

# Insurance (Application of Laws) Act 1986 No 13

[1986-13]



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.

### Authorisation

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# Insurance (Application of Laws) Act 1986 No 13



New South Wales

An Act to provide for the application of certain Commonwealth insurance legislation to State insurance.

## 1 Name of Act

This Act may be cited as the *Insurance (Application of Laws) Act 1986*.

## 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

## 3 Definitions

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

**applied provision** means a provision of:

- (a) the *Insurance Contracts Act 1984* of the Commonwealth, or
- (b) (Repealed)
- (c) an instrument in force under either of those Acts,

being a provision that, pursuant to this Act, applies as a law of New South Wales.

**regulation** means a regulation made under this Act.

- (2) An applied provision shall be construed in accordance with the *Acts Interpretation Act 1901* of the Commonwealth, as in force from time to time.
- (3) Without affecting the generality of section 31 of the *Interpretation Act 1987*, this Act shall be construed as operating to the full extent of, but so as not to exceed, the legislative power of Parliament.
- (4) Notes included in this Act do not form part of this Act.

#### 4 Crown bound

- (1) This Act and the applied provisions bind the Crown in right of New South Wales and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown, whether in right of New South Wales or otherwise, liable to be prosecuted for an offence against an applied provision.

#### 5 Application of [Insurance Contracts Act 1984](#) of the Commonwealth etc

- (1) Except to the extent to which the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of:
  - (a) the [Insurance Contracts Act 1984](#) of the Commonwealth, as in force from time to time, and
  - (b) any instrument in force under that Act,apply as laws of New South Wales to and in respect of all contracts of insurance and proposed contracts of insurance entered into, or proposed to be entered into, in the course of State insurance, including contracts and proposed contracts entered into, or proposed to be entered into, by the State and some other insurer as joint insurers.
- (2) Subsection (1) does not operate so as to apply section 5 or 9 (2) of the [Insurance Contracts Act 1984](#) of the Commonwealth as a law of New South Wales.

#### 6 Application of Corporations legislation to State insurance matters

- (1) The regulations may declare any State insurance matter to be an applied Corporations legislation matter for the purposes of Part 3 of the [Corporations \(Ancillary Provisions\) Act 2001](#) (with such modifications as may be specified in the declaration) in relation to the following:
  - (a) all or any of the provisions of Chapter 7 (Financial services and markets) of the [Corporations Act 2001](#) of the Commonwealth,
  - (b) all or any of the provisions of the [Australian Securities and Investments Commission Act 2001](#) of the Commonwealth relating to financial products or financial markets.

#### Note—

Part 3 of the [Corporations \(Ancillary Provisions\) Act 2001](#) provides for the application of provisions of the [Corporations Act 2001](#) and Part 3 of the [Australian Securities and Investments Commission Act 2001](#) of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the [Corporations \(Ancillary Provisions\) Act 2001](#) ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already

apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Without limiting subsection (1), any such regulations may:
- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
  - (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
    - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
    - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (c) specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
  - (d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
  - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.
- (4) In this section:

**State insurance matter** means:

- (a) State insurance within the meaning of section 51 (xiv) of the *Commonwealth Constitution*, or
- (b) contracts of insurance and proposed contracts of insurance entered into, or proposed to be entered into, by the State and some other insurer as joint insurers, or
- (c) conduct in connection with contracts and proposed contracts of the kind referred to in paragraph (b).

## **7 Exclusion of GIO insurance funds administration business**

- (1) The applied provisions do not apply to or in respect of the insurance funds administration business of the Government Insurance Office of New South Wales (that is, business of the kind referred to in section 5B (1) (b) of the *Government Insurance Act 1927*) or to or in respect of that Office in its conduct of that business.
- (2) This section continues to have effect with respect to that insurance funds administration business even though it is transferred to another person or body under the *Government Insurance Office (Privatisation) Act 1991*.

## **8 Recovery of penalties**

- (1) Proceedings for an offence against an applied provision may be dealt with summarily:
  - (a) before the Local Court, or
  - (b) before the Supreme Court in its summary jurisdiction.
- (2) Where proceedings for an offence against an applied provision are dealt with before the Local Court, the maximum pecuniary penalty that may be imposed in respect of the offence is \$5,000 or the pecuniary penalty indicated in the provision in respect of the offence, whichever is the lesser.
- (3) Where proceedings for an offence against an applied provision are dealt with before the Supreme Court in its summary jurisdiction, the maximum pecuniary penalty that may be imposed in respect of the offence is the pecuniary penalty indicated in the provision in respect of the offence.

## **9 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 provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.