
  - (b) if the insurer is made bankrupt or, being a company, is wound up, or
  - (c) if the insurer is convicted of an offence under an Act imposing a tax or duty, or
  - (d) if the insurer's registration was made in error or as a consequence of a false or misleading statement made in relation to the application for registration, or
  - (e) if the Chief Commissioner is of the opinion that the insurer has ceased to write general insurance in New South Wales, or
  - (f) for any other reason the Chief Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.

### **20 Cessation of business and cancellation of registration by the insurer**

- (1) A registered insurer that ceases to write general insurance business in New South Wales must, within 1 month after it ceases to write that business:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) lodge the return required to be lodged under section 6 if the return has not been lodged for the year, and
  - (c) on or before the twenty-first day of the month after which the notice is given, pay the tax for which it is liable for the year, except to the extent (if any) to which that tax has been paid.

Maximum penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Chief Commissioner.

### **20A Register of insurers**

- (1) The Chief Commissioner must keep a register of the insurers who are registered under

this Part.

- (2) Anyone may inspect the register without charge at the Chief Commissioner's principal office during the hours that the office is open to the public.

## **Part 5 Miscellaneous**

### **21 Recovery of tax prohibited**

An insurer that is required to pay tax under this Act must not charge a person who effects insurance with the insurer any amount that is directly attributable to that tax.

Maximum penalty: 500 penalty units.

### **22 Effect on contract of insurance of failure to comply with this Act**

A failure to comply with this Act does not render a contract of insurance illegal or invalid.

### **23 Proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **24 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **25 Review of Act**

- (1) The Treasurer is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

### **26 Amendment of [Taxation Administration Act 1996 No 97](#), section 4 Meaning of "taxation laws"**

The [Taxation Administration Act 1996](#) is amended by inserting in section 4 in alphabetical order of Acts:

*Insurance Protection Tax Act 2001*

**27 Tax liability for year commencing 1 July 2001**

- (1) Despite section 5 (1), the Governor, on the recommendation of the Treasurer, may determine that the total amount of tax imposed by this Act on insurers for the year commencing on 1 July 2001 is to be an amount that is specified in the determination and that is less than \$65 million but not less than the total amount of instalments paid or payable by an instalment date specified by the Chief Commissioner under subsection (3) that occurs before the date on which the determination takes effect.
- (2) Despite section 8, the Chief Commissioner must make an assessment under that section for the tax year commencing on 1 July 2001 not later than 15 March 2002.
- (3) Despite section 15 (3), the first three instalments of tax to be paid under this Act for the year commencing 1 July 2001 are payable by such dates as may be specified by the Chief Commissioner in the relevant notice of assessment.