
INSURANCE.

No. 4 of 1932.

An Act relating to Insurance.

[Assented to 12th March, 1932.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

- Short title.** 1. This Act may be cited as the *Insurance Act 1932*.
- Commencement.** 2. This Act shall commence on a date to be fixed by Proclamation.
- Definitions.** 3.—(1.) In this Act, unless the contrary intention appears—
“ Accident insurance business ” means the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents (whether fatal or not) disease or sickness, or any class of personal accidents, disease or sickness ;

“ Actuary ” means a Fellow or Associate of the Institute of Actuaries of Great Britain and Ireland or of the Faculty of Actuaries of Scotland and includes a Fellow or Associate of an Institute of Actuaries of Australia which is approved by the Governor-General;

“ Approved securities ” means—

- (a) Government securities of the Commonwealth or of any State or of the United Kingdom or of any other part of the King's Dominions ;
- (b) Municipal securities which have been approved by the Treasurer ;
- (c) Debentures of any corporation (whether public or private) formed or constituted in the Commonwealth, which have been approved by the Treasurer ;
- (d) Fixed deposits in any bank, carrying on business in the Commonwealth, which has been approved by the Treasurer ;
- (e) Bank guarantees or undertakings which are in the prescribed form and which have been approved by the Treasurer ;
- (f) Unencumbered titles to freehold lands in the Commonwealth and first mortgages of freehold lands in which the sum secured does not exceed two-thirds, or such other proportion as the Treasurer determines, of the improved value of the lands ; and
- (g) Any other securities specified by regulation as approved securities ;

“ Foreign company ” means a company which is incorporated, or the head office of which is, outside the Commonwealth ;

“ Insurance business ” means life insurance business and includes the business of undertaking liability to make good any loss or damage, contingent upon the happening of a specified event and any business in relation thereto, but does not include—

- (a) any scheme or arrangement whereby staff superannuation benefits are provided by an employer or his employees or by an employer and his employees ;
- (b) the business carried on by any religious organization, or by any person on its behalf, which business consists solely of the undertaking of liability for the insurance of property belonging to, or held under lease by, that organization, or in which that organization has any legal or equitable estate or interest ; or
- (c) any scheme whereby superannuation or insurance benefits are provided by any Friendly Society registered under any State Act, or by any trade union or association of employees registered under any Act or State Act, for the members of that society, union or association ;

“ Life insurance business ” means that class of insurance business which involves the issue of, or the undertaking of liability under, life policies and any business in relation thereto ;

“ Life policy ” means a policy insuring payment of money on death (not being death by accident or specified sickness only) or the happening of any contingency dependent on the termination or continuance of human life, and includes an instrument evidencing a contract which is subject to the payment of a premium or to the payment of premiums for a term dependent on the termination or continuance of human life and an instrument securing the grant of an annuity upon human life ;

“ Owner ”, in relation to any policy, means the person who for the time being is the legal holder of the policy ;

“ Policy ” means a policy of insurance in any class of insurance business ;

“ Premium income ” means income derived from premiums after deducting reinsurances, returned premiums and cancellations ;

“ The Court ” means the High Court or the Supreme Court of the State or Territory in which the subject-matter in question arises.

(2.) For the purposes of this Act, life insurance business shall be deemed to be a class of insurance business and all other insurance business shall be deemed to be one class of insurance business :

Provided that, where the insurance business carried on by any person consists only of life insurance business and accident insurance business, that person shall, for the purposes of this Act, be deemed to carry on one class of insurance business.

(3.) Subject to this Act, a person shall not be deemed, for the purposes of this Act, to carry on insurance business by reason merely of his collecting premiums in respect of life insurance contracts entered into outside the Commonwealth or making payments due under such contracts.

Application
to Territories.

4. This Act shall extend to the Territories of the Commonwealth.

State Insurance.

5. This Act shall not be deemed to apply to State insurance within the limits of the State concerned.

Insurance
business
done on
behalf of
associations
outside
Commonwealth.

6.—(1.) Any person granting cover or receiving premiums, proposals or requests in respect of insurance business on behalf of or for transmission to any company, person or association of persons outside the Commonwealth (in this section referred to as the insurers) shall be deemed for the purposes of this Act to be carrying on in the Commonwealth the insurance business to which the cover, premiums, proposals or requests relate, and the first mentioned person shall, subject to this section, make deposits in accordance with this Act.

(2.) If several persons act in association in the Commonwealth in respect of the granting of cover, or in the doing of any of the acts specified in the last preceding sub-section through a person outside

the Commonwealth on account of one insurer or on account of a group of insurers (no member of which is a company or is acting on behalf of a company), the business carried on in the Commonwealth by the persons so acting shall, for the purposes of this Act, if the Treasurer so directs, be regarded as business carried on by one person, and the amount of any deposit required to be made under this Act shall be calculated accordingly.

7.—(1.) After the commencement of this Act, no State Act, whether passed before or after the commencement of this Act, to the extent to which it requires a person carrying on or proposing to carry on insurance business to make any deposit or to make any payment by way of licence fee or to make, as a condition upon which that person may carry on insurance business, any other payment, shall, subject to this Act, have any force or effect:

Deposits under
State Acts.

Provided that this sub-section shall not affect the operation of any State Act, in force on the first day of February, One thousand nine hundred and thirty-two, in so far as the State Act imposes stamp duty upon licences issued to persons engaged in insurance business.

(2.) Where, at the commencement of this Act, any amount or security is, in pursuance of any enactment which upon such commencement ceases to have effect, held by a State or by any authority of a State by way of deposit on account of any person carrying on insurance business, the State or authority shall, when so required by the Treasurer, return the amount or security to the person by whom the deposit was lodged.

(3.) So much of any amount or security as is in the form of money or approved securities and is returned to any person under the last preceding sub-section shall, if that person continues to carry on insurance business after the commencement of this Act, to the extent of the deposit required to be lodged by that person under this Act, be lodged by that person with the Treasurer forthwith as, or as part of, the deposit so required.

(4.) Any person failing to comply with the requirements of the last preceding sub-section shall be deemed to have committed an offence against section nine of this Act.

8. Where under any State Act in force on the first day of February One thousand nine hundred and thirty-two, any amount or security is held by any State or authority of a State by way of deposit by any person carrying on insurance business—

Deposits with
States
continued in
certain cases.

- (a) the amount or security may, until the Treasurer requires the return thereof under the last preceding section, remain deposited with that State or authority subject to the conditions contained in the State Act;
- (b) the depositor shall, to the extent of the amount or security deposited, be exempt from liability to make deposits under this Act; and

- (c) the provisions of the State Act relating to the liability of the State or authority in respect of the amount or security deposited, and the conditions upon which the amount or security is held shall remain in force so long as the amount or security is held by the State or authority.

Penalty for not lodging deposit.

9. A person shall not carry on insurance business in the Commonwealth or in any Territory unless he has lodged a deposit with the Treasurer as required by this Act.

Penalty : Two thousand pounds, and, in addition, Five hundred pounds per day for each day on which business is unlawfully carried on.

Deposits in respect of life insurance business.

10.—(1.) Subject to this Act, a person carrying on life insurance business in the Commonwealth at the commencement of this Act shall, within six months after such commencement, deposit with the Treasurer money or approved securities to the value of Fifty thousand pounds.

(2.) Where a person carrying on life insurance business in the Commonwealth at the commencement of this Act satisfies the Treasurer that his net liability, as ascertained at the last actuarial valuation, in respect of that business is less than Two hundred and fifty thousand pounds, the person shall, within six months after such commencement, deposit with the Treasurer money or approved securities to the value of One thousand pounds for every Five thousand pounds of that net liability.

(3.) Where the deposit lodged under the last preceding sub-section is less than Fifty thousand pounds, the amount deposited shall be increased by One thousand pounds in respect of every Five thousand pounds by which the net liability of the depositor increases beyond the amount of his net liability taken into account in fixing the amount of his initial deposit under this Act until the amount deposited reaches Fifty thousand pounds.

Deposits in respect of insurance business other than life insurance.

11. A person carrying on insurance business (other than life insurance business) at the commencement of this Act shall, from time to time as prescribed, deposit with the Treasurer money or approved securities to the value of One thousand pounds in respect of each Five thousand pounds of his annual premium income, but so that the deposit required under this section shall not exceed in any case Forty thousand pounds.

Deposits in case of foreign company.

12. A foreign company not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before carrying on that business in the Commonwealth, deposit with the Treasurer, in respect of each class of insurance business proposed to be carried on by the company, money or approved securities or both to the value of Fifty thousand pounds :

Provided that, in the case of a foreign company incorporated or having its head office outside the British Empire, the deposit under this section shall be Sixty thousand pounds in respect of each class of insurance business proposed to be carried on by that company in the Commonwealth.

13.—(1.) Any person (not being a company to which the last preceding section applies) not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before carrying on insurance business in the Commonwealth, deposit with the Treasurer money or approved securities or both to the value of Five thousand pounds in respect of each class of insurance business proposed to be carried on.

Deposits in case of new insurance businesses.

(2.) The person, in respect of life insurance business carried on by him, shall thereafter deposit annually with the Treasurer money or approved securities or both to the value of Five thousand pounds, until the deposit in respect of that business reaches the value of Fifty thousand pounds:

Provided that in the case of an organization having no shareholders and carrying on life insurance business, the annual deposit under this sub-section in respect of that business shall be One thousand pounds until the maximum deposit of Fifty thousand pounds is reached.

(3.) Any person who has made a deposit in accordance with subsection (1.) of this section in respect of insurance business (other than life insurance business) carried on by him, shall thereafter from time to time as prescribed deposit with the Treasurer money or approved securities to the value of One thousand pounds for every Five thousand pounds by which his annual premium income exceeds Twenty-five thousand pounds, until the deposit in respect of that business reaches the value of Forty thousand pounds.

14. If it is proved to the satisfaction of the Treasurer that any company has acquired the share capital or the business of any other company, a deposit by the acquiring company to the extent which would be required by this Act of that company if it carried on the business of that other company in addition to its own business shall, if the Treasurer so certifies, be a sufficient compliance with the requirements of the Act and no deposit shall be required to be made by that other company.

Deposits by companies acquiring share capital of other companies.

15. The Treasurer may exempt from the requirement to make any deposit under this Act any body of persons which satisfies him that it carries on or proposes to carry on insurance business wholly for the purpose of insuring its members or the employees of its members or persons engaged in a particular trade or industry, against liability, loss or damage contingent upon the happening of any event.

Exemption.

Returns, &c.,
to be
furnished.

16.—(1.) The initial deposit made to the Treasurer under this Act shall be accompanied—

- (a) by a return certified as correct under the hand of the principal officer of the company or of the chief representative of the company in the Commonwealth, shewing for the last annual business or trading period of the company the amount insured under life insurance business of the company or the premium income of the company in respect of other insurance business, as the case may be ;
- (b) by a copy of the last revenue account and balance-sheet of the company, or if no revenue account and balance-sheet have been issued, by a copy of any prospectus issued by the company ;
- (c) by a copy of the memorandum and articles of association of the company (if any) ; and
- (d) in the case of an individual, by such returns, balance-sheets and information as are prescribed.

(2.) A company or individual person having made an initial deposit with the Treasurer under this Act shall in any year within three months after notice given by the Treasurer or within such further time as is specified in the notice make to the Treasurer a return under the hand of the individual, or in the case of a company of the principal officer of the company, or the chief representative of the company in the Commonwealth, shewing the net liability under life insurance business of the company or the premium income for the last annual business or trading period of the company in respect of other insurance business, as the case may be.

(3.) The Treasurer may, at the expense of the company or individual, require returns under this Act to be certified as correct by a qualified public accountant or actuary, approved by the Treasurer.

(4.) Any person who wilfully or knowingly makes any return under this Act which is false in any material particular shall be guilty of an offence.

Penalty : Imprisonment for two years.

Question to be
decided by
Treasurer.

17.—(1.) Where any question arises under this Act as to the net liability or premium income of any person carrying on insurance business, the question shall, for the purposes of this Act, be decided by the Treasurer.

(2.) A person may appeal to the Court against any decision of the Treasurer under this section and the decision of the Court upon such appeal shall be final and conclusive.

Provisions as to
sums deposited.

18.—(1.) Every sum of money deposited in accordance with the requirements of this Act shall be invested by the Treasurer in such of the securities prescribed for the purposes of this section as the depositor selects or, in default of such selection within fourteen days after the deposit has been made, in such prescribed securities as the Treasurer determines.

(2.) All deposits made in accordance with the requirements of this Act shall be deemed to form part of the assets of the depositor, and all interest accruing due on the deposits or the securities in which they are for the time being invested shall be paid to him.

(3.) In the event of the winding-up of the business of any person carrying on business outside the Commonwealth who has made any deposit under this Act, the Court may, notwithstanding anything in this Act, order the deposit or any part thereof to be transferred by the Treasurer to any liquidator outside the Commonwealth on such terms and conditions, if any, as the Court directs; and application for an order under this sub-section may be made to the Court by or on behalf of the liquidator or by or on behalf of any person who satisfies the Court that he represents a majority of the policy owners resident within the Commonwealth.

(4.) In this section, the expression "winding-up" includes any method of dissolution or proceedings analogous to the winding-up of a company, and the expression "liquidator" includes any person occupying the position of a liquidator.

19. Every person who makes any deposit with the Treasurer in pursuance of this Act shall be entitled to obtain from the Secretary to the Treasury or other proper officer a certificate in writing of the deposit made and a receipt therefor.

Certificate of deposits.

20.—(1.) If the Treasurer is satisfied that by reason of depreciation in the value of securities or other cause the value of money and approved securities deposited by any person with the Treasurer falls short of the value required by this Act, he may, by notice in writing, require the person to deposit with the Treasurer money or approved securities or both to a value deemed by the Treasurer to be sufficient to bring the amount of the deposit to the value required by this Act.

Increase of deposit where securities have depreciated.

(2.) A notice under this section shall not be issued until after the Treasurer has given an opportunity to the person to be heard in connexion with the matter.

(3.) A person may appeal to the Court against any requirement of the Treasurer under this section and the decision of the Court upon such appeal shall be final and conclusive.

(4.) Any person who fails to deposit with the Treasurer money or approved securities or both as required by the Treasurer under this section or as decided by the Court on appeal shall be guilty of an offence.

Penalty: Five hundred pounds, and in addition One hundred pounds for each day during which the failure continues.

21. All moneys and securities for the time being deposited by any person with the Treasurer under this Act shall, subject to this Act, be and remain as a security for the payment of liability under the

Deposits to be security to policy owners.

policies issued by that person and shall not be liable for any debts or contracts of the person other than to or with his policy owners, in respect of their policies, until payment in full of the liability under such policies has been made.

Deposits available to satisfy judgments in respect of policies.

22.—(1.) The moneys and securities deposited with the Treasurer under this Act shall be available to satisfy any final judgment obtained in the Commonwealth by a policy owner against the insurer in respect of any policy, and the Treasurer may satisfy any such judgment out of such moneys or securities accordingly, and thereupon the deposit shall be deemed to be reduced by the amount of the payment so made.

(2.) In the event of the winding-up of the business of any person carried on in the Commonwealth, the money and securities deposited by him with the Treasurer under this Act shall, subject to any order made under sub-section (3.) of section eighteen of this Act, be held by the Treasurer to meet the liabilities of the person under the policies issued by him in the Commonwealth, and when these have been met to the extent authorized in the winding-up, any surplus shall be paid to the liquidator.

Responsibility for lost securities.

23. If any money or securities deposited under this Act are, while so deposited, lost, stolen, destroyed or damaged, the injury occasioned to all persons interested therein shall be made good out of moneys to be appropriated by the Parliament for the purpose.

Value of securities.

24. In all matters relating to the value of securities deposited under this Act, the decision of the Treasurer shall, subject to appeal to the Court, be binding and conclusive.

Appeals.

25.—(1.) The Court shall have jurisdiction to hear and determine appeals under this Act.

(2.) The Justices of the High Court or a majority of them may make rules of Court for regulating the practice and procedure in relation to appeals to the Court under this Act.

Substitution of deposits.

26.—(1.) A person may at any time substitute for any security deposited under this Act any equivalent approved security, and any security so substituted shall be subject to the same charge or liability as the security withdrawn.

(2.) Any person who makes any such substitution shall obtain from the Secretary to the Treasury or other proper officer a certificate in writing of the transfer so made.

(3.) In the case of any person ceasing to carry on insurance business in the Commonwealth, the Treasurer may permit the withdrawal of the whole of the amount deposited under this Act or such portion thereof as he considers reasonable having regard to the liabilities of the person to policy owners in the Commonwealth.

Regulations.

27. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.