

Bishopsgate Insurance Australia Limited Act 1983 No 81

[1983-81]



New South Wales

Status Information

Currency of version

Repealed version for 1 July 1992 to 29 October 2023 (accessed 24 November 2024 at 13:29)

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.

Notes—

- **Repeal**

This Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2023 No 35](#), Sch 5 with effect from 30.10.2023.

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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Bishopsgate Insurance Australia Limited Act 1983 No 81



New South Wales

An Act to make provisions relating to claims against and liabilities incurred by Bishopsgate Insurance Australia Limited in respect of policies of insurance or indemnity under the [Workers' Compensation Act 1926](#).

1 Name of Act

This Act may be cited as the [Bishopsgate Insurance Australia Limited Act 1983](#).

2 Interpretation

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

Company means Bishopsgate Insurance Australia Limited.

Contribution Fund means the Insurers' Contribution Fund established under section 30H (1) of the [Workers' Compensation Act 1926](#).

employer has the same meaning as it has in the [Workers' Compensation Act 1926](#).

fund means the fund established under section 3.

Government Insurance Office means the Government Insurance Office of New South Wales.

licensed insurer means a person who is at, or who becomes after, 19 August 1983:

(a) an insurer licensed under the [Workers' Compensation Act 1926](#), or

(b) a self-insurer within the meaning of that Act,

but does not include the Company.

policy of insurance issued by the Company means a policy of insurance or indemnity under section 18 (1) of the [Workers' Compensation Act 1926](#) issued by the Company and includes a policy of insurance or indemnity under that subsection issued by:

- (a) Harvey Trinder (NSW) Proprietary Limited or Bain Dawes Proprietary Limited between 16 July 1957, and 30 June 1968, both dates inclusive,
- (b) Bishopsgate Insurance Company Limited of London between 31 July 1971, and 30 June 1977, both dates inclusive,
- (c) Neptune Insurance Company Proprietary Limited between 15 June 1948, and 30 June 1978, both dates inclusive, and
- (d) any other company prescribed for the purposes of this paragraph between such dates as may be so prescribed.

regulation means a regulation made under this Act.

State Compensation Board means the State Compensation Board constituted under the *Workers' Compensation Act 1926*.

- (2) So far as the legislative power of Parliament permits, the liquidator of the Company shall have and may exercise outside New South Wales the powers, authorities, duties and functions conferred or imposed on the liquidator by this Act, in addition to having and exercising those powers, authorities, duties and functions within New South Wales.

2A WorkCover Authority to assume functions of GIO under this Act

- (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.
- (2) Accordingly, after that commencement:
 - (a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions, and
 - (b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority, and
 - (c) anything done or omitted to be done in connection with the exercise or performance of those functions before that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.
- (3) In this section, a reference to a function includes a reference to a power, authority or duty.

2B Insurers' Guarantee Fund to replace Insurers' Contribution Fund

- (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the [Workers Compensation Act 1987](#).
- (2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.

3 Fund

- (1) There shall be a fund:
 - (a) into which shall be paid:
 - (i) the contributions required by section 4 or the regulations to be paid by licensed insurers,
 - (ii) all income accruing from the investment or re-investment of money under subsection (3), or otherwise accruing to the fund,
 - (iii) any amounts received by the Government Insurance Office in the exercise of the rights, or the discharge of the obligations, referred to in section 7 (1) (other than an amount required by section 30L of the [Workers' Compensation Act 1926](#), to be paid into the Contribution Fund),
 - (iv) any amounts payable to the Government Insurance Office pursuant to section 30K of the [Workers' Compensation Act 1926](#), as a result of the application of that section, in accordance with section 9 (2), to a payment made by the Government Insurance Office, and
 - (v) any amounts payable to the Government Insurance Office pursuant to section 11, and
 - (b) out of which shall be paid such amounts as may be authorised by this Act to be paid thereout.
- (2) The fund shall, subject to this Act and the regulations, be under the direction, control and management of the Government Insurance Office.
- (3) The Government Insurance Office may invest and re-invest any money in the fund in all or any one or more of the securities and investments mentioned in section 5C (1) of the [Government Insurance Act 1927](#), and any such securities and investments held by the Government Insurance Office pursuant to this subsection may at any time be realised, hypothecated or otherwise disposed of as the Government Insurance Office may from time to time determine.

(4), (5) (Repealed)

4 Contributions to the fund

- (1) The Government Insurance Office may, in any year prescribed by the regulations (being a year commencing on 1 July 1983, or on 1 July in any following year) determine the amount to be contributed to the fund in that year, being an amount which the Government Insurance Office considers is necessary to satisfy, during that year, claims, judgments and awards arising from or pertaining to policies of insurance issued by the Company and to provide for the payment of any other amounts required by this Act to be paid from the fund during that year.
- (2) Where the Government Insurance Office determines an amount pursuant to subsection (1) in respect of a year prescribed for the purposes of that subsection, each licensed insurer shall in that year pay to the Government Insurance Office for payment into the fund an appropriate contribution calculated in accordance with the following formula:

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

where:

A is the amount which the licensed insurer is required by or under the *Workers' Compensation Act 1926*, to contribute to the fund established by section 41 of that Act in the year immediately preceding the year so prescribed,

B is the total amount required by or under that Act to be contributed by all licensed insurers to that fund in that preceding year, and

C is the amount determined pursuant to subsection (1) in respect of the year so prescribed.

- (3) An appropriate contribution, calculated in accordance with subsection (2), not paid within the time specified by the Government Insurance Office in a notice to a licensed insurer requiring the licensed insurer to pay the contribution may be recovered as a debt in any court of competent jurisdiction.
- (4) In any proceedings under subsection (3), a certificate purporting to be executed by the Board as to the amount of the appropriate contribution payable, pursuant to this section, by the licensed insurer, and as to the time within which the contribution should be paid, as specified by the Government Insurance Office, shall without proof of its execution by the Board be evidence of the facts stated therein.

5 Liquidator to notify Government Insurance Office of claims

The liquidator of the Company shall, on receiving any claim pertaining to any policy of insurance issued by the Company, forward that claim to the Government Insurance Office.

6 Delivery of documents etc to Government Insurance Office

The liquidator of the Company shall, whenever requested to do so by the Government Insurance Office, deliver to the Government Insurance Office all documents relating to policies of insurance issued by the Company and any claims, judgments or awards made in respect of any such policies in the liquidator's possession and furnish to the Government Insurance Office any information in the liquidator's possession relating to any such policies or any such claims, judgments or awards.

6A Scheme of arrangement

- (1) The Government Insurance Office may, for the purposes of this Act, participate in any scheme of arrangement in relation to the Company.
- (2) The regulations may make provision for or with respect to any matter under this Act which is affected by any such arrangement.

7 Appointment of Government Insurance Office as agent and attorney of employer

- (1) Where an employer is insured under a policy of insurance issued by the Company, the Government Insurance Office, as manager of the fund, is by this Act appointed the agent and attorney of the employer and as such may, in the name of the employer or in its own name, exercise the rights, or discharge the obligations, of the employer for the purpose of:
 - (a) dealing with and finalising any claim against which the employer is indemnified under the policy of insurance,
 - (b) satisfying any such claim or any judgment or award against which the employer is indemnified under the policy of insurance, or
 - (c) to the extent that any such claim, judgment or award has been satisfied by the Government Insurance Office as agent and attorney of the employer:
 - (i) proving in the winding-up of the Company or under any scheme of arrangement in relation to the Company,
 - (ii) receiving any dividends or other money payable to the employer in the winding-up of the Company or under any scheme of arrangement in relation to the Company,
 - (iii) recovering any money which the employer is entitled to recover under section 64 of the *Workers' Compensation Act 1926*, or
 - (iv) recovering any money which the employer is entitled, under the policy of insurance, to recover from a company referred to in paragraphs (a)-(c) of the definition of **policy of insurance issued by the Company** in section 2 (1) or from a company prescribed for the purposes of paragraph (d) of that definition,

or for any other prescribed purpose.

- (1A) A reference in subsection (1) (c) to a claim, judgment or award satisfied by the Government Insurance Office includes (in the case of payments under a scheme of arrangement in relation to the Company) a reference to any contingent liability in respect of any such claim, judgment or award that has not been satisfied or any such future claim, judgment or award.
- (2) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations:
- (a) arising from or pertaining to a policy of insurance issued by the Company to an employer, and
 - (b) which may or shall be exercised or discharged for the purpose of:
 - (i) dealing with and finalising any claim, or
 - (ii) satisfying any claim, judgment or award,against which the employer is indemnified under the policy,
- are hereby vested in or imposed on the employer.
- (3) Subsection (2) shall not be construed so as to vest in or impose on an employer, or to affect in any other way, a right of an insurer to be indemnified by a reinsurer or an obligation of an insurer to indemnify an employer or any other prescribed right or obligation.
- (4) Where the Government Insurance Office is, under subsection (1), empowered to exercise any rights, or to discharge any obligations, of an employer as the employer's agent and attorney, the employer is not entitled, without the consent of the Government Insurance Office, to exercise those rights or discharge those obligations.
- (5) The appointment effected pursuant to subsection (1) may be revoked only by an Act.

8 Payments to employer or liquidator

- (1) Where an employer insured under a policy of insurance issued by the Company has satisfied (whether before or after the commencement of Schedule 1 to the [Bishopsgate Insurance Australia Limited \(Amendment\) Act 1984](#)) any claim, judgment or award in respect of which the employer has not been indemnified under that policy, the Government Insurance Office, as manager of the fund, may pay from the fund to the employer an amount equal to the whole or any part of the amount paid by the employer in satisfaction of the claim, judgment or award.
- (2) Where the liquidator of the Company has satisfied (whether before or after the commencement of Schedule 1 to the [Bishopsgate Insurance Australia Limited](#)

(*Amendment Act 1984*) any claim, judgment or award in respect of which an employer is entitled to be indemnified under a policy of insurance issued by the Company, the Government Insurance Office, as manager of the fund, may pay from the fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim, judgment or award.

(3) Where:

(a) a payment is made under subsection (1) to an employer in respect of a claim, judgment or award, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer, or

(b) a payment is made under subsection (2) to the liquidator of the Company in respect of a claim by or on behalf of any person or a judgment or award for the benefit of any person, the Government Insurance Office shall be deemed, to the extent of the payment, to have satisfied the claim, judgment or award as agent and attorney of the employer of that person.

(4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Government Insurance Office and neither those subsections nor the exercise of any of those powers operates to confer, directly or indirectly, any right on any person to whom a payment is made under those subsections or on any other person.

9 Operation of certain provisions of Act No 15, 1926

(1) Section 18BA of the *Workers' Compensation Act 1926* applies in relation to an employer insured under a policy of insurance issued by the Company as if the Government Insurance Office were the insurer liable to indemnify the employer under the policy.

(2) Section 30K of the *Workers' Compensation Act 1926* applies to and in respect of a payment made by the Government Insurance Office (as agent and attorney of an employer) pursuant to a policy of insurance issued by the Company in the same way as it would have applied to and in respect of the payment had it been made by the Government Insurance Office as the insurer under the policy.

(3) Where the Government Insurance Office receives as agent and attorney of an employer a payment from the Contribution Fund in accordance with section 30K of the *Workers' Compensation Act 1926*, section 30L of that Act applies to and in respect of that payment as if the Government Insurance Office were an insurer which had received that payment in respect of compensation paid by it.

(4) Sections 53B and 53E of the *Worker's Compensation Act 1926* apply in relation to a claim being dealt with by the Government Insurance Office as agent and attorney of

an employer insured under a policy of insurance issued by the Company as if a reference in those sections to an insurer included a reference to the Government Insurance Office.

- (5) The Governor may make regulations, not inconsistent with this Act, for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of the *Workers' Compensation Act 1926* (including the provisions referred to in subsections (1)-(4)) in relation to the dealing with or finalising of claims, or the satisfying of judgments or awards, by the Government Insurance Office as agent and attorney of an employer insured under a policy of insurance issued by the Company.

10 Application of fund

- (1) Out of the fund, the Government Insurance Office as manager of the fund:
- (a) shall pay the amount of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, being a claim, judgment or award that it proposes to satisfy as agent and attorney of an employer, and any other amounts required by this Act to be paid from the fund,
 - (b) shall pay to the general fund kept by the Government Insurance Office for the purposes of the *Government Insurance Act 1927*:
 - (i) an amount equivalent to the sum of the payments made by that Office out of that general fund, being the payments validated by section 5 of the *Bishopsgate Insurance Australia Limited (Amendment) Act 1984*, and
 - (ii) interest on the amount referred to in subparagraph (i) at a rate agreed upon by the Attorney General and the Treasurer, and
 - (c) is entitled:
 - (i) to be paid the costs of administration of the fund (including such management fee, not exceeding the maximum amount (if any) prescribed, as is reasonable having regard to the work involving the fund), and
 - (ii) to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise or performance or the purported exercise or performance of its powers, authorities, duties and functions under this Act.
- (2) A payment made by the Government Insurance Office to or in respect of a worker, being a payment validated by section 5 of the *Bishopsgate Insurance Australia Limited (Amendment) Act 1984*, shall be deemed to have been made by the Government Insurance Office under subsection (1) (a) as agent and attorney of the employer of that worker.

- (3) Where a payment is made by the Government Insurance Office as agent and attorney of an employer, being a payment authorised by this Act, the Government Insurance Office shall not be entitled to recover the amount of that payment from the employer.

11 Recovery of amounts under contracts or arrangements for reinsurance

To the extent that any amounts are paid out of the fund in respect of a claim, judgment or award pursuant to section 10 (including the costs of the Government Insurance Office), the Government Insurance Office shall, where the Company (if it had provided indemnity to that extent under a policy of insurance) would have been entitled to recover any sum under a contract or arrangement for reinsurance, be entitled to the benefit of and may exercise the rights and powers of the Company under that contract or arrangement so as to enable the Government Insurance Office to recover from the reinsurer and pay into the fund the amount due under that contract or arrangement.

12-14 (Repealed)

15 Entitlements payable after dissolution of the Company

- (1) When the Company has been dissolved, a person who would have had (but for the dissolution taking place) an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company is entitled to payment of that amount:
- (a) out of the fund, and
 - (b) after the fund is closed, out of the Contribution Fund.
- (1A) When the fund has been closed and a person has an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company, being an amount:
- (a) which has not been paid out of, or for which provision has not been made from, the fund, and
 - (b) which is payable by a company referred to in paragraphs (a)–(c) of the definition of **policy of insurance issued by the Company** in section 2 (1) or by a company prescribed for the purposes of paragraph (d) of that definition,
- the person shall be entitled to payment of the amount out of the Contribution Fund.
- (2) A person referred to in subsection (1) or (1A) may make a claim against the WorkCover Authority, as manager of the Contribution Fund, in respect of an entitlement to payment of an amount under either of those subsections.
- (3) The WorkCover Authority, as manager of the Contribution Fund, is entitled to deal with and finalise a claim made under subsection (2) to the same extent as it would have been entitled to do so:

- (a) as manager of the fund, and
 - (b) in the case of a claim arising under or pertaining to a policy of insurance issued by the Company in respect of which the Company is the insurer—if the Company had not been dissolved.
- (3A) When the Company has been dissolved, the payments of compensation under judgments or awards pertaining to policies of insurance issued by the Company which would (but for the dissolution taking place) be payable by the Company are to continue and be paid:
- (a) out of the fund, and
 - (b) after the fund is closed, out of the Contribution Fund.
- (4) Out of the Contribution Fund, the WorkCover Authority:
- (a) shall, as manager of the Contribution Fund, satisfy any liability arising from or pertaining to a claim made under subsection (2) or any judgment or award made pursuant to that claim or referred to in subsection (3A), and
 - (b) is entitled:
 - (i) to be paid, as manager of the Contribution Fund, the costs of administration of the Contribution Fund arising under this Act, and
 - (ii) to be indemnified against all liabilities met by it and all costs and expenses that it may incur, as manager of the Contribution fund, in or in connection with the exercise or performance or the purported exercise or performance of its powers, authorities, duties and functions under this section.

16 Application of surplus money in fund

- (1) Money that remains in the fund after the Government Insurance Office has paid out (or made provision for paying out) all money authorised or required to be paid out of the fund by this Act is to be repaid in accordance with this section to the persons who have made contributions to the fund.
- (2) The Government Insurance Office is required to make provision for all liabilities (including contingent liabilities) of the fund after its closure, including by making an appropriate payment to the Contribution Fund.
- (3) If the Government Insurance Office is satisfied that contributors will become entitled to a repayment from the fund, it may make periodic interim repayments of money in the fund to contributors in accordance with this section.
- (4) The Government Insurance Office is entitled to rely on the advice of an actuary as to the amount available for repayments under this section.

- (5) Money is to be repaid to contributors under this section in the same proportions as the contributions were made.
- (6) The Government Insurance Office may require each contributor who is repaid money by way of an interim repayment under this section to make a payment (not exceeding the amount repaid) to the fund if the amount standing to the credit of the fund before its closure is insufficient to meet the estimated liabilities (including contingent liabilities) of the fund.
- (7) The Government Insurance Office may recover any amount overpaid or required to be paid under subsection (6) as a debt due to the Office.
- (8) Repayments are not to be made under this section to the following contributors:
 - (a) contributors who no longer exist or who cannot be located by the Government Insurance Office after due inquiry,
 - (b) defaulting insurers within the meaning of Division 6A of Part 7 of the [Workers Compensation Act 1987](#) or insolvent insurers within the meaning of Division 7 of Part 7 of that Act,
 - (c) companies in liquidation.

Money otherwise payable to any such contributor may be paid into a suspense account by the Government Insurance Office and may, at any time, be paid into the Contribution Fund.

17 Application of money received after closure of fund

- (1) Any money received, after the fund is closed, by the Government Insurance Office from the liquidator of the Company by way of dividend (or under any scheme of arrangement in relation to the Company) as agent and attorney of an employer is to be paid into an account in a bank in New South Wales.
- (2) The money so paid is to be distributed to the contributors to the fund in the manner provided under section 16 for the distribution of the surplus remaining on the closure of the fund.

18 Inspection of documents etc by person authorised by Minister

The liquidator of the Company shall, whenever requested to do so by a person authorised by the Minister, make any documents relating to policies of insurance issued by the Company and any claims, judgments or awards made in respect of any such policies in the liquidator's possession available for inspection by that person.

19 State Compensation Board may take certain legal proceedings

- (1) Where:

- (a) the liquidator of the Company applies to any court for directions in relation to any particular matter arising under the winding up,
- (b) the exercise or performance by the liquidator of the Company of any of the liquidator's powers, authorities, duties or functions, whether under this Act or not, is challenged, reviewed or called into question in proceedings before any court, or
- (c) any other matter that concerns or may affect the operation of this Act is raised in proceedings before any court,

the State Compensation Board may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

- (2) In any case in which the Attorney General might take proceedings on the relation or on behalf or for the benefit of a person to whom the Company is liable in respect of a claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Act, any other Act or any rule of law, the State Compensation Board shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.
- (3) The State Compensation Board is entitled to be paid, out of the fund, all the costs and expenses incurred by the Board in exercising the powers conferred by this section.

20 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) requiring licensed insurers (being insurers, other than the Company, licensed under the *Workers' Compensation Act 1926*, and self-insurers within the meaning of that Act, as at a date specified in the regulations) to make further contributions to the fund,
- (b) the manner and method of determining any such further contributions,
- (c) varying in circumstances therein specified the periods with respect to which contributions are based or the basis on which such contributions are determined under section 4,
- (d) the payment, and proceedings for the recovery, of contributions, and
- (e) the repayment of money to contributors.