

# Insurance Protection Tax Act 2001 No 40

[2001-40]



New South Wales

## Status Information

### Currency of version

Current version for 5 November 2015 to date (accessed 22 May 2024 at 0:23)

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.

### Responsible Minister

- Minister for Better Regulation and Fair Trading
- Treasurer
- Minister for Work Health and Safety

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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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## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Definitions .....	4
<b>Part 1A Abolition of tax</b> .....	7
3A, 3B (Repealed) .....	7
3C Refunds of tax from Policyholders Protection Fund .....	7
<b>Parts 2, 3 (Repealed)</b> .....	7
<b>Part 3A Policyholders Protection Fund</b> .....	8
16 Definitions .....	8
16A Declaration of insolvent insurers .....	8
16B Policyholders Protection Fund .....	8
16C Tax to be paid into Policyholders Protection Fund .....	9
16D Application of Policyholders Protection Fund—claims under home building insurance contracts of insolvent insurers .....	9
16E Application of Policyholders Protection Fund—claims under third-party motor accident policies of insolvent insurers .....	9
16F Repayments to Policyholders Protection Fund .....	10

16G Repayments to Policyholders Protection Fund—money recovered from motor accident insolvent insurers and re-insurers ..... 10

16H Policyholders Protection Fund to reimburse additional money advanced from Consolidated Fund ..... 10

17-23, (Repealed) ..... 10

24 Regulations..... 10

**Parts 4, 5 (Repealed) ..... 11**

**Schedule 1 Savings, transitional and other provisions ..... 11**

# 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 a private health insurer within the meaning of the *Private Health Insurance Act 2007* 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,
- (l) insurance under which the class of persons who take out the insurance are liable, or may become liable, under a contract of insurance or by or under an Act, to meet the cost of claims made under policies of insurance issued to members of that class in the event that the insurer is unable to meet the cost of those claims (due to the insolvency of the insurer, a shortfall in the funds available to the insurer to meet the cost of the claims or for any other reason), and which is insurance, or insurance of a class, for the time being approved by the Treasurer for the purposes of this paragraph.

**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** means:

- (a) a person who arranges contracts of insurance in New South Wales:
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee (as defined in section 761A of the [Corporations Act 2001](#) of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal (as defined in section 1430 of the [Corporations Act 2001](#) of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

**insurer** means a person:

- (a) who writes general insurance, and
- (b) who does so otherwise than as an insurance intermediary, and
- (c) who is authorised to carry on insurance business under the [Insurance Act 1973](#) of the Commonwealth.

**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.

## Part 1A Abolition of tax

### 3A, 3B (Repealed)

### 3C Refunds of tax from Policyholders Protection Fund

- (1) If, at any time after 1 July 2011, the Treasurer determines that any amount standing to the credit of the Policyholders Protection Fund is not needed for payments to the Building Insurers' Guarantee Fund and the Nominal Defendant's Fund in accordance with Part 3A, the Treasurer may direct that the amount (the **refund amount**) be paid from the Policyholders Protection Fund for the purposes of providing a refund to insurers.
- (2) The refund amount is to be paid to insurers who pay tax under this Act in respect of the year commencing 1 July 2010.
- (3) Each of those insurers is to be paid the relevant proportion of the refund amount.
- (4) The relevant proportion is the proportion that the amount of tax paid by the insurer under this Act in respect of the year commencing 1 July 2010 bears to the total amount of tax paid by all insurers under this Act in respect of that year.
- (5) The Chief Commissioner is to pay the refund amount to insurers in accordance with this section.

## Parts 2, 3

### 4-15 (Repealed)

## 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,
- (ca) money the Treasurer directs to be paid from the Fund for the purposes of providing a refund to insurers in accordance with section 3C,
- (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.

#### **17-23, (Repealed)**

#### **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) (Repealed)

## **Parts 4, 5**

### **25-28 (Repealed)**

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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, 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.

### **Part 2 Provisions consequent on enactment of [Regulatory Reform and Other Legislative Repeals Act 2015](#)**

#### **2 Repeal of obsolete provisions relating to imposition and abolition of tax**

An amendment made to this Act by the [Regulatory Reform and Other Legislative Repeals Act 2015](#) does not affect any liability to pay tax imposed by this Act that arose before 1 July 2011 and this Act, as in force before that amendment, continues to have effect in respect of any such liability.

#### **3 Application of section 30 of [Interpretation Act 1987](#)**

Nothing in this Part affects the application of section 30 of the [Interpretation Act 1987](#).