



# STATE GOVERNMENT INSURANCE COMMISSION ACT 1992

No. 39 of 1992

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**ELIZABETHAE II REGINAE**

**A.D. 1992**

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**No. 39 of 1992**

**An Act to provide for the continuation of the State Government Insurance Commission; to define the functions and powers of the Commission; to repeal the State Government Insurance Commission Act 1970; and for other purposes.**

*[Assented to 21 May 1992]*

The Parliament of South Australia enacts as follows:

**PART I  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *State Government Insurance Commission Act 1992*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

“**board**” means the board of directors of the Commission established under Part 3:

“**Commission**” means the State Government Insurance Commission continued in existence by this Act:

“**Compulsory Third Party Fund**” means the Compulsory Third Party Fund established under Part 4:

“**compulsory third party insurance business**” means business relating to insurance required under Part IV of the *Motor Vehicles Act 1959*:

“**director**” means a person appointed as a member of the board under Part 3:

“**insurance business**” includes—

(a) assurance, additional insurance, coinsurance or reinsurance;

(b) the granting, issuing or entering into of guarantees, sureties or contracts of indemnity;

and

(c) any other activity or transaction—

(i) of a kind generally regarded by the insurance industry as constituting or forming part of insurance or insurance business;

or

(ii) of a kind prescribed by regulation:

“**Life Fund**” means the Life Fund established under Part 4:

“**life insurance business**” has the same meaning as in the *Life Insurance Act 1945* of the Commonwealth, as in force from time to time.

## PART 2

### CONTINUATION OF COMMISSION

#### Continuation of Commission

4. (1) The State Government Insurance Commission is continued in existence.

(2) The Commission—

(a) continues as the same body corporate;

(b) has perpetual succession and a common seal;

(c) is capable of suing and being sued in its corporate name;

(d) has the functions and powers assigned or conferred by or under this Act.

(3) The Commission is an instrumentality of the Crown and holds its property on behalf of the Crown.

## PART 3

### BOARD OF DIRECTORS

#### Board of directors

5. (1) The Commission is to have a board of directors.

(2) The board is to be the governing body of the Commission and anything done by the board in the administration of the Commission's affairs is binding on the Commission.

(3) The board is subject to direction by the Minister.

(4) Any direction to the board by the Minister must be in writing and must be published in the *Gazette* within 14 days after it is given to the board.

#### Composition of board

6. (1) The board is to consist of not more than seven persons appointed by the Governor.

(2) One of the directors will be appointed by the Governor to chair the board.

(3) The chief executive officer of the Commission is eligible for appointment to the board.

(4) A director is to be appointed for a term (not exceeding three years) specified in the instrument of appointment and is, on the expiration of a term of office, eligible for reappointment.

(5) The Governor may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(6) The Governor may appoint a person to be a deputy of a director (other than the director appointed to chair the board) and the deputy may act as a director in the absence of that director.

(7) The Governor may remove a director from office for—

(a) misconduct;

(b) incapacity to carry out satisfactorily duties of office;

or

(c) failure to carry out satisfactorily duties of office.

(8) The office of a director becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice to the Minister;

(d) is convicted of an indictable offence;

(e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors;

or

(f) is removed from office under subsection (7).

(9) On the office of a director becoming vacant, a person may be appointed in accordance with this section to the vacant office.

### **Procedures of board**

7. (1) Four directors constitute a quorum for a meeting of the board and no business may be transacted at a meeting of the board unless a quorum is present.

(2) The director appointed to chair the board must chair meetings of the board at which he or she is present.

(3) If the director appointed to chair the board is absent from a meeting of the board, the meeting must be chaired—

(a) where another director has been appointed as that director's deputy and is present at the meeting—by the deputy;

(b) in any other case—by a director chosen by the directors present at the meeting.

(4) A decision carried by a majority of the votes cast by directors present at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director chairing the meeting has a casting vote in addition to a deliberative vote.

(6) A conference between directors constituting a quorum by telephone or audio-visual means is a valid meeting of the board if—

(a) notice of the conference is given to all directors in the manner determined by the board for that purpose;

and

(b) each participating director is capable of communicating with every other participating director during the conference.

(7) A decision concurred in by directors otherwise than at a meeting of the board is a valid decision of the board if—

(a) notice of the terms of the decision proposed to be made has been given to all directors in the manner determined by the board for that purpose;

and

(b) a number of directors not less than that required for a quorum of the board have signified their concurrence in the decision by letter, telegram, telex, facsimile transmission or other method of written communication setting out the terms of the decision.

(8) Subject to this Act, the board may determine its own procedures.

(9) The board must have accurate minutes kept of its proceedings.

#### **Vacancies or defects in appointment of directors**

8. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

#### **Immunity of directors**

9. (1) A director incurs no liability for anything done honestly and with reasonable care and diligence in the performance or purported performance of functions or duties under this Act.

(2) Any liability that would, but for this section, attach to a director attaches instead to the Crown.

#### **Remuneration**

10. A director is entitled to such remuneration, allowances and expenses as may be determined by the Governor, including remuneration, allowances and expenses for membership of the governing body of a subsidiary of the Commission.

#### **Directors' duties of honesty, care and diligence, etc.**

11. (1) A director must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

Penalty: If the contravention was committed with intent to deceive or defraud the Commission, or creditors of the Commission or creditors of any other person or for any other fraudulent purpose—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

(2) A director must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions, whether within or outside the State.

Penalty: Division 6 fine.

(3) A director or former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Commission.

Penalty: Division 4 fine or division 4 imprisonment, or both.

(4) A director must not, whether within or outside the State, make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Commission.

Penalty: Division 4 fine or division 4 imprisonment, or both.

(5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

(6) For the purposes of section 9, a person will not be taken to have acted honestly if the act constituted or involved contravention by the person of subsection (3) or (4) of this section.

### **Disclosure of interest**

**12.** (1) A director who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the board—

(a) must disclose the nature of the interest to the board;

and

(b) must not take part in any deliberations or decisions of the board on the matter.

Penalty: Division 5 fine or division 5 imprisonment.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the board.

(4) If a director makes a disclosure of interest in respect of a proposed contract and does not take part in any deliberations or decisions of the board on the matter—

(a) the contract is not liable to be avoided by the Commission on the ground of the fiduciary relationship between the director and the Commission;

and

(b) the director is not liable to account to the Commission for profits derived from the contract.

### **Delegation**

**13.** (1) The board may delegate any of its powers or functions.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be made subject to conditions and limitations specified in the instrument of delegation;

and

(b) is revocable at will and does not derogate from the power of the delegator to act in any matter.

(4) A delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect pecuniary or personal interest.

Penalty: Division 5 fine or division 5 imprisonment.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

(6) In subsection (4)—

“**delegate**” includes a member of a body, or of the governing body of a company or other entity, to which any powers or functions of the board have been delegated.

## PART 4

### OPERATIONS OF COMMISSION

#### Functions and objectives of Commission

14. (1) The functions of the Commission are—

- (a) to carry on insurance business of any kind;
- (b) to invest, re-invest or otherwise use or employ the funds of the Commission;
- (c) to perform any functions conferred on or delegated to the Commission by or under this or any other Act;
- (d) to perform any functions of a kind prescribed by regulation;
- (e) to perform any functions that are necessary or convenient for or incidental to the performance of functions referred to above.

(2) The Commission may perform its functions within or outside the State.

(3) The Commission must pursue the following objectives:

- (a) to carry on its insurance business with a predominant focus on the insurance requirements of South Australians;
- (b) to act commercially and with a view to achieving a satisfactory profit performance over the medium term;
- (c) to exercise prudence in the management and expansion of its insurance business and its assets and liabilities and to conduct its affairs to high standards of corporate and business ethics;
- (d) to avoid exposure to excessive levels of insurance risk by reinsuring its risks and by accepting reinsurance of other insurers' risks.

#### Powers of Commission

15. Subject to any limitations imposed by or under this Act, the Commission has all the powers of a natural person.

#### Common seal and execution of documents

16. (1) A document is duly executed by the Commission if—

(a) the common seal of the Commission is affixed to the document in accordance with this section;

or

(b) the document is signed on behalf of the Commission by a person or persons in accordance with authority conferred under this section.

(2) The common seal of the Commission must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.



(3) The Commission may, by instrument under its common seal, authorize a director, an employee of the Commission (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Commission subject to conditions and limitations (if any) specified in the instrument of authority.

(4) Without limiting subsection (3), an authority may be given so as to authorize two or more persons to execute documents jointly on behalf of the Commission.

#### **Validity of transactions of Commission**

17. (1) Subject to subsection (2), a transaction to which the Commission is a party or apparently a party (whether made or apparently made under the Commission's common seal or by a person with authority to bind the Commission) is not invalid because of—

- (a) any deficiency of power on the part of the Commission;
- (b) any procedural irregularity on the part of the board or any director, employee or agent of the Commission;
- (c) any procedural irregularity affecting the appointment of a director, employee or agent of the Commission.

(2) This section does not validate a transaction in favour of a party—

- (a) who enters into the transaction with actual knowledge of the deficiency or irregularity;
- or
- (b) who has a connection or relationship with the Commission such that the person ought to know of the deficiency or irregularity.

#### **Commission's charter**

18. (1) The Minister must, in consultation with the board, prepare a charter for the Commission.

(2) The charter must deal with the following matters:

(a) the nature and scope of the activities to be undertaken, including—

- (i) the nature and scope of the investment activities to be undertaken in respect of money of the Life Fund, money of the Compulsory Third Party Fund and other money held by the Commission;
- (ii) the nature and scope of any activities or transactions outside the State;
- (iii) the nature and scope of the activities or transactions that may be undertaken by subsidiaries of the Commission, by other companies or entities related to the Commission or by the Commission in partnership or under any arrangement for sharing of profits, co-operation or joint venture with another person;

and

(b) all requirements of the Minister or the Treasurer as to—

- (i) the Commission's obligations to report on its operations;
- (ii) the form and contents of the Commission's accounts and financial statements;
- (iii) any financial, accounting or internal auditing practices or procedures to be observed by the Commission.

(3) The charter may—

- (a) limit the functions or powers of the Commission otherwise provided by this Act;
- (b) deal with any other matter not specifically referred to in subsection (2).

(4) The Minister must, in consultation with the board, review the charter at the end of each financial year.

(5) The Minister may, in consultation with the board, amend the charter at any time.

(6) The charter or any amendment to the charter comes into force and is binding on the Commission on a day determined by the Minister and specified in the charter or amendment.

(7) On the charter or an amendment to the charter coming into force, the Minister must—

- (a) within six sitting days, cause a copy of the charter, or the charter in its amended form, to be laid before both Houses of Parliament;

and

- (b) within 14 days (unless such a copy is sooner laid before both Houses of Parliament under paragraph (a)), cause a copy of the charter, or the charter in its amended form, to be presented to the Economic and Finance Committee of the Parliament.

#### **Advances by Treasurer**

19. (1) The Treasurer may advance money to the Commission (by way of grant or loan) on terms and conditions determined by the Treasurer in consultation with the board.

(2) An amount advanced to the Commission under subsection (1) will be paid out of the Consolidated Account which is appropriated by this section to the necessary extent.

#### **Borrowing and security for loans**

20. Except as approved by the Treasurer, the Commission may not borrow money or give security for the repayment of a loan.

#### **Guarantee**

21. (1) The liabilities of the Commission are guaranteed by the Treasurer.

(2) A liability of the Treasurer arising by virtue of a guarantee under subsection (1) will be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.

(3) The Treasurer may, from time to time, after consultation with the board, fix charges to be paid by the Commission in respect of the guarantee provided under this section and determine the times and manner of their payment.

#### **Compliance with insurance laws**

22. Subject to the regulations, the Commission must—

- (a) supply to the Minister such annual accounts and statements as it would be required to supply—

- (i) under section 44 of the *Insurance Act 1973* of the Commonwealth, as in force from time to time;

and

- (ii) under Divisions 4, 5 and 6 of Part III of the *Life Insurance Act 1945* of the Commonwealth, as in force from time to time,

if it were an insurer (incorporated in Australia) carrying on business in the State;

(b) comply with all requirements imposed on insurers carrying on business in the State by or under an Act of the Commonwealth for the disclosure of information to existing, prospective or former policy holders;

and

(c) comply with any other requirement imposed on insurers carrying on business in the State by or under an Act of the Commonwealth that is declared by regulation to be a requirement that applies to the Commission.

#### **Tax and other liabilities of Commission**

23. (1) The Commission is liable to all such rates, duties, taxes and imposts and has all such other liabilities and duties as would apply under the law of the State if the Commission were not constituted by this Act and were not an instrumentality of the Crown.

(2) The Commission is liable to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines to be equivalent to income tax and any other taxes or imposts that the Commission does not pay to the Commonwealth but would be liable to pay under the law of the Commonwealth if it were constituted and organized in such manner as the Treasurer determines to be appropriate for the purposes of this subsection as a public company or group of public companies carrying on the business carried on by the Commission.

(3) Amounts determined by the Treasurer to be payable under subsection (2) must be paid by the Commission at the times and in the manner determined by the Treasurer.

#### **Restraint of trade or commerce**

24. (1) The Commission must not, without the approval of the Minister, make a contract or arrangement or enter into an understanding in restraint of trade or commerce.

(2) The Commission must not, without the approval of the Minister—

(a) supply any service;

(b) charge a price for any service;

(c) give or allow a discount, allowance, rebate or credit in relation to the supply of any service,

on the condition, or subject to a contract, arrangement or understanding, that the person to whom the Commission supplies the service will not, or will to a limited extent only, obtain services of a similar kind from a competitor of the Commission.

(3) The Commission must not discriminate between purchasers of like services in relation to—

(a) the price charged by the Commission for those services;

(b) any discounts, allowances, rebates or credits given in relation to the supply of those services;

(c) the method of payments for those services,

if the nature of that discrimination is likely to have the effect of substantially lessening competition in the market for services of a similar kind.

(4) Where the Minister gives an approval under subsection (1) or subsection (2), the Minister must forthwith publish in the *Gazette* notice of that approval setting out with reasonable particularity the matter approved of and the reasons for the approval.

**Special funds for life and compulsory third party insurance**

25. (1) The Commission must establish a Life Fund to be maintained as a separate fund for the Commission's life insurance business.

(2) Subject to subsection (3), the Commission must establish a Compulsory Third Party Fund to be maintained as a separate fund for the Commission's compulsory third party insurance business.

(3) The Commission is not required to maintain the Compulsory Third Party Fund if the Commission ceases to be the sole insurer providing policies of insurance under Part IV of the *Motor Vehicles Act 1959*.

(4) While maintaining the Compulsory Third Party Fund, the Commission must manage its compulsory third party insurance business and the investment of money of the Fund with the objective of maintaining the Fund's capacity to meet its liabilities by achieving prudent annual surpluses so far as that is achievable having regard to the premium levels fixed under the *Motor Vehicles Act 1959* in respect of such insurance.

(5) Each Fund is to consist of—

- (a) all income of the Commission derived from the insurance business for which the Fund is established;
- (b) all income of the Commission derived from or attributable to investment of money of the Fund;
- (c) all amounts paid to the Commission by the Treasurer for payment into the Fund;
- (d) any other amount that the Commission pays to the Fund.

(6) Subject to subsection (9), each Fund may be applied only—

- (a) in payments made in pursuance of the insurance business for which the Fund is established;
- (b) in investments as authorized under this Act in respect of money of the Fund;
- (c) in payment of the proportion of the Commission's costs (including borrowing costs) determined by the Commission to be properly attributable to the costs of administering the business for which the Fund is established;
- (d) in making such payments as the Treasurer requires in accordance with this Act to be made from the Fund.

(7) The Commission must, in managing its investment of money of the Compulsory Third Party Fund, give due consideration to investment opportunities in or of benefit to South Australia.

(8) Subject to this Act, money of a Fund must not be transferred or lent to another Fund or account of the Commission.

(9) This section does not prevent the Commission—

- (a) from managing the investment of a Fund by combining the money or investments of the Fund with other money or investments of the Commission;
- (b) from keeping money of a Fund in a single bank account together with other money of the Commission and, in the course of operation of such an account—
  - (i) from allowing the Fund to be in temporary deficit;
  - (ii) from allowing the Fund to be temporarily debited to meet payments required to be made for business of the Commission other than the business for which the Fund is established.

**Requirement by Treasurer for payment from surplus**

26. (1) Where it appears from the audited accounts of the Commission that a surplus has been achieved by the Commission in respect of a financial year, the Commission must, if the Treasurer so requires, pay to the Treasurer or, as the Treasurer directs, otherwise deal with such part of the surplus as the Treasurer determines in consultation with the board.

(2) Where it appears from the audited accounts of the Commission that a surplus exists in the Life Fund or the Compulsory Third Party Fund, the Commission must, if the Treasurer so requires, pay to the Treasurer or, as the Treasurer directs, otherwise deal with such part of the surplus as the Treasurer determines in consultation with the board.

**Actuarial investigations of Life Fund**

27. (1) The board must cause an actuarial investigation to be made of the state and sufficiency of the Life Fund as at 30 June in each year.

(2) The board must, on receipt of a report on the results of an actuarial investigation under subsection (1), forward a copy of the report to the Treasurer.

**Accounts and audit**

28. (1) The board must cause proper accounts to be kept of the Commission's financial affairs and financial statements to be prepared in respect of each financial year.

(2) The accounts and financial statements must comply with the requirements of the Treasurer contained in the Commission's charter.

(3) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of the Commission.

**Annual report**

29. (1) The board must, on or before 30 September in each year, deliver to the Minister a report on the operations of the Commission during the preceding financial year.

(2) The report must—

- (a) incorporate the audited accounts and financial statements for the financial year;
- (b) incorporate the Commission's charter as for the time being in force and set out any amendments to the charter made during the financial year;
- (c) set out any directions given to the board by the Minister that are not contained in the Commission's charter;
- (d) set out details of any approval given by the Treasurer during the financial year in respect of any borrowing by the Commission or any security given by the Commission for the repayment of a loan;

and

- (e) set out details of any approval given by the Minister during the financial year in respect of a contract, arrangement or understanding in restraint of trade or commerce or any other transaction referred to in section 24.

(3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

**PART 5****MISCELLANEOUS****Regulations**

30. The Governor may make such regulations as are contemplated by this Act or necessary or expedient for the purposes of this Act.

## SCHEDULE

*Repeal, Transitional Provisions and Validation*

- (1) The *State Government Insurance Commission Act 1970* is repealed.
- (2) Each member of the Commission in office immediately before the commencement of this Act will, subject to this Act, continue in office as a member of the board of directors of the Commission under this Act for the balance of the term for which the member was appointed.
- (3) The person holding the office of Chairman of the Commission immediately before the commencement of this Act will be taken to have been appointed under this Act to chair the board of directors of the Commission.
- (4) All transfers of money or investments made by the Commission before the commencement of this Act between separate funds kept by the Commission for different classes of insurance are to be taken to have been made lawfully.
- (5) The assets and liabilities of the Commission in respect of its compulsory third party insurance business and its life insurance business as recorded in the Commission's accounting records immediately before the commencement of this Act are to be treated as assets and liabilities of the Compulsory Third Party Fund and Life Fund respectively for the purposes of the establishment of those funds under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor