

# Associated General Contractors Insurance Company Limited Act 1980 No 38

[1980-38]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 July 1992 to 29 October 2023 (accessed 27 December 2024 at 16:56)

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This Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2023 No 35](#), Sch 5 with effect from 30.10.2023.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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# Associated General Contractors Insurance Company Limited Act 1980 No 38



New South Wales

An Act to make provisions relating to claims against and liabilities incurred by Associated General Contractors Insurance Company 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 [Associated General Contractors Insurance Company Limited Act 1980](#).

## 2 Interpretation

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

**Company** means Associated General Contractors Insurance Company Limited.

**Contribution Fund** means the Insurers' Contribution Fund established under section 30H (1) of 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 an insurer, other than the Company, licensed under the [Workers' Compensation Act 1926](#), and a self-insurer within the meaning of that Act, as at 20 March 1980.

**policy of insurance** means a policy of insurance or indemnity under section 18 (1) of the [Workers' Compensation Act 1926](#).

**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 for Victoria, in addition to the liquidator of the Company for New South Wales (if any), shall have and may exercise the powers, authorities, duties and functions of the liquidator of the Company under this Act.

## **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 into which shall be paid the contributions required by section 4 or the regulations to be paid by licensed insurers, all income accruing from the investment or re-investment of money under subsection (3), or otherwise accruing to the fund, and any amounts required by section 13 to be paid into the fund and 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) Full and accurate accounts shall be kept by the Government Insurance Office in respect of the fund.
- (5) The accounts relating to the fund shall be audited by the Auditor-General.

#### **4 Contributions to fund**

- (1) Each licensed insurer shall from time to time pay to the Government Insurance Office for payment into the fund such amount as may be calculated, in accordance with subsection (2), by the Government Insurance Office as the appropriate contribution by that licensed insurer.
- (2) The appropriate contribution in the case of a licensed insurer shall be an amount equivalent to that which bears the same proportion to the amount determined by the Government Insurance Office as necessary to meet claims, judgments and awards arising from or pertaining to policies of insurance issued by the Company as the amount which that 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 which commenced on 1 July 1979, bears to the total amount required by or under that Act to be contributed by all licensed insurers to that fund in that year.
- (3) An appropriate contribution, calculated in accordance with this section, not paid within the time specified by the Government Insurance Office in a notice to a licensed insurer requiring him 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 the receipt by him of 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 his possession and furnish to the Government Insurance Office any information in his possession relating to any such policies or any such claims, judgments or awards.

## **7 Control of Supreme Court over liquidator**

If any complaint is made to the Supreme Court by the Government Insurance Office or the State Compensation Board with respect to the exercise or performance by the liquidator of the Company of any of his powers, authorities, duties or functions under this Act, the Supreme Court shall inquire into the matter and take such action as it thinks fit.

## **8 Claims may be finalised etc by Government Insurance Office as agent**

(1) Subject to subsection (2), the Government Insurance Office:

- (a) may deal with and finalise any claim, and
- (b) may exercise any right of the Company arising from or pertaining to any claim, judgment or award,

arising from or pertaining to any policy of insurance issued by the Company.

(2) Subsection (1) does not authorise the Government Insurance Office (except to the extent that the liquidator of the Company otherwise agrees):

- (a) to pay any amount for the purpose of satisfying any claim, judgment or award, or
- (b) to recover any amount due to the Company.

(3) The Government Insurance Office shall, when it acts pursuant to this section, be deemed to be acting as the agent of the Company.

## **9 Liquidator may borrow money from fund to satisfy claims etc**

(1) For the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the liquidator of the Company may from time to time borrow from the fund such amounts as may be necessary for that purpose.

(2) The liquidator shall apply any amount borrowed from the fund in pursuance of subsection (1) for the purpose for which it was borrowed.

## **10 Application of fund**

Out of the fund, the Government Insurance Office:

- (a) shall, as manager of the fund, pay any amount that the liquidator of the Company wishes to borrow, pursuant to section 9, for the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, and
- (b) is entitled:
  - (i) to be paid, as manager of the fund, the costs of administration of the fund, and
  - (ii) to be indemnified against all payments made by it and all costs and expenses that it may incur, as manager of the 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 Act.

### **11 Powers of liquidator of the Company**

The powers of the liquidator of the Company with respect to any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company shall be exercised as though:

- (a) the reference to the authority of the Court, of the committee of inspection or of a resolution of the creditors in section 377 of the *Companies (New South Wales) Code* were a reference to the authority of the Government Insurance Office, and
- (b) the words “subject to the provisions of section 441,” were omitted from section 377 (1) (b) of the *Companies (New South Wales) Code*.

### **12 Exclusion of liability of liquidator**

- (1) The liquidator of the Company shall not be personally liable for or in respect of the exercise or performance or the purported exercise or performance by the Government Insurance Office of its powers, authorities, duties and functions under section 8 or any other provision of this Act.
- (2) Subsection (1) has effect notwithstanding anything to the contrary in section 379 (4) of the *Companies (New South Wales) Code*.

### **13 Payment into fund of money recovered by liquidator**

- (1) (Repealed)
- (2) Where the Company or the liquidator of the Company, pursuant to section 64 of the *Workers' Compensation Act 1926*, or otherwise, recovers any amount due to the Company as a consequence of the satisfaction with money borrowed from the fund of any part of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the amount recovered shall, after deducting any expenses of or incidental to recovering that amount, be paid by the liquidator to the Government Insurance Office for payment into the fund in priority to all payments in



respect of the debts referred to in section 441 of the *Companies (New South Wales) Code*.

- (3) Where any amount is paid pursuant to section 30K of the *Workers' Compensation Act 1926*, from the Contribution Fund to the Company or to the liquidator of the Company as a consequence of the satisfaction with money borrowed from the fund of any part of any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company, the amount paid shall be paid by the liquidator to the Government Insurance Office for payment into the fund in priority to all payments in respect of the debts referred to in section 441 of the *Companies (New South Wales) Code*.
- (4) This section shall have effect notwithstanding any agreement to the contrary entered into whether before or after the commencement of this Act.

### **13A Recoveries under indemnity given by Palmdale Insurance to Company**

- (1) Any money received by the Government Insurance Office from the liquidator of Palmdale Insurance Limited in connection with the indemnity given by Palmdale Insurance Limited to the Company by Deed of Indemnity dated 31 March 1976 is to be paid into the fund or, after the closure of the fund, in accordance with section 16A.
- (2) For the purpose of determining any entitlement to such a payment, the liabilities of the Company include any contingent liability of the Government Insurance Office in respect of money which will in future be required to be borrowed by the liquidator of the Company from the fund, or which will in future be required to be paid by the Government Insurance Office from the fund or paid from the Contribution Fund, for the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company.

### **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.
- (2) A person referred to in subsection (1) may make a claim against the Government Insurance Office, as manager of the Contribution Fund, in respect of an entitlement to payment of an amount under that subsection.
- (3) The Government Insurance Office, as manager of the Contribution Fund:

- (a) may in all respects deal with and finalise a claim made under subsection (2), and
- (b) may exercise any right the Company would have had but for its dissolution arising from or pertaining to that claim or any judgment or award made pursuant to that claim,

as if the Government Insurance Office had been the insurer under the policy from which that claim arises or to which it pertains.

(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 by the Government Insurance Office:

- (a) out of the fund, and
- (b) after the fund is closed, out of the Contribution Fund.

(4) Out of the Contribution Fund, the Government Insurance Office:

- (a) shall, as manager of the Contribution Fund, satisfy any liability the Company would have had but for its dissolution 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.

#### **16A 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 otherwise pursuant to section 17 (1), or from the liquidator of Palmdale Insurance Limited as referred to in section 13A, 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.

#### **17 Recovery of money paid from fund**

- (1) The Government Insurance Office shall prove as debts in the winding up of the Company:
  - (a) the amount (if any) by which the total amounts paid out of the fund by the

Government Insurance Office, or to which the Government Insurance Office or the State Compensation Board is entitled, under the provisions of this Act exceed the total amounts paid into the fund pursuant to section 13, and

(b) the amount of any contingent liability of the Company referred to in section 13A (2).

(2) The amounts referred to in subsection (1) are debts provable in the winding up of the Company.

(3), (4) (Repealed)

### **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 his 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 the Supreme 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 his powers, authorities, duties and 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 it 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, and
- (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, and
- (d) the repayment of money to contributors.