

# Government Insurance Office (Privatisation) Act 1991 No 38

[1991-38]



New South Wales

## Status Information

### Currency of version

Current version for 1 April 2005 to date (accessed 17 July 2024 at 20:45)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### 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](#).

File last modified 1 April 2005

# Government Insurance Office (Privatisation) Act 1991 No 38



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Object of Act .....	5
4 Definitions .....	6
<b>Part 2 Creation of capital structure and other steps prior to conversion of GIO into public company</b> .....	7
5 Share capital of GIO .....	7
6 Issue of shares in GIO .....	7
7 Creation of debt due to State by GIO .....	8
8 Retention by GIO of certain distributable reserves .....	8
9 GIO to apply to be registered as a company etc .....	8
<b>Part 3 Conversion of GIO into public company and repeal of Government Insurance Act 1927</b> .....	9
10 GIO taken to be registered under Corporations Law as public company .....	9
11 New name of GIO .....	10
12 Memorandum and articles of GIO .....	10

13 Membership of GIO .....	10
14 Minister may act for State as shareholder .....	11
15 Continuity of GIO and construction of references to GIO .....	11
16 Government guarantee continued for existing or pre-sale policies etc .....	11
17 Repeal of GIO Act etc.....	12
18 Savings and transitional provisions relating to conversion of GIO into public company .....	12
19 (Repealed) .....	12

#### **Part 4 Reorganisation of GIO business undertaking in connection with conversion and sale of GIO**

.....	12
20 Minister may direct transfer of parts of GIO business undertaking to GIO subsidiary .....	12
21 Minister may direct transfer of parts of business undertaking of GIO subsidiary to other subsidiaries or to GIO .....	12
.....	12
22 Allocation of transferred assets to capital and reserves .....	12
23 Time when transfers may be effected .....	13

#### **Part 5 Exclusion of parts of business undertaking from GIO or GIO subsidiary**

.....	13
24 Excluded undertakings .....	13
25 Time when exclusion may be effected .....	13
26 Self Insurance Corporation etc may sell excluded undertaking or retain it .....	13
27 GIO or subsidiary may act as agent etc with respect to excluded undertaking .....	14
28 (Repealed) .....	14

#### **Part 6 Sale of GIO by public float after conversion into public company**

.....	14
29 Sale of GIO by public float .....	14
30 State may dispose of its shares .....	14
31 Maximum shareholding of 10% of shares offered in public float .....	14
32 Proceeds of sale .....	15
33 Special trust account for proceeds of public float pending repayment of debt to State .....	15

<b>Part 7 Special provisions applying to GIO during period after conversion into public company and prior to disposal of State’s majority shareholding</b>	
.....	16
34 Application of Part during majority shareholding in GIO by State .....	16
35 Ministerial control .....	16
36 Status of GIO etc .....	16
37 Application of certain provisions of State Owned Corporations Act 1989 to GIO .....	17
<b>Part 8 Vesting of undertaking on transfer etc</b> .....	17
38 Application and interpretation .....	17
39 Vesting of undertaking etc in transferee .....	17
40 Transfer of staff .....	18
41 Consideration etc for vestings .....	19
<b>Part 9 Miscellaneous</b> .....	19
42 Act binds Crown.....	19
42A (Repealed).....	19
43 Non-disclosure of confidential information relating to GIO’s customers .....	19
44 Exemption from tax for conversion documents etc .....	19
45 Certificate evidence.....	20
46 Regulations.....	20
<b>Schedule 1 Savings and transitional provisions relating to conversion of GIO into a public company</b>	
.....	21
<b>Schedule 2 (Repealed)</b> .....	23

# Government Insurance Office (Privatisation) Act 1991 No 38



New South Wales

An Act to provide for the conversion of the Government Insurance Office into a public company and for its sale by a public float; and to repeal the *Government Insurance Act 1927* and amend other Acts.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Government Insurance Office (Privatisation) Act 1991*.

### 2 Commencement

- (1) This Act commences on days to be appointed by proclamation.
- (2) Part 3 is to commence on a day that is after the day appointed for the commencement of Part 2.

### 3 Object of Act

The object of this Act is to provide for the conversion of the Government Insurance Office into a public company and for its sale by a public float, and in particular:

- (a) to convert GIO from a statutory authority into a public company limited by shares and with the name “GIO Australia Holdings Limited”, and
- (b) to repeal the *Government Insurance Act 1927* and to apply the *Corporations Law* to GIO after its conversion, and
- (c) to replace the State’s existing equity in GIO by the issue of fully paid up shares to the State and the creation of a debt payable to the State by GIO after its conversion, and
- (d) to authorise the Minister to exclude from the sale of GIO any part of the business undertakings of GIO and of its subsidiaries, and to reorganise those business undertakings before the sale, and
- (e) to authorise the sale of GIO by a public float (comprising disposal of the shares issued

to the State on the conversion and the initial issue of shares by GIO after its conversion to repay the specially created debt to the State) and to limit to 10% the maximum initial shareholding of any one purchaser.

#### 4 Definitions

(1) In this Act:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**business undertaking** of GIO or of a GIO subsidiary means all the assets, rights and liabilities of GIO or the subsidiary.

**conversion** means the conversion of GIO into a public company on the commencement of Part 3.

**excluded undertaking** means any assets, rights or liabilities of GIO or a GIO subsidiary which the Minister has directed to be excluded under Part 5.

**GIO** means the body corporate that, immediately before the conversion, exists because of section 3 of the GIO Act under the name of the Government Insurance Office of New South Wales (that name being changed on conversion to GIO Australia Holdings Limited).

**GIO Act** means the *Government Insurance Act 1927*.

**GIO Board** means the Government Insurance Office of New South Wales Board established by section 3B of the GIO Act.

**GIO subsidiary** means a subsidiary of GIO within the meaning of the [Corporations Law](#).

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**Self Insurance Corporation** means the NSW Self Insurance Corporation constituted by the [NSW Self Insurance Corporation Act 2004](#).

**share** means a share in the share capital of a body corporate.

***the State of New South Wales*** includes the Crown in right of New South Wales and the Government of New South Wales.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, in the case of a duty, a reference to the performance of that duty.

(3) In this Act, a reference to the business undertaking of GIO or of a GIO subsidiary at any particular time does not include a reference to any part of that undertaking that has been excluded or transferred by this Act before that time.

## **Part 2 Creation of capital structure and other steps prior to conversion of GIO into public company**

### **5 Share capital of GIO**

- (1) As from the commencement of this Part, GIO is to have a share capital.
- (2) The nominal share capital is to be \$1,000,000,000. The amount of the issued share capital is to be equal to the amount that section 6 requires to be applied in paying up shares in GIO.
- (3) The share capital is to be divided into shares of \$1 each.
- (4) The share capital may be divided into classes of shares.
- (5) Rights may be attached to shares included in a class of shares.
- (6) Anything done under subsection (4) or (5) is to be done by the Minister by order in writing.
- (7) This section has effect for the purposes of this Act despite anything to the contrary in section 7B (2) of the GIO Act.
- (8) As from the conversion, this section has effect subject to the [Corporations Law](#) and to the memorandum and articles of association of GIO.

### **6 Issue of shares in GIO**

- (1) As soon as practicable after the commencement of this Part, GIO is required to apply the requisite amount of its capital in paying up, in full, shares in GIO.
- (2) The requisite amount of capital is such amount as the Minister determines by order in writing. The Minister is required to consult with the GIO Board before making such an order.

- (3) As soon as practicable after complying with subsection (1), GIO is required to issue the shares paid up under that subsection to the State of New South Wales.
- (4) The issue of those shares discharges in full any obligation of GIO existing before the conversion to repay the capital of GIO to the State of New South Wales. The issue of those shares does not discharge the obligation of GIO to repay any debt created by section 7.
- (5) The shares so issued are taken to have been issued for valuable consideration other than cash, being the discharge effected by subsection (4).
- (6) The State of New South Wales is not a member of GIO at any time before the conversion merely because the State holds shares in GIO.

#### **7 Creation of debt due to State by GIO**

- (1) The purpose of this section is to provide the means (apart from the sale of the shares in GIO issued to the State of New South Wales) by which the State is to receive the proceeds of the sale of GIO by a public float under this Act.
- (2) On the conversion, GIO becomes liable to pay to the State of New South Wales such amount as the Minister may determine by order in writing before the conversion.
- (3) Any such amount is payable at such time or times as the Minister determines by order in writing and may be recovered by the Minister on behalf of the State as a debt in any court of competent jurisdiction.

#### **8 Retention by GIO of certain distributable reserves**

- (1) The Minister may, before the conversion, determine by order in writing the kinds and amounts of distributable reserves of GIO recorded at that time in its books of account which are to be retained and carried forward in those books of account after the conversion.
- (2) The Minister is required to consult with the GIO Board before making such an order.

#### **9 GIO to apply to be registered as a company etc**

- (1) GIO must, before the conversion:
  - (a) apply to the Australian Securities Commission under section 133 of the *Corporations Law* to be registered as a company limited by shares under Division 3 of Part 2.2 of the *Corporations Law* (Registering non-companies as companies), and
  - (b) apply to that Commission under section 374 of the *Corporations Law* for the reservation of the name "GIO Australia Holdings Limited".
- (2) GIO is required to lodge with the application for registration as a company:



- (a) proposed memorandum and articles of association of GIO, and
  - (b) subject to any order in writing of the Minister, the other documents and information required by section 136 of the *Corporations Law* to accompany the application.
- (3) The proposed memorandum of association:
- (a) is to specify that the State of New South Wales is to be the sole subscriber to the memorandum and is to take up the number of shares in the capital of GIO issued under section 6, and
  - (b) is to be signed by the Minister on behalf of the State of New South Wales.
- (4) The proposed articles of association:
- (a) are to provide that the first directors of GIO after the conversion are to be appointed by the Minister, and
  - (b) are to be signed by the Minister on behalf of the State of New South Wales.
- (5) GIO is entitled to make the applications, and to lodge the documents, referred to in this section.
- (6) The name “GIO Australia Holdings Limited” is taken to have been reserved under section 374 of the *Corporations Law* immediately after the making of the application to reserve that name.

### **Part 3 Conversion of GIO into public company and repeal of Government Insurance Act 1927**

#### **10 GIO taken to be registered under *Corporations Law* as public company**

- (1) On the commencement of this Part:
- (a) the application referred to in section 9 for registration as a company is taken to have been granted, and
  - (b) GIO is taken to have been registered under section 137 of the *Corporations Law*:
    - (i) by the name “GIO Australia Holdings Limited”, and
    - (ii) as a public company, and as a company limited by shares, within the meaning of the *Corporations Law*, and
  - (c) the name “GIO Australia Holdings Limited” is taken to have been registered in respect of GIO under section 374 (5) of the *Corporations Law*.
- (2) The date of commencement of GIO’s registration as a company under Division 3 of

Part 2.2 of the *Corporations Law* is taken to be the date of commencement of this Part.

- (3) For the purposes of Division 3 of Part 2.2 of the *Corporations Law*, GIO is taken to have been, immediately before the commencement of this Part, and to be on that commencement, a corporation within the meaning of the *Corporations Law*.

#### **11 New name of GIO**

- (1) On the conversion, GIO's name is, by force of this subsection, changed to "GIO Australia Holdings Limited".
- (2) Section 382 (4) of the *Corporations Law* applies in relation to the change of name made by subsection (1) as if:
  - (a) GIO were a company, within the meaning of the *Corporations Law*, when the change was made, and
  - (b) the change was made under the *Corporations Law*.
- (3) This section has effect despite anything in the *Corporations Law*, but nothing in this section prevents:
  - (a) GIO from later changing its name under section 382 of the *Corporations Law*, or
  - (b) the cancellation, under Part 4.2 of the *Corporations Law*, of the registration of a name.
- (4) GIO or a GIO subsidiary is not entitled to use in connection with its business the name "Government Insurance Office" or any other name (apart from "GIO") which suggests that it is associated with the State of New South Wales. This subsection does not apply during any period to which Part 7 applies.

#### **12 Memorandum and articles of GIO**

- (1) As from the conversion, the proposed memorandum and articles of association lodged under section 9:
  - (a) are respectively the memorandum and articles of association of GIO, and
  - (b) bind GIO and its members accordingly.
- (2) As from the conversion, the *Corporations Law* applies in relation to GIO's memorandum and articles of association as if they had been registered as such under the *Corporations Law*.

#### **13 Membership of GIO**

- (1) The State of New South Wales, as the holder of shares in GIO at the conversion, becomes (by force of this subsection) a member of GIO at the conversion.

- (2) The State of New South Wales is, in relation to membership of GIO, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if it had become a member of GIO under its memorandum and articles of association.

#### **14 Minister may act for State as shareholder**

The Minister may act for or on behalf of the State of New South Wales in connection with:

- (a) the rights, privileges and benefits, and
- (b) the duties, liabilities and obligations,

of the State as the holder of shares in GIO which were issued to the State under Part 2.

#### **15 Continuity of GIO and construction of references to GIO**

- (1) Without limiting any other provision of this Act or the *Corporations Law*, GIO Australia Holdings Limited is a continuation of, and the same legal entity as, GIO (as it existed before the conversion).
- (2) After the conversion, a reference in any other Act or in any instrument made under any Act or in any other document of any kind to the Government Insurance Office is to be read as (or as including) a reference to GIO Australia Holdings Limited, unless it is required by this Act to be read as a reference to some other person because it relates to an excluded undertaking or an undertaking transferred to a GIO subsidiary company. This subsection is subject to the regulations under section 46 (2).

#### **16 Government guarantee continued for existing or pre-sale policies etc**

- (1) The payment of all money under a policy or contract which, immediately before the repeal of section 8 of the GIO Act, was guaranteed by the State under that section continues to be guaranteed by the State. The guarantee continues despite the repeal of that section and despite the fact that GIO's liabilities under the policy or contract have been transferred, whether by the operation of this Act or otherwise.
- (2) In addition, the payment of all money under a policy or contract of a class approved from time to time by the Treasurer for the purposes of this section is guaranteed by the State. The policies or contracts that may be so approved are those issued or made:
  - (a) by GIO or a GIO subsidiary at any time when the State of New South Wales holds shares in GIO (being shares issued under Part 2) or at any later time if before that time GIO or the GIO subsidiary offered to issue or make the policies or contracts, or
  - (b) by the Self Insurance Corporation or other person to whom the excluded undertaking to which the policies or contracts relate is transferred under this Act.

- (3) Any liability arising from the guarantee under this section is to be met out of the Consolidated Fund, which is appropriated accordingly.

#### **17 Repeal of GIO Act etc**

On the conversion, the following Acts and the regulations under those Acts are repealed:

GIO Act

*Government Insurance (Amendment) Act 1978 No 153*

*Government Insurance (Amendment) Act 1982 No 56*

*Government Insurance (Amendment) Act 1985 No 95*

#### **18 Savings and transitional provisions relating to conversion of GIO into public company**

Schedule 1 has effect.

#### **19 (Repealed)**

### **Part 4 Reorganisation of GIO business undertaking in connection with conversion and sale of GIO**

#### **20 Minister may direct transfer of parts of GIO business undertaking to GIO subsidiary**

- (1) The Minister may, by order in writing, direct that any part or parts of GIO's business undertaking be transferred to a GIO subsidiary or GIO subsidiaries specified in the order.
- (2) Part 8 applies to an order under this section.

#### **21 Minister may direct transfer of parts of business undertaking of GIO subsidiary to other subsidiaries or to GIO**

- (1) The Minister may, by order in writing, direct that any part or parts of the business undertaking of a GIO subsidiary (including anything transferred under this Part) be transferred to another GIO subsidiary specified in the order or to GIO.
- (2) Part 8 applies to an order under this section.

#### **22 Allocation of transferred assets to capital and reserves**

- (1) The Minister may, by order in writing, direct that any assets transferred to a GIO subsidiary or to GIO under this Part are to be allocated to capital and reserves in such amounts and in accordance with such requirements as are specified in the order.
- (2) Any shares issued in accordance with a direction under this Part are taken to have been issued in consideration of the vesting in the GIO subsidiary or GIO under this Part of the assets allocated to capital.

### **23 Time when transfers may be effected**

- (1) An order under this Part may be made before, on or after the conversion of GIO into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in GIO are held by the State of New South Wales (being the shares issued under Part 2). However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares.

## **Part 5 Exclusion of parts of business undertaking from GIO or GIO subsidiary**

### **24 Excluded undertakings**

- (1) The Minister may direct, by order in writing, that any assets, rights or liabilities that are part of the business undertaking of GIO or a GIO subsidiary be excluded from that business undertaking and transferred to the Self Insurance Corporation or another person on behalf of the State of New South Wales.
- (2) If an excluded undertaking includes money, the order may direct the payment of the money into the Consolidated Fund.
- (3) An order under this section may define an excluded undertaking by reference to a business undertaking other than any part specified in the order.
- (4) Part 8 applies to an order under this section.

### **25 Time when exclusion may be effected**

- (1) An order under this Part may be made before, on or after the conversion of GIO into a public company.
- (2) After the conversion, any such order may not be made unless all the shares in GIO are held by the State of New South Wales (being the shares issued under Part 2). However, the order may be expressed to take effect after the State has ceased to hold all or any of those shares.

### **26 Self Insurance Corporation etc may sell excluded undertaking or retain it**

- (1) The Self Insurance Corporation or any other person to whom any excluded undertaking is transferred may:
  - (a) sell or otherwise dispose of the whole or any part of the excluded undertaking, or
  - (b) retain the whole or any part of the excluded undertaking and conduct any business to which it relates.
- (2) The Minister may, for the purposes of any such sale or other disposal, direct by order

in writing that the excluded undertaking concerned be transferred to the body or person to whom it is being sold or otherwise disposed of.

(3) Part 8 applies to an order under this section.

## **27 GIO or subsidiary may act as agent etc with respect to excluded undertaking**

The Self Insurance Corporation or any other person to whom any excluded undertaking is transferred under this Part may enter into an agreement or arrangement with GIO or a GIO subsidiary for the exercise by GIO or the GIO subsidiary (as an agent or otherwise) of such functions relating to the excluded undertaking as are specified in the agreement or arrangement.

## **28 (Repealed)**

# **Part 6 Sale of GIO by public float after conversion into public company**

## **29 Sale of GIO by public float**

- (1) The Minister may make arrangements for the sale of GIO by a public float, comprising the disposal of the shares issued to the State under Part 2 and the initial issue of shares by GIO after its conversion to repay the debt to the State created under Part 2.
- (2) The arrangements may include underwriting agreements and the issue of a prospectus.
- (3) This section does not require all the money paid for the initial issue of shares to be applied to the repayment of the debt to the State.

## **30 State may dispose of its shares**

- (1) The State of New South Wales may, subject to this Part, dispose of all or any of its shares in GIO.
- (2) The Minister is authorised to enter into agreements for the transfer to any person of those shares. Without limitation, any such person may be a body corporate.

## **31 Maximum shareholding of 10% of shares offered in public float**

- (1) This section applies to the issue of shares by GIO under its first registered prospectus and the disposal by the State of New South Wales of its shares in GIO.
- (2) A person must not (whether as principal or agent):
  - (a) apply to GIO (or to an agent or underwriter) for the issue of shares in GIO, or
  - (b) offer or agree to acquire the shares in GIO of the State of New South Wales,if the issue or acquisition would have the result that the relevant interest of a person in GIO would be more than 10%.

Maximum penalty: 500 penalty units.

- (3) The relevant interest of a person in GIO at a particular time is equal to the percentage of the total paid-up share capital of GIO in which the person holds an interest.
- (4) A person is taken to have an interest in shares for the purposes of this section if the person has such an interest within the meaning of the *Banks (Shareholdings) Act 1972* of the Commonwealth.
- (5) This section has effect subject to such exceptions or modifications (if any) as are prescribed by the regulations.
- (6) It is a defence to a prosecution for an offence against this section if the defendant proves that the contravention was due to the defendant not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.
- (7) Proceedings for an offence against this section are to be dealt with by the Supreme Court in its summary jurisdiction.
- (8) A contract, dealing or other transaction affecting shares in GIO is not unenforceable, voidable or void merely because the contract, dealing or other transaction was entered into in contravention of this section.

### **32 Proceeds of sale**

- (1) The proceeds of the sale of GIO must be paid into the Consolidated Fund.
- (2) The proceeds of sale consist of any payment for the disposal of the shares of the State of New South Wales, any repayment of the debt to the State created under Part 2 and any proceeds of the sale of an excluded undertaking determined by the Minister.
- (3) There may be deducted from the proceeds of sale before payment into the Consolidated Fund such amount as the Minister approves to meet the expenses reasonably incurred in connection with the sale (including expenses incurred in connection with the conversion of GIO into a public company).

### **33 Special trust account for proceeds of public float pending repayment of debt to State**

- (1) All money paid to GIO by an applicant for the issue of shares by GIO under its first registered prospectus must, until the repayment of the debt to the State created under Part 2, be held by GIO in a bank account kept by GIO solely for the purpose of depositing money paid by applicants for the issue of those shares.
- (2) The terms of operation of the bank account are to be that GIO may not withdraw money from the account without the Minister's consent and that the Minister may without restriction withdraw money from the account to repay the debt.
- (3) A bank with which any such money has been deposited does not have any duty to

inquire into or see to the proper application of the money so long as the bank acts in good faith.

- (4) This section does not authorise the withdrawal of money from the bank account before the issue of the shares for which the money was paid.

## **Part 7 Special provisions applying to GIO during period after conversion into public company and prior to disposal of State's majority shareholding**

### **34 Application of Part during majority shareholding in GIO by State**

This Part applies during any period after the conversion when a majority of the issued shares in GIO are held by the State of New South Wales—the shares held by the State being shares issued under Part 2.

### **35 Ministerial control**

- (1) The board of directors of GIO is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) Neither the enactment of this section nor the exercise of the Minister's powers under this section constitutes the Minister as a director of GIO or a person who participates in the management of GIO.
- (3) A director of GIO is not personally liable in any civil or criminal proceedings (including proceedings for a breach of any duty under the [Corporations Law](#)) for anything done or omitted for the purpose only of complying with a direction of the Minister under this section.

### **36 Status of GIO etc**

- (1) GIO (and any GIO subsidiary to which any part of GIO's business undertaking is transferred under this Act) are agencies through which the State of New South Wales engages in State insurance, and for that purpose are public authorities of the State.
- (2) However, GIO or any GIO subsidiary:
  - (a) is not and does not represent the State of New South Wales except by express agreement with the Minister, and
  - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State of New South Wales merely because it is a company in which the State holds shares, and
  - (c) cannot render the State of New South Wales liable for any debts, liabilities or obligations of GIO or any GIO subsidiary,



unless this Act or any other Act or law otherwise expressly provides.

- (3) In this section, **State insurance** means State insurance as referred to in section 51 (xiv) of the [Commonwealth Constitution](#).

### **37 Application of certain provisions of [State Owned Corporations Act 1989](#) to GIO**

The following provisions of the [State Owned Corporations Act 1989](#) apply to GIO as if it were a State owned corporation (with or without any modification prescribed by the regulations):

- (a) such of the provisions of Part 4 (Accountability) as are prescribed by the regulations,
- (b) section 35 (Affirmative action),
- (c) section 36 (Application of other Acts),
- (d) any other provision prescribed by the regulations.

## **Part 8 Vesting of undertaking on transfer etc**

### **38 Application and interpretation**

- (1) This Part applies to the following orders under this Act:
- (a) an order under Part 4 transferring a part of the business undertaking of GIO to a GIO subsidiary or transferring a part of the business undertaking of a GIO subsidiary to another GIO subsidiary or to GIO,
  - (b) an order under Part 5 excluding a part of the business undertaking of GIO or a GIO subsidiary and transferring it to the Self Insurance Corporation or other person on behalf of the State,
  - (c) an order under Part 5 transferring any part of the excluded undertaking to a person acquiring it from the Self Insurance Corporation or other person on behalf of the State.
- (2) In this Part, the body or person from whom a part of a business undertaking is so transferred is called the **transferor** and the body or person to whom it is being so transferred is called the **transferee**.

### **39 Vesting of undertaking etc in transferee**

- (1) When any part of a business undertaking is transferred by an order to which this Part applies, the following provisions have effect (subject to the order directing the transfer):
- (a) the assets of the transferor comprised in that part of the undertaking vest in the transferee by force of this section and without the need for any conveyance,

transfer, assignment or assurance,

- (b) the rights and liabilities of the transferor comprised in that part of the undertaking become by force of this section the rights and liabilities of the transferee,
- (c) all proceedings relating to that part of the undertaking commenced before the transfer by or against the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
- (d) anything done or omitted to be done in relation to that part of the undertaking before the transfer by, to or in respect of the transferor is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
- (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the transferor is (to the extent that it relates to that part of the undertaking but subject to the regulations under section 46 (2)) to be read as, or as including, a reference to the transferee.

(2) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(3) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(4) No attornment to the transferee by a lessee from the transferor is required.

(5) Any instrument executed only for:

- (a) a purpose ancillary to or consequential on the operation of this section, or
- (b) the purpose of giving effect to this section,

is not chargeable with stamp duty.

#### **40 Transfer of staff**

(1) This section applies when an order to which this Part applies includes the transfer of the employment of staff from the transferor to the transferee.

(2) Each member of the staff concerned becomes after the transfer a member of the staff

of the transferee and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the transferor.

- (3) Neither the contract of employment nor the period of employment of each member of the staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this section, this Act does not affect any accrued rights that the member of the staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of the staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the transferor.

#### **41 Consideration etc for vestings**

An order to which this Part applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

### **Part 9 Miscellaneous**

#### **42 Act binds Crown**

This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **42A (Repealed)**

#### **43 Non-disclosure of confidential information relating to GIO's customers**

Information with respect to the affairs of an individual customer of GIO or of a GIO subsidiary is not to be disclosed to the Minister or any other person pursuant to any power conferred by this Act.

#### **44 Exemption from tax for conversion documents etc**

(1) In this section:

***exempt matter*** means:

- (a) the issue of shares in GIO under Part 2 and the disposal of those shares by the State, or
- (b) the application by GIO under this Act for registration as a company or for the reservation of its name, or
- (c) any other matter related to the conversion of GIO into a public company under

this Act.

**State tax** means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

(2) State tax is not payable in relation to:

(a) an exempt matter, or

(b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.

(3) This section does not limit the operation of section 39 (5).

#### **45 Certificate evidence**

A certificate purporting to be signed by the Minister or a prescribed officer that:

(a) an order specified or referred to in the certificate is an order made by the Minister under a specified provision of this Act, or

(b) a specified class of policies or contracts have been approved by the Treasurer under section 16,

is admissible in evidence in any legal proceedings and is evidence of the matters certified.

#### **46 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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act (including the interpretation of references to GIO or the GIO Act).

(3) Any such savings or transitional provisions may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on 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, GIO, a GIO subsidiary or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State, GIO, a GIO subsidiary or an authority of the State) in respect of anything done or omitted to be done before

the date of its publication.

## **Schedule 1 Savings and transitional provisions relating to conversion of GIO into a public company**

(Section 18)

### **1 Dissolution of GIO Board**

- (1) On the conversion, the GIO Board is dissolved.
- (2) A person holding office as a director of the GIO Board immediately before its dissolution:
  - (a) ceases to hold that office, and
  - (b) except as provided by subclause (3), is not entitled to any remuneration or compensation because of the loss of that office.
- (3) Part 8 of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as a director of the GIO Board, without immediately being appointed to the service of GIO or a GIO subsidiary, in the same way as it applies to a person removed from office under that Part.

### **2 Application of certain provisions of Corporations Law**

- (1) While the State of New South Wales continues to hold all the shares in GIO (being the shares issued to the State under Part 2), sections 186 and 461 (d) of the *Corporations Law* do not apply in relation to GIO, and section 249 (7) of the *Corporations Law* applies in relation to GIO as if:
  - (a) the State of New South Wales were a holding company (within the meaning of section 249 (7) of the *Corporations Law*) of GIO, and
  - (b) the Minister were a representative of the State authorised under section 249 (3) of the *Corporations Law*.
- (2) Sections 139 (2) and (3) and 151 (5) of the *Corporations Law* do not apply in relation to GIO.
- (3) For the purposes of section 409 of the *Corporations Law*, GIO is taken to be subject to the law of the Commonwealth relating to life insurance.
- (4) For the purposes of Division 2 of Part 5.6 of the *Corporations Law* (Contributories on winding up):
  - (a) the State of New South Wales is not (in relation to any period before the conversion) a past member of GIO, and

(b) a person is not a past member of GIO merely because he or she was a member of the GIO Board, or acted as a member of the GIO Board, before the conversion.

(5) For the purposes of the *Corporations Law*, accounts and records kept under Part 3 of the *Public Finance and Audit Act 1983* are, after the conversion, taken to be accounting records kept by GIO under a provision of a previous law of the State of New South Wales, being a provision corresponding to section 289 of the *Corporations Law*.

(6) For the purposes of the *Corporations Law*, a report and financial statements that were prepared under Part 3 of the *Public Finance and Audit Act 1983* (or under section 11 of the GIO Act) in relation to a period and furnished to a Minister on a particular day are, after the conversion, taken to be a profit and loss account of GIO that was:

(a) made out in relation to that period, and

(b) laid before the body at an annual general meeting of the body held on that day.

### **3 Audit**

(1) As from the conversion, the functions of the Auditor-General under the *Public Finance and Audit Act 1983* are no longer exercisable with respect to GIO, except in respect of whole financial years before the conversion.

(2) GIO is not required to prepare accounts as at the date of conversion if the conversion occurs during a financial year.

### **4 Saving of GIO tax-equivalent contribution payable to Treasurer**

(1) The repeal of section 10A of the GIO Act does not affect any liability under that section in respect of any period before the conversion.

(2) The regulations may make provision for or with respect to the payment of any amount of that liability, including the time at which any such amount is payable and the filing of returns by GIO relating to the payment of any such amount.

(3) The regulations may also make provision for or with respect to the application of the provisions of section 10A of the GIO Act (with or without modifications) to GIO or any GIO subsidiary during any part of the period to which Part 7 applies when GIO or the GIO subsidiary is not liable to pay income tax.

### **5 Superannuation under State schemes**

(1) This clause applies to a member of the staff of GIO who is, immediately before the conversion, a contributor to the State Superannuation Fund or the State Authorities Superannuation Fund.

(2) Contributors to whom this clause applies cease to be contributors on the conversion. They are taken to have elected on the conversion to preserve their superannuation

benefits in accordance with the relevant statutory provisions.

- (3) This clause does not affect the provisions of any other Act or regulations relating to the rights of contributors.

## **Schedule 2 (Repealed)**