

INSURANCE.

No. 76 of 1960.

An Act to amend the *Insurance Act 1932-1937*.

[Assented to 9th December, 1960.]

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

- 1.—(1.) This Act may be cited as the *Insurance Act 1960*. Short title and citation.
(2.) The *Insurance Act 1932-1937** is in this Act referred to as the Principal Act.
(3.) The Principal Act, as amended by this Act, may be cited as the *Insurance Act 1932-1960*.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. Section three of the Principal Act is amended— Interpretation.
 - (a) by omitting from sub-section (1.) the definition of "Actuary" and inserting in its stead the following definition:—

" 'Actuary' means a Fellow of The Institute of Actuaries incorporated by Royal Charter on the twenty-ninth day of July, One thousand

* Act No. 4, 1932, as amended by No. 29, 1932; and No. 5, 1937.

eight hundred and ninety-four, or a Fellow of The Faculty of Actuaries in Scotland, and, when an Institute of Actuaries is established in Australia and has been approved by the Governor-General, includes a Fellow of that Institute;”;

(b) by omitting from paragraph (a) of the definition of “Approved securities” in sub-section (1.) the words “King’s Dominions” and inserting in their stead the words “Queen’s dominions”;

(c) by omitting paragraphs (f) and (g) of the definition of “Approved securities” in sub-section (1.) and inserting in their stead the following paragraphs:—

“(f) Instruments of title to unencumbered freehold lands in the Commonwealth approved by the Treasurer;

“(g) First mortgages of freehold lands in the Commonwealth approved by the Treasurer 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

“(h) Any other securities approved by the Treasurer;”;

(d) by omitting from sub-section (1.) the definitions of “Insurance business”, “Life insurance business” and “Life policy” and inserting in their stead the following definition:—

“‘Insurance business’ means the business of undertaking liability to make good, or indemnify against, any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business in relation to insurance business as so defined, but does not include—

(a) life insurance business as defined by sub-section (1.) of section four of the *Life Insurance Act 1945–1959*;

(b) accident insurance business undertaken solely in connexion with life insurance business as so defined;

(c) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants;

- (d) business in relation to a scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or his employees, or by both, wholly through an organization established solely for that purpose by the employer or his employees or by both;
- (e) business in relation to a scheme or arrangement for the provision of benefits consisting of—
- (i) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or
 - (ii) the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of that person,
- and no other benefits, except benefits incidental to the scheme or arrangement; and
- (f) the business of insuring the property of a religious organization, where the person carrying on the business does not carry on any other insurance business;”;
- (e) by adding at the end of the definition of “ Owner ” in sub-section (1.) the words “, and, where the legal holder of the policy is liable to pay workers’ compensation to, or to the dependants of, a person and is entitled to be indemnified by the policy against that liability, includes that last-mentioned person or any of those dependants ”;
- (f) by omitting the definition of “ Policy ” in sub-section (1.) and inserting in its stead the following definition:—
- “ ‘ Policy ’ means a policy of insurance issued in the course of any insurance business;”;

(g) by inserting after the definition of "Premium income" in sub-section (1.) the following definition:—

" 'The Commonwealth' includes all the Territories of the Commonwealth; "; and

(h) by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-sections:—

"(2.) For the purpose of paragraph (f) of the definition of 'Approved securities' in the last preceding sub-section, freehold land shall be deemed not to be encumbered by reason only that—

(a) any rates or land tax payable in respect of the land or a part of the land has not been paid; or

(b) the land or a part of the land is subject to a lease or easement.

"(3.) The express references in this Act to companies do not imply that references to persons do not include references to companies.

"(4.) A reference in this Act to money deposited by a person with the Treasurer for the purposes of this Act shall, unless the contrary intention appears, be read as including a reference to any securities in which that money has been invested by the Treasurer under sub-section (1.) of section eighteen of this Act.

"(5.) For the purposes of this Act, a person who has at any time carried on insurance business in the Commonwealth shall be deemed to be so carrying on insurance business until the liabilities (including contingent liabilities) of that person to policy owners in the Commonwealth have been met to the extent required by law."

4. After section five of the Principal Act the following section is inserted:—

Delegation.

" 5A.—(1.) The Treasurer may, either generally or in relation to a matter or class of matters, by writing under his hand, delegate all or any of his powers and functions under this Act or the regulations (except this power of delegation).

"(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

"(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Treasurer."

Penalty for not lodging deposit.

5. Section nine of the Principal Act is amended by omitting the words "or in any Territory".

6. Sections ten to sixteen (inclusive) of the Principal Act are repealed and the following sections inserted in their stead:—

“ 11.—(1.) Subject to the next succeeding sub-section, a person (other than a person to whom section thirteen A of this Act applies) carrying on insurance business in the Commonwealth at the commencement of this Act shall, from time to time as prescribed, deposit and maintain on deposit with the Treasurer approved securities to the value of One thousand pounds in respect of each Five thousand pounds of his annual premium income.

Deposits by persons carrying on insurance business at commencement of Act.

“ (2.) The deposit required to be made and maintained by a person under the last preceding sub-section shall not, in any case, be less than One thousand pounds or more than—

- (a) in the case of a person other than a foreign company—
Eighty thousand pounds; or
- (b) in the case of a foreign company—One hundred thousand pounds.

“ 12. A foreign company not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before commencing to carry on insurance business in the Commonwealth, deposit with the Treasurer approved securities to the value of One hundred thousand pounds and shall, while carrying on insurance business in the Commonwealth, maintain on deposit with the Treasurer approved securities to that value.

Deposits by foreign companies commencing to carry on insurance business after commencement of Act.

“ 13.—(1.) A person (other than a company to which the last preceding section applies or a person to whom section thirteen A or thirteen B of this Act applies) not carrying on insurance business in the Commonwealth at the commencement of this Act shall, before commencing to carry on insurance business in the Commonwealth, deposit with the Treasurer approved securities to the value of Five thousand pounds and shall, while carrying on insurance business in the Commonwealth, maintain on deposit with the Treasurer approved securities to that value.

Deposits by certain persons (other than foreign companies) commencing to carry on insurance business after commencement of Act.

“ (2.) Subject to the next succeeding sub-section, a person who has made a deposit in accordance with the last preceding sub-section, in respect of insurance business carried on by him, shall, after making the deposit, from time to time as prescribed, deposit and maintain on deposit with the Treasurer 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.

“ (3.) The last preceding sub-section does not require a person to deposit or maintain on deposit with the Treasurer approved securities to a value exceeding Eighty thousand pounds.

“ 13A. A person (other than a company to which section twelve of this Act applies) carrying on insurance business in

Deposits by certain persons contravening Act.

the Commonwealth immediately before the commencement of the *Insurance Act 1960* in contravention of section nine of the *Insurance Act 1932-1937* shall, immediately after the commencement of the *Insurance Act 1960*, deposit, and maintain on deposit, with the Treasurer approved securities to the value of Ten thousand pounds.

Deposits in
other cases.

“ 13B. A person (other than a company to which section twelve of this Act applies) not carrying on insurance business in the Commonwealth at the commencement of the *Insurance Act 1960* shall, before commencing to carry on insurance business in the Commonwealth, deposit with the Treasurer approved securities to the value of Ten thousand pounds and shall, while carrying on insurance business in the Commonwealth, maintain on deposit with the Treasurer approved securities to that value.

Additional
deposits.

“ 13C.—(1.) Subject to the next succeeding sub-section, a person who makes a deposit in pursuance of either of the last two preceding sections, in respect of insurance business carried on by him, shall, after making the deposit, from time to time as prescribed, deposit and maintain on deposit with the Treasurer 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.

“ (2.) The last preceding sub-section does not require a person to deposit or maintain on deposit with the Treasurer approved securities to a value exceeding Eighty thousand pounds.

Deposits by
companies
beneficially
owning shares
of other
companies.

“ 14.—(1.) Where the Treasurer is satisfied that a company (in this section referred to as ‘ the parent company ’) has become the beneficial owner of the shares of another company (in this section referred to as ‘ the subsidiary company ’), a deposit made and maintained by the parent company of a value equal to the value of the deposit that would be required by this Act to be made and maintained by the parent company if it carried on the business of the subsidiary company in addition to its own business is, if the Treasurer, by writing under his hand, so certifies, a sufficient compliance by the subsidiary company with the requirements of this Act, and, where the parent company makes and maintains such a deposit, a deposit is not required to be made and maintained by the subsidiary company.

“ (2.) Where the parent company has made and maintains a deposit that, by virtue of the last preceding sub-section, is a sufficient compliance by the subsidiary company with the requirements of this Act—

(a) the Treasurer shall return to the subsidiary company any money or approved securities previously deposited by that company in accordance with this Act;

- (b) the insurance business carried on in the Commonwealth by the subsidiary company shall, for the purposes of sub-section (4.) of section sixteen of this Act, be deemed to be insurance business carried on by the parent company;
- (c) if the subsidiary company carries on business outside the Commonwealth—
 - (i) sub-sections (3.), (3A.) and (4.) of section eighteen of this Act apply, in the event of the winding-up of the subsidiary company, to the deposit made and maintained by the parent company as if it had been made and maintained by the subsidiary company; and
 - (ii) upon the transfer of the deposit or part of the deposit made and maintained by the parent company to a liquidator in accordance with sub-section (3.) of that section, the deposit shall be deemed to be reduced by the amount so transferred;
- (d) if a policy owner obtains a final judgment against the subsidiary company in respect of a policy and that judgment is not satisfied within a period of three months after the date of the judgment, or, in the event of an appeal from the judgment or in special circumstances, within such further period as the Treasurer allows—
 - (i) sections twenty-one and twenty-two of this Act apply to the deposit made by the parent company as if it had been made by the subsidiary company; and
 - (ii) the parent company shall forthwith deposit, and maintain on deposit, with the Treasurer approved securities to a value equal to the difference between the value of the deposit previously made by the parent company under this Act and the sum of the values of the deposits that, but for this section, would have been required by this Act to have been made and maintained by the parent company, the subsidiary company and any other subsidiary company of the parent company that, by virtue of the last preceding sub-section, is not required to make and maintain a deposit under this Act; and
- (e) if a policy owner obtains a final judgment against the parent company in respect of a policy and

that judgment is not satisfied within a period of three months after the date of the judgment, or, in the event of an appeal from the judgment or in special circumstances, within such further period as the Treasurer allows—

- (i) the deposit made and maintained by the parent company ceases to be a sufficient compliance by the subsidiary company with the requirements of this Act; and
- (ii) the subsidiary company shall forthwith deposit, and maintain on deposit, with the Treasurer approved securities in accordance with this Act.

“(3.) Where the parent company ceases to be the beneficial owner of the shares of the subsidiary company, the parent company shall forthwith notify the Treasurer in writing of that fact.

Penalty: Two hundred pounds.

“(4.) Where the Treasurer is satisfied that the parent company has ceased to be the beneficial owner of the shares of the subsidiary company—

- (a) he shall notify the subsidiary company in writing that he is so satisfied;
- (b) the deposit by the parent company ceases to be a sufficient compliance by the subsidiary company with the requirements of this Act;
- (c) the subsidiary company shall, upon receipt of the notification, forthwith deposit, and maintain on deposit, with the Treasurer approved securities in accordance with this Act; and
- (d) until the subsidiary company so makes a deposit, the deposit made and maintained by the parent company shall, for the purposes of this Act, be deemed to be a deposit made and maintained by the subsidiary company.

Notice of lease
or acquisition
of land
deposited as
security.

“14A.—(1.) Where—

- (a) a person has deposited and is maintaining on deposit with the Treasurer the instrument of title to freehold land for the purposes of this Act; and
- (b) while the instrument is so deposited, that person grants a lease of the land or of a part of the land for a term of not less than ten years,

he shall, within twenty-one days after the grant of the lease, give to the Treasurer notice in writing of the grant of the lease.

“(2.) Where—

- (a) a person has deposited and is maintaining on deposit with the Treasurer the instrument of title to, or a first mortgage of, freehold land for the purposes of this Act; and
- (b) while the instrument or mortgage is so deposited, the land or a part of the land, or an interest in the land or a part of the land, is compulsorily acquired by or under a law of the Commonwealth, of a State or of a Territory of the Commonwealth,

the person shall, within twenty-one days after receiving notice of the acquisition, give to the Treasurer notice in writing of the acquisition.

Penalty: Two hundred pounds.

“15. The Treasurer may exempt from the requirement to make a deposit under this Act any body of persons that 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, industry, profession or occupation. Exemption.

“16.—(1.) A person carrying on insurance business in the Commonwealth shall, within the prescribed period, furnish to the Treasurer in writing— Information and returns to be furnished.

- (a) in the case of a person being a company—
 - (i) a copy of the Act, charter, deed of settlement or memorandum of association and articles of association of the company, or any other document by which the company is constituted; and
 - (ii) the full name and address of the principal officer of the company or, in the case of a foreign company, of the principal officer or representative of the company in Australia; and
- (b) in any case—
 - (i) an address in Australia for service of notices; and
 - (ii) the date on which the annual trading period of the person ends.

“(2.) For the purposes of the last preceding sub-section, the prescribed period is—

- (a) in the case of a person carrying on insurance business in the Commonwealth on the date of commencement of the *Insurance Act 1960*—the period of twenty-one days after that date; and

(b) in the case of a person commencing to carry on insurance business in the Commonwealth after the date of commencement of the *Insurance Act 1960*—the period of twenty-one days after the person so commences to carry on insurance business.

“(3.) A person carrying on insurance business in the Commonwealth shall, within twenty-one days after the making of an alteration—

(a) in the case of a person being a company—

(i) in the Act, charter, deed of settlement or memorandum of association and articles of association of the company, or any other document by which the company is constituted; or

(ii) in the name and address of the principal officer of the company or, in the case of a foreign company, of the principal officer or representative of the company in Australia; or

(b) in any case—

(i) in the address in Australia for service of notices; or

(ii) in the date on which the annual trading period of the person ends,

furnish to the Treasurer particulars in writing of the alteration.

“(4.) A person who has made a deposit with the Treasurer under this Act shall furnish to the Treasurer, within the prescribed period, a return, signed by the person, showing the premium income in respect of the insurance business carried on by the person in the Commonwealth during the last preceding annual trading period of the person.

“(5.) The last preceding sub-section does not apply to a person who has deposited and is maintaining on deposit with the Treasurer money or approved securities—

(a) in the case of a foreign company—to a value of One hundred thousand pounds; or

(b) in any other case—to a value of Eighty thousand pounds.

“(6.) Where a person is required to furnish a return under this section, the Treasurer may, by notice in writing under his hand to the person, require the person, at the expense of that person, to furnish with the return a certificate as to the correctness of the return by a qualified public accountant or an actuary, approved by the Treasurer, and where the Treasurer so requires, the return shall be deemed not to have been furnished until the certificate is furnished.

“(7.) A person carrying on insurance business in the Commonwealth shall furnish to the Treasurer such other returns and information as are prescribed at such times as are prescribed.

“(8.) A person carrying on insurance business in the Commonwealth shall not refuse or fail to furnish to the Treasurer a return or other information required by or under this section.

Penalty: Two hundred pounds.

“(9.) A person shall not wilfully or knowingly furnish a return or other information required by or under this section that is false in a material particular.

Penalty for a contravention of this sub-section: Imprisonment for two years.”.

7. Section eighteen of the Principal Act is amended—

Interest on deposits, &c.

(a) by omitting from sub-section (1.) the words “ this Act ” and inserting in their stead the words “ the *Insurance Act* 1932, or that Act as amended before the commencement of the *Insurance Act* 1960,”; and

(b) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“(3.) In the event of the winding-up of a company or the sequestration of the estate of a person other than a company, being a company or person that carries on business outside the Commonwealth and has made a deposit under this Act, the Court may, notwithstanding anything in this Act, order the deposit or a part of the deposit to be transferred by the Treasurer to a liquidator of the company, or trustee in bankruptcy of the person other than a company, outside the Commonwealth on such terms and conditions, if any, as the Court directs.

“(3A.) An application for an order under the last preceding sub-section may be made to the Court by or on behalf of the liquidator or trustee in bankruptcy or by or on behalf of a person who satisfies the Court that he represents a majority of the policy owners resident within the Commonwealth.”.

8. Section twenty of the Principal Act is amended—

Increase of deposit where securities have depreciated.

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“(1.) Where the Treasurer is satisfied that, by reason of—

(a) depreciation in the value, or reduction in the amount, of—

(i) approved securities deposited by a person with the Treasurer; or

(ii) securities in which money deposited by a person with the Treasurer has been invested by the Treasurer; or

(b) any other cause,

the value of the deposit falls short of the value required by this Act, he may, by notice in writing under his hand to that person, require that person to deposit with the Treasurer approved securities to a value deemed by the Treasurer to be sufficient to increase the value of the deposit to the value required by this Act.”; and

(b) by omitting from sub-section (4.) the words “ money or approved securities or both ” and inserting in their stead the words “ approved securities ”.

9. After section twenty of the Principal Act the following sections are inserted:—

Decrease of
deposit in
certain cases,

“ 20A.—(1.) Where the Treasurer is satisfied that, by reason of—

(a) appreciation in the value of—

(i) approved securities deposited by a person with the Treasurer; or

(ii) securities in which money deposited by a person with the Treasurer has been invested by the Treasurer;

(b) decrease in the annual premium income of a person; or

(c) any other cause,

the value of the deposit exceeds the value required by this Act, he shall, subject to the next succeeding sub-section, on request in writing by that person, return to the person securities to a value deemed by the Treasurer to be sufficient to reduce the value of the deposit to the value required by this Act.

“ (2.) The last preceding sub-section does not require the Treasurer to return securities to a person where—

(a) in the case of a person being a company—the company is being wound-up;

(b) in the case of a person not being a company—the estate of the person has become sequestrated; or

(c) in any case—the Treasurer is not satisfied that that person has made adequate provision to meet his liabilities (including contingent liabilities) to policy owners in the Commonwealth.

Revocation of
approval.

“ 20B.—(1.) The Treasurer may revoke an approval given by him for the purposes of the definition of ‘ Approved securities ’ in sub-section (1.) of section three of this Act.

“(2.) Where, by reason of the revocation of such an approval, a security deposited by a person with the Treasurer for the purposes of this Act ceases to be an approved security, the person shall, within one month after receiving notice in writing under the hand of the Treasurer of the revocation, substitute for that security an approved security of a value deemed by the Treasurer to be sufficient to increase the value of the deposit to the value required by this Act.

“(3.) Where—

- (a) a person has deposited a bank guarantee or undertaking with the Treasurer as an approved security for the purposes of this Act; and
- (b) the bank that gave the guarantee or undertaking notifies the Treasurer in accordance with the guarantee or undertaking that it proposes to revoke the guarantee or undertaking,

the person who deposited the guarantee or undertaking shall, within one month after receiving notice in writing under the hand of the Treasurer of the proposed revocation, substitute for the guarantee or undertaking another approved security of a value not less than the value of the guarantee or undertaking.”.

10. Section twenty-two of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections:—

Deposits
available to
satisfy
judgments and
meet liabilities.

“(2.) In the event of the winding-up of a company or the sequestration of the estate of a person other than a company, being a company or person that carries on insurance business in the Commonwealth and has deposited money or securities under this Act—

- (a) the money or securities so deposited 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 company or person under the policies issued by it or him in the Commonwealth; and
- (b) when the liabilities have been met to the extent having effect in, or for the purposes of, the winding-up or sequestration, any surplus shall be paid to the liquidator or trustee in bankruptcy, as the case may be.

“(3.) For the purpose of enabling the Treasurer to satisfy a judgment or meet liabilities in accordance with this section out of a security deposited with him or in which he has invested money deposited with him, the Treasurer may sell or otherwise realize the security or a part of the security in such manner, and on such terms and conditions, as he thinks fit.”.

Substitution
and return
of deposits.

11. Section twenty-six of the Principal Act is amended—

- (a) by inserting in sub-section (2.), after the word “ shall ”, the words “ be entitled to ”; and
 (b) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (3.) Where a person has ceased to issue policies to persons in the Commonwealth, the Treasurer may, in his discretion, permit the withdrawal of the money or securities deposited by that person under this Act or such part of that money or those securities as the Treasurer considers reasonable having regard to the liabilities (including contingent liabilities) of the person to policy owners in the Commonwealth.

“ (4.) Where a person has ceased to carry on insurance business in the Commonwealth, the Treasurer shall return to him the money or approved securities deposited by him under this Act.”.

12. After section twenty-six of the Principal Act the following sections are inserted:—

Expenses.

“ 26A. A person who is or has been required to deposit money or an approved security with the Treasurer by or under this Act is liable to pay or make good any expenses incurred in connexion with—

- (a) the deposit of the money or security;
 (b) the substitution for the money or security of another approved security; or
 (c) the return or withdrawal of the money or security.

Notices,
returns, &c.

“ 26B.—(1.) Where a notice is required by this Act to be given to or served upon a person, the notice may be given or served—

- (a) in the case of a person not being a company—by delivering it to him personally or by sending it to him by post at the last address furnished by him under section sixteen of this Act; or
 (b) in the case of a company—by delivering it personally to an officer or employee of the company or by sending it to the company by post at the last address furnished by the company under section sixteen of this Act.

“ (2.) Where a notice, return or other information is required by this Act to be given or furnished by a person being a company, the notice, return or other information shall be given or furnished by the principal officer of the company or, if the company is a foreign company, by the principal officer or representative of the company in Australia.”.

13.—(1.) Where, immediately before the date of commencement of this Act, a person was maintaining money or an approved security on deposit with the Treasurer in pursuance of the Principal Act—

Transitional provisions.

- (a) the money or approved security shall be deemed to be an approved security deposited for the purposes of the Principal Act as amended by this Act; and
- (b) if that person is, by reason of the enactment of this Act, required to deposit with the Treasurer an approved security or an additional approved security, the time within which he is so required to deposit with the Treasurer the approved security or additional approved security is six months after that date.

(2.) Where, before the commencement of this Act, a person furnished to the Treasurer, in pursuance of section sixteen of the Principal Act, a return, document or information that is required to be furnished by him to the Treasurer by section sixteen of the Principal Act as amended by this Act, the return, document or information shall be deemed to have been furnished to the Treasurer in pursuance of that last-mentioned section.