

Insurance Act 1973

No. 76 of 1973

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SCHEDULE

Provisions applicable to Lloyd's

Insurance Act 1973

No. 76 of 1973

AN ACT

Relating to Insurance.

[Assented to 19 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Insurance Act 1973*. Short title.
2. (1) Parts I and II shall come into operation on the day on which this Act receives the Royal Assent. Commencement.
(2) The remaining provisions of this Act shall come into operation on such date as is, or on such dates as respectively are, fixed by Proclamation.
3. (1) In this Act, unless the contrary intention appears— Interpretation.
“accident insurance business” means the business of undertaking liability under policies of insurance in respect of the happening of personal accidents (whether fatal or not), disease or sickness or of any class of personal accidents, disease or sickness;
“Acting Insurance Commissioner” means a person appointed under section 19;
“Australia” includes a Territory to which this Act extends;

- “ barrister or solicitor ” means a barrister or solicitor of the High Court or of the Supreme Court of a State, or of the Australian Capital Territory or the Northern Territory of Australia;
- “ books ” includes accounts, deeds, writings, documents and any other records of information however compiled, recorded or stored, and whether in written or printed form, on microfilm or in any other form;
- “ Chairman ” means the Chairman of the Tribunal, and includes a person appointed to act as chairman of the Tribunal;
- “ Commissioner ” means the Insurance Commissioner;
- “ Court ” means the Commonwealth Industrial Court;
- “ debenture ” includes debenture stock, bonds, notes and any other securities of a body corporate, whether constituting a charge on the assets of the body corporate or not;
- “ director ”, in relation to a body corporate, includes a member of the governing body of the body corporate;
- “ financial year ”, in relation to a body corporate, means the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;
- “ friendly society ” means a society registered under a State Act or a law of a Territory providing for the registration of friendly or benefit societies;
- “ insurance business ” means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include—
- (a) life insurance business;
 - (b) accident insurance business undertaken solely in connexion with life insurance business;
 - (c) pecuniary loss insurance business carried on solely in the course of carrying on banking business and for the purposes of that business by a bank within the meaning of the *Banking Act 1959-1967*;
 - (d) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants;
 - (e) business in relation to the benefits provided for its members or their dependants by an association of employees or of employees and other persons that is registered as an organization under the *Conciliation and Arbitration Act 1904-1972*;

- (f) 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;
- (g) 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;
- (h) business undertaken by a person, being a carrier, carrier's agent, forwarding agent, wharfinger, warehouseman or shipping agent, relating only to his liability in respect of goods belonging to another person and in his possession or under his control for the purpose of the carriage, storage or sale of those goods;
- (i) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to his liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody;
- (j) 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; or
- (k) business as a registered medical benefits organization or a registered hospital benefits organization carried on by an organization that is a registered organization within the meaning of Part VI of the *National Health Act 1953–1972*;

“life insurance business” has the same meaning as in the *Life Insurance Act 1945–1973*;

“Lloyd's” means the society of that name incorporated by the Imperial Act known as Lloyd's Act 1871;

“Lloyd's underwriter” means an underwriting member of Lloyd's;

“member” means a member of the Tribunal, and includes the Chairman and a person appointed to act as a member;

“pecuniary loss insurance business” means the business of undertaking liability by way of insurance against any one or more of the following risks:—

- (a) risks of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts when due;
- (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee;
- (c) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them;
- (d) risks of loss to the persons insured attributable to their incurring unforeseen expense;

“premium” includes an instalment of premium;

“profit and loss account” includes income and expenditure account, revenue account and any other account showing the results of the business of a body corporate for a period;

“share” means a share in the capital of a body corporate, and includes stock;

“Tribunal” means the Insurance Tribunal established by this Act.

(2) In this Act, unless the contrary intention appears, a reference to the *Companies Ordinance 1962-1973* of the Australian Capital Territory shall, if that Ordinance is amended, be read as a reference to that Ordinance as amended and in force for the time being.

References to related bodies corporate.

4. For the purposes of this Act, the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations, within the meaning of the *Companies Ordinance 1962-1973* of the Australian Capital Territory, are related to each other would be determined under that Ordinance if, in section 6 of that Ordinance—

- (a) the reference to a corporation controlling more than half of the voting power of another corporation were a reference to a corporation controlling more than one-quarter of the voting power of another corporation; and
- (b) the reference to a corporation holding more than half of the issued share capital of another corporation were a reference to a corporation holding more than one-quarter of the issued share capital of another corporation.

Application of Act.

5. (1) This Act does not apply to State insurance whether or not extending beyond the limits of the State concerned.

(2) This Act does not apply to or with respect to insurance business carried on by—

- (a) the Commonwealth, including the Administration of a Territory;

- (b) the Housing Loans Insurance Corporation established under the *Housing Loans Insurance Act 1965-1966*;
- (c) the Export Payments Insurance Corporation constituted under the *Export Payments Insurance Corporation Act 1956-1973*;
- (d) the Director of War Service Homes within the meaning of the *Defence Service Homes Act 1918-1973*;
- (e) the Joint Coal Board constituted in pursuance of the *Coal Industry Act 1946-1966*;
- (f) Coal Mines Insurance Pty Limited, a company incorporated in the State of New South Wales;
- (g) The Motor Vehicle Insurance Trust constituted under the *Motor Vehicle (Third Party Insurance) Act, 1943-1972* of the State of Western Australia;
- (h) a body, not being a company, established or constituted under a law of the Commonwealth or of a State or Territory that is required by or under a law of the Commonwealth or of a State or Territory to carry on any business of insurance or to undertake liability under a contract of insurance; or
- (i) a prescribed body, not being a company.

6. This Act extends to a Territory not forming part of Australia that is for the time being declared by Proclamation to be a Territory to which this Act extends. Extension of Act to Territories.

7. (1) Where this Act has effect with respect to an amount or value in relation to a body corporate and in relation to a particular day and that amount or value is in a currency other than Australian currency, the amount or value shall be converted into Australian currency at the rate of exchange that is, at the close of business on that day, the telegraphic transfer buying rate of exchange of the principal banker of the body corporate or, if there is no such rate on that day, at the telegraphic transfer buying rate of exchange of the banker at the close of business on the last day on which there was such a rate. Amounts and values to be expressed in Australian currency.

(2) For the purposes of this section, "the principal banker", in relation to a body corporate, means the banker that is the principal banker of the body corporate for the purposes of section 119.

PART II—ADMINISTRATION

8. (1) There shall be an Insurance Commissioner, who shall be appointed by the Governor-General. Office of Commissioner.

(2) The Commissioner is, subject to any directions of the Treasurer, charged with the general administration of this Act.

Terms and conditions of appointment.

9. Subject to this Act, the Commissioner holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

Remuneration and allowances.

10. (1) The Commissioner shall be paid salary at such rate as the Parliament fixes, but until 1st January, 1974, the rate of that salary shall be such rate as is prescribed.

(2) The Commissioner shall be paid such allowances (other than annual allowances) as are prescribed.

Leave of absence.

11. The Treasurer may grant leave of absence to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Treasurer determines.

Outside employment and interests.

12. (1) The Commissioner shall not engage in paid employment outside the duties of his office.

(2) A person who is a director or employee of a body corporate that carries on insurance business in Australia, or of a body corporate related to such a body corporate, shall not be appointed as the Commissioner and the Commissioner shall not be a director or employee of a body corporate that carries on insurance business in Australia, or of a body corporate related to such a body corporate.

(3) The Commissioner shall give written notice to the Treasurer of all direct and indirect pecuniary interests that he has or acquires in any insurance business carried on in Australia or in any body corporate carrying on any such business.

Rights of public servant appointed as Commissioner if s. 14 not applicable.

13. If a person appointed as the Commissioner was, immediately before his appointment, an officer of the Public Service of the Commonwealth (including an unattached officer) and section 14 does not apply in relation to the appointment—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as the Commissioner shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this section had been specified in the Schedule to that Act.

Public servant appointed as Commissioner may continue office as public servant.

14. (1) If a person appointed as the Commissioner is, at the time of his appointment, an officer of the Public Service of the Commonwealth, the Governor-General may, by writing under his hand, direct that this section applies in relation to the appointment.

(2) Where this section applies in relation to the appointment of an officer of the Public Service of the Commonwealth as the Commissioner—

- (a) the duties of the Commissioner shall, during the period of the appointment, be deemed to form part of the officer's duties as an officer of the Public Service of the Commonwealth, except that, in the performance of his duties as Commissioner, the officer is subject only to the directions of the Treasurer as provided by sub-section 8 (2);
- (b) the officer shall hold office as Commissioner during the pleasure of the Governor-General;
- (c) the officer shall not be paid salary or allowances under this Act;
- (d) the performance by the officer of the duties of his office in the Public Service of the Commonwealth shall not be taken to be engaging in paid employment outside the duties of the office of Commissioner for the purposes of sub-section 12 (1); and
- (e) sections 13, 15, 16 and 17 do not apply in relation to the officer.

15. For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1972*, the Commissioner shall be deemed to be required, by the terms of his employment, to give the whole of his time to the duties of his office.

Application of Superannuation Act to Commissioner.

16. The Governor-General may retire the Commissioner on the ground of invalidity.

Termination of appointment.

17. (1) The Governor-General may suspend the Commissioner from office for misbehaviour.

Suspension and removal of Commissioner.

(2) The Treasurer shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within seven sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within fifteen sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner ought to be restored to office and, if each House so passes such a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of fifteen sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the Commissioner from office.

(5) If the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6) The Commissioner shall not be removed from office except as provided by this section.

Resignation. 18. The Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

Acting Commissioner. 19. (1) Where—

(a) there is a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or

(b) the Commissioner is, or is about to be, absent or, for any reason, unable to perform the functions of his office,

the Governor-General may appoint a person to act as the Commissioner until the filling of the vacancy or during the absence or inability.

(2) The Governor-General may—

(a) subject to this Act, determine the terms and conditions of appointment of an Acting Insurance Commissioner; and

(b) at any time terminate such an appointment.

(3) The appointment of an Acting Insurance Commissioner made in anticipation of the absence or inability of the Commissioner has effect from and including the day on which the absence or inability commences.

(4) The appointment of an Acting Insurance Commissioner ceases to have effect if he resigns the appointment by writing under his hand addressed to the Governor-General.

(5) Sections 11, 12, 14 and 126 apply in relation to an Acting Insurance Commissioner in like manner as they apply in relation to the Commissioner.

(6) While the appointment of an Acting Insurance Commissioner remains in force, he has, and may exercise, all the powers and shall perform all the functions of the Commissioner.

(7) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

Staff. 20. The staff necessary to assist the Commissioner shall be persons employed under, or whose services are made available in accordance with arrangements made under, the *Public Service Act 1922-1973*.

PART III—AUTHORITY TO CARRY ON INSURANCE BUSINESS

Certain persons not to carry on insurance business. 21. (1) Subject to this Act, a person other than a body corporate or a Lloyd's underwriter shall not, after the expiration of the period of six months after the commencement of this section, carry on insurance business.

Penalty: One thousand dollars for each day during which the contravention continues.

(2) Subject to this Act, a body corporate shall not carry on insurance business unless it is authorized under this Act to carry on insurance business.

Penalty: Ten thousand dollars for each day during which the contravention continues.

(3) A Lloyd's underwriter shall not carry on insurance business at any time after Part VII has ceased to have effect.

Penalty: One thousand dollars for each day during which the contravention continues.

22. (1) A body corporate may make an application to the Commissioner for an authority to carry on insurance business. Application for authority.

(2) The application shall be in writing signed by not less than two directors of the body corporate, or, if there is only one director, by that director, and shall specify—

- (a) the name of the body corporate;
- (b) the date and place of incorporation of the body corporate;
- (c) if the body corporate is incorporated in Australia, the address of its registered office;
- (d) if the body corporate is not incorporated in Australia, the address of its head office and also the address of its chief office in Australia;
- (e) if the body corporate is registered as a foreign company under the law of a State or Territory, the name of each State or Territory in which it is so registered and the date of the registration;
- (f) the name and address of each director of the body corporate;
- (g) the period in respect of which the last accounts of the body corporate were made up;
- (h) the class or classes of insurance business that the body corporate carries on or proposes to carry on in Australia;
- (i) particulars of business other than insurance business that the body corporate carries on or proposes to carry on in Australia;
- (j) if the body corporate has a share capital—
 - (i) the amount of its nominal share capital;
 - (ii) the aggregate of the nominal amounts of its shares allotted for cash; and
 - (iii) the amount of its paid-up capital;
- (k) if the body corporate is not incorporated in Australia—
 - (i) whether it carries on any business of insurance in a place outside Australia and, if so, whether it is complying in all respects with the law of that place relating to the carrying on of that business and has so complied during the preceding period of five years; and

- (ii) whether it has, within the preceding period of five years, made an application under the law of some place outside Australia for or with respect to the grant of authority to carry on any such business in that place and, if so, whether it was granted the authority;
 - (l) the name of a bank that the body corporate intends to notify as its principal banker for the purposes of section 119 if it is granted an authority; and
 - (m) such other matters, including matters relating to the assets and liabilities of the body corporate and its ability to meet its obligations, as are prescribed.
- (3) The application shall be accompanied by—
- (a) a copy of the Act, charter, deed of settlement, memorandum of association or other document by which the body corporate is constituted;
 - (b) a copy of the articles of association or other rules of the body corporate; and
 - (c) such other documents (if any) as are prescribed.
- (4) Where a body corporate has made an application under this section for an authority to carry on insurance business and, before an authority is granted or refused, a change occurs in the particulars specified in the application or in the matters contained in a document required to accompany the application, the body corporate shall, within fourteen days after the occurrence of the change, give to the Commissioner notice in writing signed by a director and specifying particulars of the change.
- (5) A body corporate shall not—
- (a) make an application under this section: or
 - (b) give to the Commissioner a notice under sub-section (4), that is false or misleading in a material particular.
- Penalty: Ten thousand dollars.

Authority to commence carrying on insurance business.

23. Where an application is made in accordance with section 22 by a body corporate (not being a body corporate that carries on insurance business in Australia and carried on such business before 9th December, 1971), the Treasurer may grant to the body corporate an authority to carry on insurance business if he is satisfied that—

- (a) the body corporate has a paid-up share capital of not less than Two hundred thousand dollars or, where the body corporate does not have a share capital, has assets the value of which is not less than Two hundred thousand dollars;
- (b) where the body corporate is incorporated in Australia—the value of the assets of the body corporate exceeds the amount of its liabilities by not less than One hundred thousand dollars;

- (c) the value of the assets in Australia of the body corporate exceeds the amount of its liabilities in Australia by not less than One hundred thousand dollars;
- (d) the body corporate has arrangements for reinsurance approved by the Commissioner under section 34 or has been granted an exemption under that section;
- (e) the body corporate is, and is likely to continue to be, able to meet its liabilities;
- (f) the body corporate is, and is likely to continue to be, able to comply with such of the provisions of this Act as are applicable to it; and
- (g) unless the period of two years after the date of the commencement of section 21 has expired or, where a longer period, not exceeding five years after that date, is prescribed for the purposes of section 9 of the *Insurance (Deposits) Act 1932-1973* before the expiration of the first-mentioned period, that longer period has expired, the body corporate is not failing to comply with the provisions of that Act with respect to the lodging of deposits with the Treasurer.

24. Where an application is made in accordance with section 22 by a body corporate to which section 23 does not apply, the Commissioner may grant to the body corporate an authority to carry on insurance business if he is satisfied that—

- (a) the body corporate has a paid-up share capital of not less than Two hundred thousand dollars or, where the body corporate does not have a share capital, has assets the value of which is not less than Two hundred thousand dollars;
- (b) where the body corporate is incorporated in Australia—the value of the assets of the body corporate exceeds the amount of its liabilities by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income during its financial year last preceding the financial year in which the application is made,
 whichever is the greater;
- (c) the value of the assets in Australia of the body corporate exceeds the amount of its liabilities in Australia by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income in Australia during its financial year last preceding the financial year in which the application is made,
 whichever is the greater;
- (d) the body corporate has arrangements for reinsurance approved by the Commissioner under section 34 or has been granted an exemption under that section;

Authority to carry on insurance business for body corporate that carried on insurance business before 9th December, 1971.

- (e) the body corporate is, and is likely to continue to be, able to meet its liabilities;
- (f) the body corporate is, and is likely to continue to be, able to comply with such of the provisions of this Act as are applicable to it; and
- (g) unless the period of two years after the date of commencement of section 21 has expired or, where a longer period, not exceeding five years after that date, is prescribed for the purposes of section 9 of the *Insurance (Deposits) Act 1932-1973* before the expiration of the first-mentioned period, that longer period has expired, the body corporate is not failing to comply with the provisions of that Act with respect to the lodging of deposits with the Treasurer.

Special provision for certain bodies corporate that carried on business before 9th December, 1971, in respect of period of two years.

25. (1) Where an application is made in accordance with section 22 by a body corporate to which section 23 does not apply, the Commissioner may grant to the body corporate an authority to carry on insurance business if he is satisfied as to the matters referred to in paragraphs 24 (d), (e), (f) and (g) and considers that, within the period of two years after the date on which the application was made, the body corporate is likely to have—

- (a) a paid-up share capital of not less than Two hundred thousand dollars or, where the body corporate does not have a share capital, assets the value of which is not less than Two hundred thousand dollars;
- (b) where the body corporate is incorporated in Australia—assets the value of which exceeds the amount of its liabilities by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income during its last preceding financial year,
 whichever is the greater; and
- (c) assets in Australia the value of which exceeds the amount of its liabilities in Australia by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income in Australia during its last preceding financial year,
 whichever is the greater.

(2) An authority granted to a body corporate under sub-section (1) is not subject to the conditions referred to in paragraphs 29 (a), (b), (c) and (d) until—

- (a) the expiration of the period of two years referred to in sub-section (1);
 - (b) if the Commissioner specifies in the authority a shorter period—the expiration of that shorter period; or
 - (c) the body corporate satisfies those conditions,
- whichever first occurs

26. (1) Where an application is made in accordance with section 22 by a body corporate—

(a) to which section 23 does not apply; and

(b) that has a paid-up share capital of not less than Twenty thousand dollars and less than Two hundred thousand dollars,

the Commissioner may grant to the body corporate an authority to carry on insurance business if he is satisfied as to the matters referred to in section 24 other than in paragraph (a) of that section.

Special provision for certain bodies corporate that carried on business before 9th December, 1971, in respect of capital requirements.

(2) An authority granted to a body corporate under sub-section (1)—

(a) is not subject to the condition referred to in paragraph 29 (a) until—

(i) the expiration of such period (if any) after the granting of the authority as the Commissioner specifies in the authority; or

(ii) the body corporate satisfies that condition, whichever first occurs; and

(b) is subject to a condition that the body corporate shall not carry on insurance business other than such business as the Commissioner specifies in the authority or insurance business included in such class of insurance business as the Commissioner so specifies.

(3) The body corporate shall not fail to comply with the condition referred to in paragraph (2) (b).

Penalty: Ten thousand dollars for each day during which the contravention continues.

27. (1) Where the Treasurer decides not to grant an authority to a body corporate under section 23 because he is not satisfied with respect to the matters referred to in that section, he shall, by notice in writing to the body corporate, refuse to grant the authority.

Refusal to grant authority.

(2) Where the Commissioner decides not to grant an authority to a body corporate under section 24, 25 or 26 because he is not satisfied with respect to the matters referred to in whichever of those sections is applicable, he shall inform the Treasurer accordingly and the Treasurer shall, after having considered that information—

(a) grant the authority; or

(b) refuse to grant the authority.

(3) An appeal lies to the Tribunal against a refusal of the Treasurer under this section to grant an authority.

28. Where an authority is granted under any of the preceding provisions of this Part, the Commissioner shall cause notice of the grant of the authority to be published in the *Gazette*.

Notification in *Gazette* of grant of authority.

Conditions
to which
authority is
subject.

29. Subject to this Part, an authority granted to a body corporate under this Part is subject to the following conditions:—

- (a) where the body corporate has a share capital—a condition that its paid-up share capital shall not at any time be less than Two hundred thousand dollars;
- (b) where the body corporate does not have a share capital—a condition that the value of its assets shall not at any time be less than Two hundred thousand dollars;
- (c) where the body corporate is incorporated in Australia—a condition that the value of its assets shall at all times exceed the amount of its liabilities by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income during its last preceding financial year,
 whichever is the greater;
- (d) a condition that the value of the assets in Australia of the body corporate shall at all times exceed the amount of its liabilities in Australia by not less than—
 - (i) One hundred thousand dollars; or
 - (ii) fifteen per centum of its premium income in Australia during its last preceding financial year.
 whichever is the greater;
- (e) a condition that the body corporate shall, at all times other than a time at which an exemption from the requirements of section 34 is in force in respect of it, have arrangements for reinsurance, being arrangements approved by the Commissioner under that section, or, if it has been granted an exemption under that section, shall comply with the terms and conditions of that exemption;
- (f) where a change occurs in the particulars specified in the application for the authority and referred to in paragraph 22 (2) (a), (b), (c), (d), (e) or (f) or in the matters contained in a document required to accompany that application—a condition that the body corporate shall, within a period of twenty-one days after the change occurs, or within such further period as the Commissioner, within that period of twenty-one days, approves, give to the Commissioner notice in writing signed by a director and specifying particulars of the change; and
- (g) such other conditions (if any) as the Treasurer or the Commissioner, as the case may be, specifies in the authority.

Assets.

30. (1) In this Part, a reference to assets of a body corporate does not include a reference to—

- (a) a loan to a person who, when the loan was made, was—
 - (i) a director of the body corporate;
 - (ii) a director of a body corporate that was related to the body corporate; or

- (iii) the spouse of a director referred to in sub-paragraph (i) or (ii);
- (b) an unsecured loan—
 - (i) to a person who, when the loan was made, was an employee of the body corporate; and
 - (ii) that exceeded One thousand dollars when it was made or that was made under an agreement under which the body corporate agreed to lend that person amounts in the aggregate exceeding One thousand dollars;
- (c) an asset that is mortgaged or charged for the benefit of a person other than the body corporate to the extent that it is so mortgaged or charged;
- (d) a loan to, debenture of or share in a body corporate that is related to the body corporate except to the extent that the Commissioner has, under sub-section (2), approved the loan, debenture or share as an asset for the purposes of this Part;
- (e) an unpaid premium that became due to the body corporate more than six months previously unless it is, under sub-section (3), approved as an asset for the purposes of this Part;
- (f) where the body corporate is registered under the *Life Insurance Act 1945–1973*, an asset of a statutory fund established under that Act by the body corporate;
- (g) a guarantee given to the body corporate, except to the extent that the Commissioner has, under sub-section (4), approved the guarantee as an asset for the purposes of this Part; or
- (h) an intangible asset, not being an intangible asset referred to in any of paragraphs (a) to (g), but including expenses of the body corporate in relation to the formation, extension or purchase of its business or the purchase of goodwill.

(2) Where a body corporate requests the Commissioner to approve as an asset for the purposes of this Part the whole or part of a loan to, debenture of, or a share in, a body corporate that is related to the body corporate the Commissioner may, by notice in writing given to the body corporate, approve the loan, debenture or share or such part of the loan or debenture as he determines, accordingly.

(3) Where a body corporate requests the Commissioner to approve as an asset for the purposes of this Part an unpaid premium, or premiums included in a class of unpaid premiums, that became due to the body corporate more than six months but not more than twelve months previously, the Commissioner may, by notice in writing given to the body corporate, approve that premium, or those premiums, accordingly.

(4) Where a body corporate requests the Commissioner to approve as an asset for the purposes of this Part the whole or part of a guarantee given to the body corporate, the Commissioner may, by notice in writing

given to the body corporate, approve the guarantee, or such part of the guarantee as he determines, accordingly.

- (5) For the purposes of this Part—
- (a) an approved security deposited by a body corporate under the *Insurance (Deposits) Act 1932–1973* that is held outside Australia shall be deemed to be an asset in Australia of the body corporate; and
 - (b) the whole or such part as the Commissioner determines of an amount owed to a body corporate by way of portions of premiums retained under a contract of reinsurance by a person outside Australia shall be deemed to be an asset in Australia of the body corporate.
- (6) An appeal lies to the Tribunal against—
- (a) a determination made under sub-section (2) or (4);
 - (b) a determination made for the purposes of paragraph (5) (b); and
 - (c) a refusal or failure to give an approval under sub-section (2), (3) or (4).

Liabilities.

31. (1) In this Part, unless the contrary intention appears, a reference to liabilities of a body corporate includes a reference to provisions for liabilities made in its accounts, or directed in accordance with this section to be made, but does not include—

- (a) a liability in respect of share capital; or
- (b) where the body corporate is registered under the *Life Insurance Act 1945–1973*, a liability that is, in accordance with that Act—
 - (i) referable to a class of life insurance business carried on by the body corporate in respect of which it has established a statutory fund under that Act; or
 - (ii) charged on any of the assets of such a statutory fund.

(2) For the purposes of this Part—

- (a) a body corporate carrying on insurance business shall, in respect of each financial year, make in its accounts a provision, or provisions, in respect of liabilities; and
- (b) the Commissioner may, by notice in writing given to the body corporate, direct that the amount of any such provision made in respect of a financial year shall be the amount specified in the notice or determined as he so specifies.

(3) An appeal lies to the Tribunal against a direction of the Commissioner under sub-section (2).

(4) For the purposes of this Part, where a liability is undertaken by a body corporate under—

- (a) a contract of insurance (including reinsurance) made in Australia or in respect of which a proposal was accepted or a policy issued in Australia, not being a contract—
 - (i) that relates only to a liability contingent upon an event that can happen only outside Australia, not being a liability that the body corporate has undertaken to satisfy in Australia; or
 - (ii) where the body corporate carries on insurance business both in and outside Australia, that relates only to a liability that the body corporate has undertaken to satisfy outside Australia; or
- (b) a contract of insurance (including reinsurance) made outside Australia or in respect of which a proposal was accepted or a policy issued outside Australia where any part of the negotiations or arrangements leading to the making of the contract, to the acceptance of the proposal or to the issue of the policy took place or were made in Australia, being a contract—
 - (i) that relates to a liability contingent upon an event that can happen only in Australia; or
 - (ii) where the body corporate carries on insurance business both in and outside Australia, that relates to a liability that the body corporate has undertaken to satisfy in Australia,

that liability is a liability in Australia.

32. (1) For the purposes of this Part, a reference to the premium income of a body corporate during a financial year is a reference to the amount that is the amount of premiums received in the course of insurance business by or due to the body corporate during that year less the sum of—

Premium income and premium income in Australia.

- (a) the amount of those premiums included in the premium income of the body corporate in respect of a preceding financial year;
- (b) the amount of premiums received in the course of insurance business that the body corporate, during the first-mentioned financial year, refunded or was liable to refund not including an amount that the body corporate was, during a preceding financial year, liable to refund; and
- (c) the amount of premiums for reinsurance in respect of insurance business paid or payable by the body corporate during the first-mentioned financial year less the sum of—
 - (i) the amount of those premiums that, during a preceding financial year, were payable by the body corporate; and
 - (ii) the amount of premiums for reinsurance in respect of insurance business that, during the first-mentioned financial year, were refunded or liable to be refunded to the body

corporate not including an amount that, during a preceding financial year, was liable to be refunded to the body corporate.

(2) For the purposes of this Part, a reference to the premium income in Australia of a body corporate during a financial year is a reference to the amount that is the amount of premiums for insurance business received by or due to the body corporate during that year in respect of the undertaking by the body corporate of liabilities that are liabilities in Australia less the sum of

- (a) the amount of those premiums included in the premium income of the body corporate in respect of a preceding financial year;
- (b) the amount of those first-mentioned premiums that the body corporate, during the first-mentioned financial year, refunded or was liable to refund not including an amount that the body corporate was, during a preceding financial year, liable to refund; and
- (c) the amount of premiums for reinsurance in respect of insurance business paid or payable by the body corporate during the first-mentioned financial year relating to liabilities undertaken by it that are liabilities in Australia less the sum of
 - (i) the amount of those premiums that, during a preceding financial year, were payable by the body corporate; and
 - (ii) the amount of premiums for reinsurance relating to those liabilities that, during the first-mentioned financial year, were refunded or liable to be refunded to the body corporate not including an amount that, during a preceding financial year, was liable to be refunded to the body corporate.

Valuation of
assets.

33. (1) The following sub-sections have effect for the purposes of this Part.

(2) The Commissioner may, by notice in writing served on a body corporate, require it to furnish him with such information with respect to the value of an asset of the body corporate as he specifies in the notice, being a value that is, in his opinion, in accordance with those sub-sections.

(3) Where the Commissioner is not satisfied that the value of an asset of a body corporate as determined by the body corporate is in accordance with sub-sections (4), (5) and (6), he may, by notice in writing served on the body corporate, direct that the value of that asset is the value specified in the notice.

(4) Where an asset of a body corporate consists of securities (not being approved securities referred to in sub-section (5))—

- (a) listed for quotation on the official list of a stock exchange in Australia; or
- (b) not so listed but listed for quotation on the official list of a stock exchange outside Australia,

the value of those securities as at a particular time is the value as ascertained by reference to any one of those stock exchanges and—

(c) by reference to—

- (i) the sale of securities of the same class last recorded before that time by that stock exchange; or
- (ii) the selling offer for securities of the same class last recorded before that time by that stock exchange,

whichever is the less; or

(d) by reference to the buying bid for securities of the same class last recorded before that time by that stock exchange, whichever is the greater.

(5) Where an asset of a body corporate consists of an approved security deposited by the body corporate under the *Insurance (Deposits) Act 1932-1973* that is listed for quotation on the official list of a stock exchange, the value of that security as at a particular time is the value as ascertained by reference to any one stock exchange that so lists that security and—

(a) by reference to —

- (i) the sale of securities of the same class last recorded before that time by that stock exchange; or
- (ii) the selling offer for securities of the same class last recorded before that time by that stock exchange,

whichever is the less; or

(b) by reference to the buying bid for securities of the same class last recorded before that time by that stock exchange, whichever is the greater.

(6) Subject to sub-sections (4) and (5), the value of an asset of a body corporate as at a particular time is the market value of the asset at that time.

(7) In this section —

“Government” means Government of the Commonwealth or of a State or any other government;

“securities” means shares, stock, debentures, debenture stock or bonds of a government, authority of a government, local governing authority or body corporate or unincorporate and includes rights and options in respect of any such shares, stock, debentures, debenture stock or bonds and interests within the meaning of Division 5 of Part IV of the *Companies Ordinance 1962-1973* of the Australian Capital Territory.

(8) An appeal lies to the Tribunal from a direction of the Commissioner under sub-section (3).

34. (1) Subject to this section, a body corporate authorized under this Act to carry on insurance business shall have arrangements, being arrangements approved by the Commissioner, for reinsurance of liabilities Reinsurance.

in respect of risks against which persons are, or are to be, insured by the body corporate in the course of its carrying on insurance business.

(2) The Commissioner shall not approve arrangements for reinsurance made, or proposed to be made, by a body corporate where the arrangements for reinsurance of liabilities in Australia of the body corporate are made, or proposed to be made, under a contract of reinsurance relating to those liabilities and to other liabilities unless the amount of the premium payable under that contract in respect of the reinsurance of the first-mentioned liabilities, or the manner in which the amount of that premium is to be ascertained, is specified in the contract.

(3) The Commissioner shall, in determining whether to approve arrangements for reinsurance made, or proposed to be made, by a body corporate, have regard to all matters that he considers relevant and, in particular to—

- (a) the class or classes of insurance business carried on or proposed to be carried on by the body corporate;
- (b) the amount of premiums received by or due to the body corporate during its last preceding financial year in respect of each class of insurance business carried on by it;
- (c) the nature and value of the assets of the body corporate;
- (d) the places in which liabilities of the body corporate may be incurred; and
- (e) the person or persons by whom the reinsurance is or is proposed to be undertaken.

(4) The Commissioner may, by notice in writing given to the body corporate, approve arrangements for reinsurance.

(5) The Commissioner, having regard to such matters as he considers relevant and, in particular to the matters mentioned in paragraphs (3) (a), (b), (c) and (d) may, by notice in writing given to a body corporate, exempt the body corporate, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of this section.

Exemption
from
requirement
relating to
assets in
Australia.

35. (1) Where a body corporate authorized under this Act to carry on insurance business has, as the result of the happening of an exceptional event outside Australia, incurred substantial liabilities in respect of any business of insurance carried on by it, the Treasurer may, if he is satisfied that it is necessary for the body corporate to remove from Australia assets in Australia in order to assist in discharging those liabilities, by notice in writing given to the body corporate, determine that, during such period, not exceeding six months after the giving of the notice, as he specifies in the notice, the body corporate shall be deemed not to have failed to comply with the condition referred to in paragraph 29 (d) so long as the value of its assets in Australia is not less than—

- (a) the amount of its liabilities in Australia; or
- (b) if the Treasurer specifies in the notice an amount exceeding the amount of its liabilities in Australia—that amount.

(2) The Treasurer may, by notice in writing given to the body corporate, extend for such period, not exceeding six months, as he specifies in the notice, the period of six months referred to in sub-section (1).

36. (1) Where a body corporate requests, by notice in writing given to the Commissioner, that the authority to carry on insurance business granted to it under this Part be revoked and the Commissioner is satisfied that the body corporate has no liabilities in respect of insurance business carried on by it in Australia, the Commissioner may, by notice in writing given to the body corporate, revoke the authority.

Cancellation
of authority.

(2) Where the Commissioner believes that a body corporate has not commenced to carry on insurance business in Australia within the period of twelve months after it was granted an authority under this Part, he may give notice in writing to the body corporate that, unless it satisfies him, within one month after the notice is given, that it has commenced to carry on insurance business in Australia, the authority will be revoked.

(3) Where the Commissioner is satisfied that a body corporate authorized under this Part to carry on insurance business has not, during the preceding period of twelve months, carried on insurance business in Australia and has not had, during that period, liabilities in respect of insurance business carried on by it in Australia, he may give notice in writing to the body corporate that, unless it satisfies him, within one month after the notice is given, that, during that period, it has carried on such business or had such liabilities, the authority will be revoked.

(4) Where a body corporate to which a notice is given under sub-section (2) or (3) does not, within the period of one month after the notice is given, satisfy the Commissioner with respect to the matters mentioned in the notice, he shall inform the Treasurer accordingly and the Treasurer may, after having considered the information, by notice in writing given to the body corporate, revoke the authority granted to it under this Part.

(5) The revocation of an authority takes effect from and including the day after the day on which the notice under sub-section (1) or (4) is given to the body corporate.

(6) Where an authority is revoked under this section, the Commissioner shall cause notice of the revocation to be published in the *Gazette*.

(7) An appeal lies to the Tribunal against—

- (a) a refusal under sub-section (1) to revoke an authority; or
- (b) the revocation of an authority under sub-section (4).

37. (1) Where—

- (a) a body corporate satisfies the Commissioner that it enters into, or proposes to enter into, contracts of insurance with—
 - (i) its members and no other persons;
 - (ii) employees of its members and no other persons;

Exemption
in respect of
insurance
business
carried on
for benefit
of limited
class of
persons.

(iii) its members or employees of its members and no other persons; or

(iv) persons engaged in one particular trade, industry or profession and no other persons,

solely for the purpose of undertaking liability to indemnify the person with whom the contract is made against personal injury, illness or other loss, including damage to property, or to make good any such loss incurred by that person; and

(b) the amount of premiums (if any) received by or due to the body corporate during its preceding financial year did not exceed Two hundred thousand dollars,

the Treasurer may, by notice in writing given to the body corporate, exempt the body corporate from such of the provisions of this Act as he specifies in the notice.

(2) An exemption given under sub-section (1) to a body corporate has effect—

(a) in respect of such period as the Treasurer specifies in the notice;

(b) in respect of such insurance business as the Treasurer so specifies; and

(c) subject to such other terms and conditions (if any) as the Treasurer so specifies,

and the Treasurer may, at any time, by notice in writing given to the body corporate, revoke the exemption.

(3) A body corporate in respect of which an exemption under sub-section (1) is in force is, subject to sub-section (2), authorized to carry on insurance business.

(4) Where, in respect of a financial year of a body corporate in respect of which an exemption under sub-section (1) is in force, the amount of premiums received by or due to it is, or exceeds, Two hundred thousand dollars, the exemption ceases to have effect on the expiration of the period of three months after the end of that financial year.

(5) Where an exemption under sub-section (1) is given or revoked, the Commissioner shall cause notice of the exemption or revocation to be published in the *Gazette*.

(6) A body corporate in respect of which an exemption under sub-section (1) is in force shall not—

(a) undertake liability under a contract of insurance unless the contract is made with a person who is—

(i) a member of the body corporate;

(ii) an employee of such a member; or

(iii) where the body corporate, before the exemption was granted, satisfied the Commissioner that it undertook or proposed to undertake liability under contracts of insurance made with

persons engaged in one particular trade, industry or profession—a person engaged in that trade, industry or profession; or

- (b) undertake, under a contract of insurance made with a person referred to in paragraph (a), liability other than liability to indemnify that person against personal injury, illness or other loss, including damage to property, or to make good any such loss incurred by that person.

Penalty: Ten thousand dollars.

38. Nothing in this Part authorizes the carrying on by a body corporate of any business that it would not have been authorized to carry on if this Part had not been enacted.

Part does not authorize body corporate to carry on any business it could not otherwise have carried on.

PART IV—ACCOUNTS

39. (1) In this Part, unless the contrary intention appears, “accounting records”, in relation to a body corporate, includes such working papers and other documents as are necessary to explain how accounts of the body corporate are made up.

Definitions.

(2) For the purposes of this Part, a reference to assets in Australia of a body corporate does not include a reference to assets in Australia of the body corporate that are not assets for the purposes of Part III.

(3) Sections 31, 32 and 33 have effect for the purposes of this Part.

(4) Notwithstanding sub-section (3), a body corporate is not required to show in a balance-sheet prepared for the purposes of this Part an asset at a value determined or ascertained in accordance with section 33 if the balance-sheet is in accordance with the requirements of the Ninth Schedule to the *Companies Ordinance* 1962-1973 of the Australian Capital Territory or would be in accordance with those requirements if they applied to the body corporate.

40. (1) A body corporate authorized under this Act to carry on insurance business shall—

Accounting records.

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the body corporate with respect to—
- (i) its insurance business and other business carried on by it in Australia; and
 - (ii) where the body corporate is incorporated in Australia, any business of insurance and all other business carried on by it outside Australia;

- (b) so keep its accounting records as to enable the accounts and statements referred to in sub-section 44 (1) to be prepared; and
- (c) so keep its accounting records as to enable those accounts and statements to be conveniently and properly audited in accordance with this Act.

(2) The body corporate shall retain its accounting records kept in accordance with sub-section (1) for at least seven years after the completion of the transactions to which they relate.

(3) If any accounting records that a body corporate is, under sub-section (1), required to keep, are in a place outside Australia, the body corporate shall keep in Australia such statements and records with respect to the matters dealt with in those accounting records as will enable the accounts and statements referred to in sub-section 44 (1) to be prepared.

(4) The accounting records referred to in sub-section (1) and the statements and records referred to in sub-section (3) shall be kept in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language.

(5) Unless the accounting records, statements and records referred to in sub-section (4) are held at the registered office of the body corporate in the State or Territory in which it is incorporated, the body corporate shall, by notice in writing given to the Commissioner, notify him of the place where those accounting records, statements and records are held.

Penalty: Ten thousand dollars.

Apportionment of receipts and payments between insurance business and other business.

41. (1) Where a body corporate authorized under this Act to carry on insurance business carries on insurance business in Australia and---

- (a) any business of insurance outside Australia;
- (b) life insurance business;
- (c) any other business in Australia, other than life insurance business;
- or
- (d) any other business outside Australia,

and an amount received or paid by the body corporate is received or paid partly in respect of insurance business carried on by it in Australia and partly in respect of business referred to in paragraph (a), (b), (c) or (d), the body corporate shall, for the purposes of this Part, apportion the amount in its accounts between insurance business carried on in Australia and that other business in respect of which the amount was received or paid.

(2) Where—

- (a) an amount required by sub-section (1) to be apportioned in the accounts of a body corporate has not been so apportioned; or
- (b) such an amount has been so apportioned but the Commissioner is satisfied that it has not been appropriately apportioned,

the Commissioner may, by notice in writing served on the body corporate, direct that the amount be apportioned as he determines.

(3) An appeal lies to the Tribunal against a direction of the Commissioner under sub-section (2).

42. (1) Where a body corporate authorized under this Act to carry on insurance business carries on more than one class of insurance business and an amount received or paid by the body corporate is received or paid in respect of more than one class of insurance business, the body corporate shall, for the purposes of this Part, apportion or allocate the amount in its accounts as prescribed.

Apportionment of receipts and payments between classes of insurance business.

(2) A reference in sub-section (1) to a class of insurance business is, where classes of insurance business are prescribed for the purposes of this Part, a reference to a class so prescribed.

43. The Commissioner may, by notice in writing given to a body corporate, require it to furnish, within such period after the notice is given, not being less than seven days, as the Commissioner specifies in the notice, information with respect to an amount received or paid by the body corporate and appearing to the Commissioner to be required by section 41 or 42 to be apportioned.

Body corporate to furnish information with respect to apportionments.

44. (1) A body corporate authorized under this Act to carry on insurance business shall, in respect of each financial year of the body corporate, lodge with the Commissioner—

Accounts and statements to be lodged with Commissioner.

- (a) the accounts and statements specified in sub-section (2) in respect of insurance business and other business carried on by it in Australia during that year; and
- (b) where the body corporate is incorporated in Australia, the accounts and statements so specified in respect of all business of insurance and all other business carried on by it outside Australia during that year.

(2) The following are the accounts and statements referred to in sub-section (1):—

- (a) an underwriting account;
- (b) a profit and loss account;
- (c) a balance-sheet;
- (d) a statement of assets and liabilities;
- (e) a statement of premium income and earned premiums;

- (f) a statement of unearned premiums;
- (g) a statement of claims;
- (h) a statement of provision made for claims;
- (i) a statement of underwriting expenses;
- (j) a statement of management expenses;
- (k) except in relation to a body corporate to which sub-section (6) applies, a statement of the cost of meeting claims;
- (l) a statement of reinsurance arrangements;
- (m) such other accounts and statements (if any) as are prescribed.

(3) Where a body corporate authorized under this Act to carry on insurance business is not incorporated in Australia, it shall, within the period of six months after the end of each financial year of the body corporate, lodge with the Commissioner—

- (a) a copy of accounts and statements, other than such accounts and statements as the Commissioner specifies, prepared for the purposes of a law of the place in which the body corporate is incorporated in respect of any business of insurance carried on by it during that year; and
- (b) a statement signed by not less than two directors, or, if there is only one director, by that director, of the body corporate stating whether, during that year, it has contravened or failed to comply with the law relating to the carrying on of any business of insurance in any place outside Australia in which it has, during that year, carried on such business and, if it has so contravened or failed to comply with such a law, giving particulars of the contravention or failure.

(4) A body corporate authorized under this Act to carry on insurance business shall, within the period of six weeks after each 31st March, 30th June, 30th September and 31st December, lodge with the Commissioner a statement of assets in Australia and liabilities in Australia on that day.

(5) A body corporate authorized under this Act to carry on insurance business, unless it is a body corporate to which sub-section (6) applies, shall, within the period of six weeks after the last day of each month of the year, lodge with the Commissioner, in respect of insurance business carried on by it in Australia, a statement of premiums, claims, revenue and expenses in respect of that month and of policies issued, renewed or cancelled or that terminated during that month.

(6) Where the insurance business carried on by a body corporate authorized under this Act to carry on insurance business consists only of the business of undertaking liability by way of reinsurance, the body corporate shall, within the period of six weeks after the last day of each month of the year, lodge with the Commissioner a statement of claims exceeding a prescribed amount incurred in that month in respect of liabilities in Australia.

(7) An account or statement lodged under any of the preceding provisions of this section, other than sub-section (3), shall be in accordance with the prescribed form.

(8) A body corporate shall lodge the accounts and statements referred to in sub-section (1)—

(a) unless sub-section (6) applies to the body corporate—within the period of four months; or

(b) where that sub-section applies to the body corporate—within the period of five months,

after the end of the financial year of the body corporate.

(9) A body corporate shall, if so required by the Commissioner by notice in writing served on it, furnish, within such period after service of the notice, not being less than seven days, as the Commissioner specifies in the notice, information with respect to such matters relating to an account or statement lodged by it under this section as he so specifies.

Penalty: Ten thousand dollars.

45. (1) A balance-sheet, profit and loss account and underwriting account lodged by a body corporate under section 44 shall be signed by two directors of the body corporate or, if there is only one director, by that director. Accounts, &c., to be signed.

(2) A statement (other than a balance-sheet, profit and loss account or underwriting account) lodged by a body corporate under sub-section 44 (1) shall be signed by a director or secretary of the body corporate or, if the body corporate is not incorporated in Australia, by the person appointed in accordance with section 118 as, or to act as, its agent.

46. (1) A person shall not act as an auditor for the purposes of this Part of a body corporate authorized under this Act to carry on insurance business unless— Appointment of auditor.

(a) he is a person other than a director or employee of the body corporate;

(b) he is a registered company auditor in a State or Territory;

(c) the Commissioner has, by notice in writing given to the body corporate, approved the appointment of that person as auditor of the body corporate for the purposes of this Part; and

(d) that approval has not been revoked.

(2) The Commissioner shall not approve the appointment of a person under sub-section (1) unless the Commissioner is satisfied that that person has had suitable experience to enable him to audit accounts of insurance business and is competent to audit such accounts.

(3) Where the Commissioner is satisfied that the auditor has failed to fulfil his obligations under this Part, the Commissioner may, by notice in writing given to the body corporate, revoke the approval of the appointment of the auditor given under sub-section (1).

(4) Where the Commissioner gives a notice under sub-section (3), he shall give a copy of the notice to the auditor.

(5) An appeal lies to the Tribunal against—

- (a) a refusal of the Commissioner to approve the appointment of a person under sub-section (1); and
- (b) a revocation of an appointment of a person under that sub-section.

Audit
of accounts.

47. (1) Accounts and statements required by sub-section 44 (1) to be lodged by a body corporate with the Commissioner shall be audited by the auditor of the body corporate.

(2) The auditor of the body corporate shall, within the period of three months or, where sub-section 44 (6) applies to the body corporate, four months, after the end of each financial year of the body corporate, give to the body corporate a certificate relating to the accounts and statements in respect of that year referred to in sub-section (1).

(3) The auditor of a body corporate shall, in a certificate given under sub-section (2) relating to accounts and statements in respect of a financial year of the body corporate—

- (a) state whether the accounts and statements to which it relates appear to him to be in accordance with this Act and give particulars of any matters that do not appear to him to be so in accordance;
- (b) state whether the accounting records of the body corporate in respect of that year appear to him to have been properly kept and to record and explain correctly the transactions and financial position of the body corporate and give particulars of accounting records that appear to him not to have been so kept and of transactions that appear to him not to have been so recorded;
- (c) state whether, in respect of that year, he has obtained the information and explanations that he requested from the body corporate and give particulars of information and explanations that he requested but did not obtain; and
- (d) state whether he is satisfied that the accounts and statements referred to in paragraph (a) agree with the accounting records of the body corporate and appear to him truly to represent the transactions and financial position of the body corporate in respect of the financial year to which they relate and, if any of them appear to him to fail so to represent the transactions and financial position, give particulars of the failure.

Certificate
of auditor
to be lodged
with
Commissioner.

48. A body corporate shall, within the period of four months or, where sub-section 44 (6) applies to the body corporate, five months, after the end of each financial year of the body corporate, lodge with the Commissioner a certificate referred to in sub-section 47 (2) relating to the accounts and statements in respect of that year referred to in sub-section 44¹(1).

Penalty: Ten thousand dollars.

49. (1) The Commissioner may, on the application of a body corporate that is required under this Part to lodge an account, statement or certificate with him, extend, or further extend, the time for lodging the account, statement or certificate. Extension of time.

(2) The Commissioner may, on the application of an auditor who is required to give a certificate to a body corporate under section 47, extend, or further extend, the time for giving the certificate and, where he so extends, or further extends, that time, the period within which the body corporate is required, under section 48, to lodge that certificate with the Commissioner is extended, or further extended, by the period by which that time is extended.

PART V—INVESTIGATIONS

50. (1) In this Part, unless the contrary intention appears—

Definitions.

“affairs”, in relation to a body corporate or to a body corporate associated with another body corporate, includes—

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the body corporate;
- (b) the ownership of shares in, debentures of and interests made available by the body corporate;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the body corporate or are or have been able to control or to influence materially the policy of the body corporate; and
- (d) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of or interests made available by the body corporate;

“inspector” includes a person exercising powers in pursuance of a delegation under section 59;

“interest” has the same meaning as in Division 5 of Part IV of the *Companies Ordinance 1962–1973* of the Australian Capital Territory;

“prescribed person”, in relation to a body corporate, means—

- (a) a person who is, or has at any time been, a director, secretary, officer or employee of the body corporate;
- (b) a person who acts or has at any time acted as banker, solicitor, auditor or in any other capacity for the body corporate;
- (c) a person who—
 - (i) has, or has at any time had, in his possession any property of the body corporate;
 - (ii) is indebted to the body corporate; or
 - (iii) is capable of giving information concerning the affairs of the body corporate; and

(d) where the Commissioner has given notice in writing to a person that he has reasonable grounds for believing that that person is a person referred to in paragraph (c), that person,

but does not include a receiver, official manager or liquidator of the body corporate.

(2) For the purposes of this Part, a body corporate is associated with another body corporate if the two bodies corporate are related to each other and—

- (a) the first-mentioned body corporate carries on insurance business; or
- (b) either of those bodies corporate is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other body corporate or of its directors,

and references in this Part to a body corporate having been associated with another body corporate shall be construed accordingly.

Enquiry by Commissioner and direction not to deal with certain assets.

51. (1) Where it appears to the Commissioner that a body corporate authorized under this Act to carry on insurance business is or is likely to become unable to meet its liabilities, he may—

- (a) by notice in writing served on the body corporate, direct it to furnish to him within such period after service of the notice, being not less than seven days, as he specifies in the notice, such information in writing about such matters in relation to the affairs of the body corporate as he so specifies; and
- (b) by notice in writing served on the body corporate, direct it not to dispose of or otherwise deal with or remove from Australia an asset in Australia specified in the notice during such period after service of the notice, being not more than six months, as he specifies in the notice.

(2) An appeal lies to the Tribunal against—

- (a) a direction given under paragraph (1) (b); and
- (b) where a direction given under that paragraph is varied, against the direction as varied.

(3) Nothing in sub-section (1) affects the validity of a transaction entered into by a body corporate in contravention of that sub-section.

(4) Where a body corporate in respect of which a direction has been given under paragraph (1) (b) is commenced to be wound up, the direction ceases to have effect.

(5) A body corporate shall not contravene or fail to comply with a direction given to it under sub-section (1).

Penalty: Ten thousand dollars.

52. (1) Where it appears to the Commissioner that a body corporate authorized under this Act to carry on insurance business—

Investigation of body corporate by inspector.

- (a) is, or is about to become, unable to meet its liabilities; or
- (b) has contravened or failed to comply with a provision of this Act or a condition or direction applicable to it under this Act,

he may, by notice in writing served on the body corporate, require it to show cause within such period after service of the notice, being not less than fourteen days, as he specifies in the notice, why, on such grounds as he so specifies, an inspector should not be appointed in respect of the body corporate.

(2) If the body corporate fails, within the period specified in the notice, to show cause to the satisfaction of the Commissioner why an inspector should not be so appointed in respect of the body corporate, the Treasurer may, if he is satisfied that, in relation to the insurance business carried on by the body corporate, it is in the public interest that an inspector be so appointed, by instrument in writing, appoint an inspector to make an investigation in respect of the body corporate.

(3) An inspector so appointed may be the Commissioner or some other person resident in Australia.

(4) The Treasurer shall, in the instrument appointing an inspector, specify the matters into which the investigation is to be made, being the whole or some part of the affairs of the body corporate.

(5) A person other than the Commissioner appointed under this section as an inspector shall, for the purposes of section 126, be deemed to be a member of the staff assisting the Commissioner.

53. (1) Where an inspector believes on reasonable grounds that it is necessary for the purposes of his investigation in respect of a body corporate to investigate the whole or some part of the affairs of another body corporate that is, or has at some relevant time been, associated with the body corporate in respect of which he is appointed, he may, with the consent in writing of the Treasurer, investigate the whole or that part of the affairs of that other body corporate.

Investigation of associated body corporate.

(2) Before commencing the investigation, the inspector shall serve on the body corporate a copy of the consent in writing of the Treasurer.

54. (1) Where an inspector empowered to investigate the whole or a part of the affairs of a body corporate believes on reasonable grounds that it is necessary for the purposes of his investigation to enter land or premises occupied by the body corporate, he may at all reasonable times enter the land or premises and may—

Entry on premises.

- (a) examine books on the land or premises that relate to the affairs of the body corporate or that he believes on reasonable grounds relate to those affairs;
- (b) take possession of any of those books for such period as he thinks necessary for the purposes of the investigation; and
- (c) make copies of or take extracts from any of those books.

(2) An inspector shall permit a person who would be entitled to inspect any books referred to in sub-section (1) if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) A person shall not obstruct or hinder an inspector in the exercise of his powers under this section.

Penalty: One thousand dollars or imprisonment for three months.

Powers of
inspector.

55. (1) An inspector may, by notice in writing given to a person who is a prescribed person in relation to a body corporate the whole or a part of the affairs of which he is investigating or in relation to a body corporate that is associated with that body corporate, require that person—

- (a) to produce to the inspector all or any of the books relating to the affairs of the body corporate that are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connexion with the investigation; or
- (c) to appear before the inspector for examination concerning matters relevant to the investigation.

(2) Where books are produced to an inspector under this section, the inspector may take possession of them for such period as he thinks necessary for the purposes of the investigation and may make copies of and take extracts from them but shall permit a person who would be entitled to inspect any of them if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) A person who complies with a requirement of an inspector under this section does not incur any liability to any other person by reason only of that compliance.

Persons to
comply with
requirements
of inspector.

56. (1) A person under this Part, shall not—

- (a) refuse or fail to comply with a requirement of an inspector under section 55 that is applicable to him, to the extent to which he is able to comply with it;
- (b) in purported compliance with such a requirement, furnish information or make a statement that he knows to be false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement, make a statement that he knows to be false or misleading in a material particular.

Penalty: One thousand dollars or imprisonment for three months.

(2) A person being examined by an inspector is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the person informs the inspector before answering the question that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings in relation to an offence under sub-section (1).

57. A barrister or solicitor acting for a person being examined by an inspector—

- (a) may attend the examination; and
- (b) may, to the extent that the inspector allows—
 - (i) address the inspector; and
 - (ii) examine the person,

in relation to matters in respect of which the inspector has questioned the person.

Person may be represented by legal practitioner.

58. (1) An inspector may cause notes of an examination of a person under this Part to be recorded in writing and read to or by that person and may require that person to sign the notes and, subject to sub-section 56 (2), notes signed by that person may be used in evidence in proceedings under this Act against that person.

Notes of examination of person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing to the inspector.

(3) Where notes are recorded under this section, the notes shall be furnished to the Treasurer with the report of the investigation to which they relate made under this Part.

59. (1) An inspector appointed to investigate the whole or a part of the affairs of a body corporate may, by instrument in writing signed by him, delegate to a member of the staff assisting the Commissioner any of his powers under this Part, except this power of delegation.

Delegation.

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

(3) A delegate shall, on the request of an officer of a body corporate in relation to which the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power by the inspector.

(5) A reference in this Part to an inspector shall be read as including a reference to a delegate of an inspector.

60. (1) An inspector—

- (a) may make one or more reports in writing to the Treasurer during the investigation of the whole or a part of the affairs of a body corporate and shall, if so directed in writing by the Treasurer, make such reports as are specified in the direction; and
- (b) shall, on the completion or termination of the investigation, report in writing to the Treasurer on the result of the investigation.

Report of inspector.

(2) A report made on the completion of the investigation shall include—

- (a) a statement of the opinion of the inspector in relation to the ability of the body corporate to meet its liabilities and the facts on which that opinion is based;
- (b) where affairs of a body corporate associated with the body corporate are investigated under this Part, a statement of the opinion of the inspector in relation to the effect of the association of the first-mentioned body corporate with the body corporate on the ability of the body corporate to meet its liabilities and the facts on which that opinion is based; and
- (c) the recommendations of the inspector with respect to—
 - (i) the question whether the body corporate should continue to be authorized to carry on insurance business;
 - (ii) any directions that should be given to the body corporate under section 62;
 - (iii) the question whether the affairs of the body corporate should be reorganized to enable it to meet its liabilities and continue to carry on business and, if so, the way in which they should be reorganized; and
 - (iv) such other matters affecting the body corporate or otherwise in the public interest in relation to the insurance business carried on by the body corporate as he thinks fit.

(3) A report made on the completion of the investigation may include statements of the opinion of the inspector in relation to the matters referred to in paragraphs (2) (a) and (b) and his recommendations with respect to the matters referred to in paragraph (2) (c).

(4) An inspector shall not include in a report a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in his opinion, a specified person has committed a criminal offence but, where an inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, he shall state that opinion in writing given to the Treasurer.

(5) Subject to sub-section (6), the Treasurer shall give a copy of a report made to him under this section to the body corporate.

(6) The Treasurer shall seek the advice of the Attorney-General before giving a copy of the report to the body corporate and shall not give a copy to the body corporate if the Attorney-General advises him that, having regard to proceedings that have been or might be instituted, a copy of the report should not be so given.

(7) Where a copy of the report has been given to the body corporate, the Treasurer may, if he considers it is in the public interest to do so and after taking into consideration any advice he has received from the Attorney-General, cause the whole or some part of the report to be published.

(8) A court before which proceedings whether under this Act or otherwise are brought against a body corporate or other person in respect of matters dealt with in a report under this Part may order that a copy of the report be given to the body corporate or that person.

61. (1) A person shall not—

Offences.

- (a) conceal, destroy, mutilate or alter a book relating to the affairs of a body corporate affairs of which are being investigated under this Part; or
- (b) send, cause to be sent, or conspire with another person to send, out of Australia a book or any money or property belonging to or under the control of such a body corporate.

Penalty: One thousand dollars or imprisonment for three months.

(2) In a prosecution for an offence under sub-section (1), it is a defence for the person charged to prove that he did not act with intent to defeat the purposes of this Part and did not act with intent to delay or obstruct the carrying out of the investigation under this Part.

62. (1) Where an investigation into affairs of a body corporate is being or has been made under this Part and it appears to the Treasurer that the body corporate is, or is about to become, unable to meet its liabilities or has contravened or failed to comply with a provision of this Act or a condition or direction applicable to it under this Act, he may, by notice in writing served on the body corporate, give any one or more of the following directions:—

Directions.

- (a) a direction that the body corporate shall not issue policies or undertake liability under contracts of insurance;
- (b) a direction that the body corporate shall not renew policies;
- (c) a direction that the body corporate shall not issue policies in respect of a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;
- (d) a direction that the body corporate shall not renew policies in respect of a class of insurance business specified in the direction;
- (e) a direction that the body corporate shall not dispose of or otherwise deal with an asset of the body corporate or an asset of the body corporate included in a class of assets specified in the direction;
- (f) a direction that the body corporate shall dispose of an asset of the body corporate or assets of the body corporate included in a class of assets specified in the direction, in such manner and within such period after the giving of the direction, not being less than twenty-one days, as the Treasurer so specifies;
- (g) a direction that the body corporate shall, within such period after the giving of the direction, not being less than twenty-one days, as the Treasurer specifies in the direction, make in its accounts

such provision or further provision as he so specifies in respect of unearned premiums or claims or in respect of both unearned premiums and claims;

- (h) a direction that the body corporate shall make, so far as it is able to do so, such arrangements with respect to reinsurance as he so specifies;
- (i) a direction that the body corporate shall increase, so far as it is able to do so, its paid-up capital, whether by calling up such uncalled capital as is available to be called up or otherwise;
- (j) a direction that the body corporate shall not, except with the consent of the Treasurer—
 - (i) enter into an arrangement or agreement for the sale or disposal of its business by amalgamation or otherwise or for the carrying on of its business in partnership with another body corporate; or
 - (ii) effect a reconstruction of the body corporate.

(2) The Treasurer shall cause a copy of a notice under paragraph (1) (a), (b), (c) or (d) to be published in the *Gazette*.

(3) An appeal lies to the Tribunal—

(a) against a direction given under this section; and

(b) where a direction given under this section is varied, against the direction as varied.

(4) Where a direction is given under paragraph (1) (a), (b), (c) or (d), the body corporate shall, notwithstanding that it appeals against the direction, comply with the direction.

(5) The consent of the Treasurer under paragraph (1) (j) shall not be unreasonably withheld.

(6) Nothing in this section affects the validity of a transaction entered into by a body corporate in contravention of sub-section (1).

(7) Where a direction has been given to a body corporate under this section and it appears to the Treasurer that the direction is no longer necessary or should be varied, the Treasurer shall, by notice in writing served on the body corporate, revoke or vary the direction.

(8) Where a body corporate in respect of which a direction has been given under this section is commenced to be wound up, the direction ceases to have effect.

(9) A body corporate shall not contravene or fail to comply with a direction given to it under paragraph (1) (a), (b), (c) or (d).

Penalty: Ten thousand dollars for each day during which the contravention continues.

(10) A body corporate shall not contravene or fail to comply with a direction given to it under paragraph (1) (e), (f), (g), (h), (i) or (j).

Penalty: Ten thousand dollars.

(11) In sub-sections (4), (9) and (10), "direction" includes, where a direction is varied, the direction as varied.

(12) A direction given under paragraph (1) (a), (b), (c) or (d) has effect and shall be complied with notwithstanding anything in any law of a State or Territory.

PART VI—THE INSURANCE TRIBUNAL

Division 1—*Constitution of the Tribunal*

63. (1) There is hereby established an Insurance Tribunal, which shall consist of a Chairman and three other members. Constitution of Tribunal.

(2) A member of the Tribunal shall be appointed by the Governor-General.

64. (1) A person shall not be appointed as Chairman unless he is a Judge of a Federal Court or of the Supreme Court of a State or of the Australian Capital Territory or the Northern Territory of Australia. Qualification of members.

(2) A person shall not be appointed as a member other than the Chairman unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, insurance business.

(3) A person shall not be appointed as a member if he is, and a member shall cease to be a member if he becomes, a director or employee of a person who carries on insurance business in Australia.

65. (1) Subject to this Part, a member holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Terms and conditions of appointment.

(2) Subject to this Part, the Governor-General may, in the instrument of appointment of a member, specify terms and conditions of appointment.

66. A member other than a member who is a Judge of a Federal Court or of a court of a State or of a Territory shall be paid— Remuneration.

(a) remuneration at the prescribed rate in respect of each day on which he sits as a member of the Tribunal for the purpose of hearing and determining proceedings; and

(b) such allowances in respect of travelling expenses as are prescribed.

Acting
appoint-
ments.

67. (1) Where the Chairman is unable, whether on account of illness or otherwise, to perform the functions of his office, or there is a vacancy in the office of Chairman, the Treasurer may appoint a person who is a barrister or solicitor of not less than five years' standing to act as Chairman during the period of inability or until the filling of the vacancy.

(2) Where a member other than the Chairman is unable, whether on account of illness or otherwise, to perform the functions of his office, the Treasurer may appoint a person qualified to be appointed as a member other than the Chairman to act as such a member during the period of inability.

(3) Where a person has been appointed under this section to act as a member during the period of inability of a member, and that member ceases to hold office without having resumed the performance of the functions of his office, the period of appointment of the person so appointed shall be deemed to continue until the appointment is terminated by the Governor-General or until the expiration of the period of twelve months after the date on which that member ceases to hold office, whichever first happens.

(4) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

Termination
of appoint-
ment.

68. The Governor-General may terminate the appointment of a member on the ground of physical or mental incapacity.

Suspension
and removal
of members.

69. (1) The Governor-General may suspend a member from office on the ground of misbehaviour.

(2) The Treasurer shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within seven sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within fifteen sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member should be restored to office and, if each House so passes such a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of fifteen sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the member from office.

(5) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(6) The Governor-General may terminate the appointment of the Chairman if he no longer holds office as a person referred to in sub-section 64 (1).

(7) The appointment of a member shall not be terminated except as provided by this section and sections 67 and 68.

70. A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation.

71. A member shall, to the best of his knowledge, disclose to the Chairman any direct or indirect pecuniary interest that the member has in any insurance business carried on in Australia, or in any body corporate carrying on any such business, being an interest that could be in conflict with his duties as a member of the Tribunal in any proceedings. Disclosure of financial interests of members.

72. A member has, in the performance of his duty as a member, the same protection and immunity as a Justice of the High Court has in respect of proceedings in the High Court. Protection of members.

73. The staff necessary to assist the Tribunal shall be persons employed under, or whose services are made available in accordance with arrangements made under, the *Public Service Act* 1922-1973. Staff.

74. (1) This section applies to every person who is or has been a member of the Tribunal or a member of the staff assisting the Tribunal. Secrecy.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty or exercise of a function under or in connexion with this Part, make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Part.

Penalty: One thousand dollars or imprisonment for three months.

(3) A person to whom this section applies shall not be required to produce in a court a document relating to the affairs of another person to which he has access, by virtue of his office or employment under or for the purposes of this Part, or to divulge or communicate to a court any information concerning the affairs of another person acquired by him by reason of any such office or employment, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act.

(4) In this section—

“ court ” includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

“ produce ” includes permit access to and “ production ” has a corresponding meaning.

Division 2—Appeals to the Tribunal

Appeals.

75. (1) An appeal to the Tribunal under this Act—

(a) may be made—

(i) by the body corporate concerned;

(ii) in the case of an appeal under section 46, by the auditor concerned; or

(iii) in the case of an appeal under Part VII, by Lloyd's or a Lloyd's underwriter; and

(b) shall, except in the case of an appeal under section 76, be made in accordance with this section.

(2) A person entitled to appeal may, by notice in writing given to the Treasurer or Commissioner, as the case may be, within the period of twenty-eight days after receiving notice of the decision, request to be given the reasons for the decision.

(3) The Treasurer or Commissioner, as the case may be, shall, within the period of fourteen days after receiving the request, give to the person making the request, a statement in writing of the reasons for the decision.

(4) The person may, by notice in writing given to the Treasurer or Commissioner, as the case may be, within the period of fourteen days after receiving the statement given under sub-section (3), submit reasons why the decision should be revoked or varied.

(5) The Treasurer or the Commissioner, as the case may be, unless he revokes or varies the decision in accordance with section 76, shall, within the period of seven days after receiving a submission under sub-section (4), lodge with the Tribunal the submission, a copy of the statement of the reasons for the decision and all other relevant documents in his possession.

(6) Where a submission, statement and other documents are lodged with the Tribunal under sub-section (5), the Tribunal shall set the matter down for hearing and shall give notice in writing to the Treasurer or the Commissioner, as the case may be, and to the person who made the submission stating the time when and place where the hearing will be held.

76. (1) Where the Treasurer or Commissioner, as the case may be, has received a request or submission under section 75 with respect to a decision, he may revoke or vary the decision. Revocation or variation of decision.

(2) Where the Treasurer or Commissioner so revokes or varies a decision, he shall give notice in writing of the revocation or variation to the person who made the request or submission.

(3) An appeal lies to the Tribunal against a decision of the Treasurer or Commissioner as varied under this section and may be made within twenty-eight days after the date on which notice of the variation of the decision was given to the person entitled to appeal.

77. In this Division, "decision" includes determination, direction and any other instrument or matter in respect of which provision is made by this Act for an appeal to the Tribunal. Interpretation.

Division 3—Procedure of the Tribunal

78. In proceedings before the Tribunal—

- (a) the appeal shall be in the nature of a rehearing;
- (b) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal; and
- (c) the Tribunal is not bound by the rules of evidence.

Procedure generally.

79. (1) Subject to this Division, the Tribunal shall, for the purpose of hearing and determining proceedings, be constituted by the Chairman and two other members. Constitution of Tribunal.

(2) The Chairman may give directions as to the constitution of the Tribunal.

(3) The Chairman shall preside at meetings of the Tribunal at which he is present.

(4) At meetings of the Tribunal at which the Chairman is not present the member present whose first appointment as a member preceded the first appointment of the other member present shall preside.

80. A question before a Tribunal shall be decided according to the opinion of a majority of the members constituting the Tribunal. Questions to be decided by majority of Tribunal.

81. (1) Proceedings before the Tribunal shall take place in private.

(2) The Tribunal may give directions as to the persons who may be present at proceedings. Hearings to be in private.

Rehearing.

82. (1) Where the hearing of any proceedings has been commenced or completed by the Tribunal but, before the matter to which the proceedings relate has been decided, one of the members ceases to be a member or ceases to be available for the purposes of the proceedings—

- (a) where the parties so agree, the hearing and determination of the matter may be completed by the Tribunal constituted by the two remaining members; and
- (b) where the parties do not so agree, the proceedings shall be reheard by the Tribunal.

(2) Where the Tribunal constituted by two members completes the hearing of a matter but does not decide the matter because the members do not agree on the decision, the proceedings shall be reheard by the Tribunal.

(3) Where proceedings are reheard by the Tribunal, the Tribunal may, for the purposes of those proceedings, have regard to any record of the proceedings before the Tribunal as previously constituted.

Power to take evidence.

83. (1) The Tribunal may take evidence on oath or affirmation and for that purpose the Chairman may administer an oath or affirmation.

(2) The Tribunal may, if it thinks fit, permit a person appearing as a witness before the Tribunal to give evidence by tendering and verifying by oath or affirmation a written statement.

(3) A member may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

(4) In proceedings before the Tribunal, a party may call witnesses.

(5) A person appearing as a witness before the Tribunal may be examined, cross-examined and re-examined.

Incriminating answers.

84. (1) A person appearing as a witness before the Tribunal is not excused from answering a question, or producing a document, on the ground that the answer to the question, or the document, may tend to incriminate him.

(2) Evidence given by a person before the Tribunal is not admissible against him in any criminal proceedings other than proceedings under or arising out of Division 4.

(3) Subject to this Act, a person appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

Representation.

85. (1) In proceedings before the Tribunal—

- (a) a party, being a body corporate, may be represented by an employee, or by a director or other officer, of the party approved by the Tribunal; and
- (b) a party may be represented by a barrister or solicitor.

(2) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

86. The Tribunal shall give a copy in writing of its decision in any proceedings, and of the reasons for the decision, to the Treasurer or the Commissioner, as the case may be, and to each other party to the proceedings.

Decision of Tribunal.

87. The Treasurer or the Commissioner, as the case may be, shall take such action (if any) as is necessary to give effect to a decision of the Tribunal.

Treasurer or Commissioner to give effect to decision of Tribunal.

88. (1) The Tribunal may, of its own motion, or, if it thinks fit, on the application of a party, refer a question of law arising in proceedings before it for determination by the Court.

Reference of questions of law to Commonwealth Industrial Court.

(2) Jurisdiction is conferred on the Court to hear and determine a question of law referred to it under this section.

(3) Where a question of law arising in any proceedings has been referred to the Court under this section, the Tribunal shall not, in those proceedings—

- (a) make a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the Court on the question.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding of fact by the Tribunal.

89. (1) Subject to sub-section (2), the jurisdiction conferred on the Court under section 88 shall be exercised by a single Judge.

Exercise of jurisdiction of Commonwealth Industrial Court by single Judge except as Chief Judge directs.

(2) The Chief Judge of the Court may, if in his opinion a question of law referred to the Court under section 88 involves the determination of a matter of sufficient importance, direct that, for the purpose of the determination of that question, the Court shall be constituted by not less than three Judges.

Division 4—Offences in relation to the Tribunal

90. A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

Failure of witness to attend.

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by the Tribunal.

Penalty: One thousand dollars or imprisonment for three months.

Witness
refusing to
be sworn,
&c.

91. A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required to answer by the Chairman; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Part served on him as prescribed.

Penalty: One thousand dollars or imprisonment for three months.

Contempt of
Tribunal, &c.

92. A person shall not—

- (a) insult or disturb a member in the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Tribunal;
- (c) use insulting language towards a member;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting; or
- (e) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: One thousand dollars or imprisonment for three months.

PART VII—LLOYD'S

Lloyd's
under-
writers.

93. (1) Subject to this Part, Lloyd's underwriters are authorized to carry on insurance business.

(2) Where it appears to the Commissioner that—

- (a) there has been a contravention of, or failure to comply with, any of the provisions of the Schedule;
- (b) by reason of the enactment of an Imperial Act, a substantial change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or
- (c) by reason of the making of a by-law by Lloyd's, the rights or obligations of Lloyd's underwriters are substantially changed,

the Commissioner may, by notice in writing served on Lloyd's, require Lloyd's to show cause, within such period after service of the notice, not being less than fourteen days, as he specifies in the notice, why this Part should not cease to have effect.

(3) If Lloyd's fails to show cause to the satisfaction of the Treasurer within the period specified in the notice, the Treasurer may determine that this Part is to cease to have effect upon—

- (a) the expiration of the period of three months after the service of the notice by the Commissioner; or

(b) where, within that period of three months—

- (i) an appeal is made under this Part to the Tribunal; or
- (ii) proceedings are pending or have commenced in relation to the determination of the Treasurer,

the expiration of the period determined in accordance with sub-section (6),

whichever is the later.

(4) Where the Treasurer makes a determination under sub-section (3), he shall give notice of the determination by instrument in writing served on Lloyd's.

(5) Lloyd's or a Lloyd's underwriter may appeal to the Tribunal against a determination of the Treasurer under sub-section (3).

(6) Where—

- (a) an appeal has been made under this Part to the Tribunal; or
- (b) within the period of three months after the service of the notice referred to in sub-section (2), proceedings in a court are pending, or have commenced but have not been determined, in relation to the determination of the Treasurer under sub-section (3),

this Part is to cease to have effect upon the expiration of—

- (c) the period of three months after the determination of the appeal to the Tribunal;
- (d) the period of one month after the day on which the proceedings referred to in paragraph (b) are determined or discontinued; or
- (e) where an appeal is instituted in relation to those proceedings within the period of one month referred to in paragraph (d) and a period is determined under sub-section (7)—the period so determined,

whichever is the later.

(7) A court in which an appeal referred to in paragraph (6) (e) is instituted may, having regard to the possibility of an appeal to the High Court, determine a period for the purposes of that sub-section at the expiration of which this Part is to cease to have effect.

(8) In sub-sections (6) and (7), " appeal " means an appeal or application for leave to appeal against a determination of the Tribunal or of a court.

(9) For the purposes of this section, where an application for leave to appeal is granted, the application shall be deemed not to have been determined or discontinued so long as—

- (a) the leave granted remains capable of being exercised; or
- (b) an appeal instituted in pursuance of the leave is pending.

(10) This Part ceases to have effect upon the expiration of the period upon the expiration of which it is, under sub-section (3), to cease to have effect and thereupon—

- (a) the Treasurer shall cause notice that this Part has ceased to have effect to be published in the *Gazette*;
- (b) the Treasurer shall return to Lloyd's such of the securities of the Commonwealth deposited by Lloyd's in accordance with the Schedule as have not been applied in satisfaction of a judgment in accordance with this Part; and
- (c) section 8 of the *Acts Interpretation Act 1901-1966* applies as if this Part had been repealed by an Act other than this Act.

Application of securities, &c.

94. (1) Subject to sub-section (2), the securities lodged by Lloyd's with the Treasurer under the Schedule and amounts paid by a bank in accordance with a covenant given to the Treasurer in accordance with the Schedule are available to satisfy a final judgment obtained in Australia against a Lloyd's underwriter in respect of a liability under a policy of insurance and the Treasurer may apply the securities and, if the securities are not sufficient, amounts so paid, in satisfaction of the judgment.

(2) The Treasurer shall not apply securities or amounts paid by a bank in satisfaction of a judgment unless—

- (a) he has, by notice in writing served on Lloyd's, informed Lloyd's of the intention so to apply the securities or amounts; and
- (b) a period of thirty days has elapsed after the date on which the notice was served.

Acts of agent deemed to be acts of Lloyd's.

95. Everything done in his representative capacity by a person appointed by Lloyd's as, or to act as, its agent in accordance with the Schedule shall, for the purposes of this Part, be deemed to have been done by Lloyd's, but this section does not affect any liability of the agent under this Part.

Service of notices.

96. A notice required or permitted to be served on, or given to, Lloyd's under or for the purposes of this Part may be served or given by leaving it at the address for service notified to the Commissioner in accordance with the Schedule or by sending it by registered post to Lloyd's at that address.

Amounts to be expressed in Australian currency.

97. Where this Part or the Schedule has effect with respect to an amount or value in relation to a particular day and that amount or value is in a currency other than Australian currency, the amount or value shall be converted into Australian currency at the rate of exchange that is, at the close of business on that day, the telegraphic transfer buying rate of exchange of the bank that is the principal banker of Lloyd's in accordance with the Schedule or, if there is no such rate on that day, at the telegraphic transfer buying rate of exchange of that bank at the close of business on the last day on which there was such a rate.

98. Nothing in this Part authorizes the carrying on by a Lloyd's underwriter of any business that he would not have been authorized to carry on if this Part had not been enacted.

Part does not authorize Lloyd's underwriter to carry on any business he could not otherwise have carried on.

PART VIII—EFFECT OF ACT ON OTHER LAWS

99. (1) It is the intention of the Parliament that sub-sections 21 (2) and (3) shall not, subject to sub-section (2), apply to the exclusion of a law of a State or Territory.

S-ss. 21 (2) and (3) not to affect State and Territory laws except in certain cases.

(2) Sub-section (1) does not apply in relation to a law in so far as that law has the effect of—

- (a) authorizing a body corporate or a Lloyd's underwriter to carry on insurance business generally; or
- (b) authorizing a body corporate, being a body corporate that is not authorized under this Act to carry on insurance business, to carry on specified insurance business or to carry on insurance business included in a specified class of insurance business.

100. Subject to section 99, it is the intention of the Parliament that no provision of this Act shall apply to the exclusion of a law of a State or Territory in so far as that law has the effect of—

Act not to affect certain State and Territory laws.

- (a) prohibiting a person from carrying on, or affecting the right of a person to carry on, insurance business by reason only of his failure to comply with that law in relation to the payment of an amount of money by way of stamp duty or otherwise;
- (b) requiring a specified contract of insurance or a contract included in a specified class of contracts of insurance to be made with a specified person or a person included in a specified class of persons;
- (c) prohibiting a person other than a specified person or a person included in a specified class of persons, from carrying on specified insurance business or insurance business included in a specified class of insurance business or from undertaking liability under a specified contract of insurance or a contract included in a specified class of contracts of insurance;
- (d) requiring a person authorized under this Act to carry on insurance business—
 - (i) to carry on any specified insurance business or insurance business included in a specified class of insurance business; or
 - (ii) to undertake liability under a specified contract of insurance or a contract of insurance included in a specified class of contracts of insurance;

(e) limiting or affecting—

- (i) the class or classes of insurance business that a person authorized under this Act to carry on insurance business may carry on; or
- (ii) the class or classes of contracts of insurance under which such a person may undertake liability; or

(f) making provision for or in relation to a prescribed matter.

Saving of s. 5A of *Motor Vehicles (Third Party Insurance) Ordinance 1952-1972* of Papua New Guinea.

101. It is the intention of the Parliament that this Act shall not apply to the exclusion of section 5A of the *Motor Vehicles (Third Party Insurance) Ordinance 1952-1972* of Papua New Guinea.

Part IV not to affect operation of certain State and Territory laws.

102. It is the intention of the Parliament that Part IV shall not apply to the exclusion of a law of a State or Territory in so far as that law makes provision with respect to accounts or accounting records of a body corporate.

Part V not to affect operation of certain State and Territory laws.

103. It is the intention of the Parliament that Part V shall not apply to the exclusion of a law of a State or Territory in so far as that law makes provision for an investigation into the affairs of a body corporate.

Part subject to ss. 110, 111 and 112.

104. This Part has effect subject to sections 110, 111 and 112.

PART IX—TRANSITIONAL PROVISIONS

Bodies corporate ceasing to carry on insurance business.

105. (1) Where a body corporate that carried on insurance business in Australia immediately before the date of commencement of section 21 and has a deposit lodged with the Treasurer as required by the *Insurance (Deposits) Act 1932-1973*

- (a) notifies the Commissioner in writing that it does not intend to make an application under Part III for an authority to carry on insurance business;
- (b) has not, within the period of three months after that date, made such an application; or
- (c) has made such an application but the Treasurer has refused to grant an authority,

the Commissioner may, by notice in writing served on the body corporate, require it to furnish, within such period, not being less than seven days, as he specifies in the notice, particulars of its proposals for and in relation to ceasing to carry on insurance business in Australia.

(2) Where a body corporate fails to comply with a notice under sub-section (1) or the Commissioner is not satisfied, from particulars furnished by a body corporate in compliance with that sub-section, that the proposals of the body corporate for and in relation to ceasing to carry on insurance business are in the best interests of the public, the Commissioner may, by notice in writing served on the body corporate, require it to show cause, within such period after service of the notice, being not less than fourteen days, as he specifies in the notice, why an inspector should not be appointed in respect of the body corporate.

(3) The Treasurer may, if he is satisfied that cause has not been shown why an inspector should not be so appointed, appoint an inspector to make an investigation in respect of the body corporate.

(4) An inspector so appointed may be the Commissioner or some other person resident in Australia.

(5) The Treasurer shall, in the instrument appointing an inspector, specify the matters into which the investigation is to be made, being the whole or some part of the affairs of the body corporate.

(6) A person other than the Commissioner appointed under this section as an inspector shall, for the purposes of section 126, be deemed to be a member of the staff assisting the Commissioner.

(7) The provisions of section 50 and of sections 53 to 61 (inclusive) apply to and in relation to an investigation of the affairs of a body corporate under this section.

(8) Where an investigation of affairs of a body corporate has been made under this section and the Treasurer is not satisfied that any insurance business of the body corporate is being terminated in accordance with the best interests of the public, the Treasurer may, by notice in writing served on the body corporate, direct that the body corporate shall not do such of the following as he specifies in the notice unless it has obtained the consent in writing of the Commissioner:—

- (a) invest an asset of the body corporate or an asset included in a specified class of assets of the body corporate;
- (b) otherwise deal with or dispose of an asset of the body corporate or an asset included in a specified class of assets of the body corporate;
- (c) enter into a contract or a contract included in a specified class of contracts under which a liability is or may be incurred by the body corporate;
- (d) enter into an arrangement or agreement for the sale or disposal of the business or of any part of the business of the body corporate by amalgamation or otherwise or for the carrying on of its business in partnership with another body corporate;
- (e) effect a reconstruction of the body corporate.

(9) The consent of the Commissioner under sub-section (8) shall not be unreasonably withheld.

(10) An appeal lies to the Tribunal—

(a) against a direction given under sub-section (8); and

(b) where a direction given under that sub-section is varied, against the direction as varied.

(11) Nothing in this section affects the validity of a transaction entered into by a body corporate in contravention of a direction under sub-section (8).

(12) Where a direction has been given to a body corporate under this section and it appears to the Treasurer that the direction is no longer necessary or should be varied, the Treasurer shall, by notice in writing served on the body corporate, revoke or vary the direction.

(13) Where a body corporate in respect of which a direction has been given under this section is commenced to be wound up, the direction ceases to have effect.

(14) In this section, " affairs " has the same meaning as in Part V.

(15) A body corporate shall not contravene or fail to comply with this section or with a direction given to it under this section.

Penalty: Ten thousand dollars.

Persons
ceasing to
carry on
insurance
business.

106. (1) The Commissioner may, by notice in writing served on a person (not being a body corporate or a Lloyd's underwriter) who carried on insurance business in Australia immediately before the date of commencement of section 21 and has a deposit lodged with the Treasurer as required by the *Insurance (Deposits) Act 1932-1973*, require that person to furnish, within such period after service of the notice, not being less than seven days, as he specifies in the notice, particulars of his proposals for and in relation to ceasing to carry on insurance business in Australia.

(2) A person shall not fail to comply with a notice given to him under sub-section (1).

Penalty: One thousand dollars for each day during which the contravention continues.

Person not
to be
deemed to
be carrying
on insurance
business by
reason only
that he
discharges
liabilities.

107. (1) A person is not guilty of an offence against sub-section 21 (1) by reason only that he is carrying on business for the purpose of discharging liabilities assumed by him before the expiration of the period of six months after the date of commencement of that section.

(2) A body corporate is not guilty of an offence against sub-section 21 (2) by reason only that it is carrying on business for the purpose of discharging liabilities assumed by it before the date of commencement of that section.

108. (1) A body corporate that—

- (a) carried on insurance business in Australia before the date of commencement of section 21; and
- (b) has not been refused an authority under section 27.

is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carries on such business during the period of three months after that date.

Transitional provisions relating to bodies corporate that carried on insurance business before commencement of s. 21.

(2) A body corporate that—

- (a) carried on insurance business in Australia before the date of commencement of section 21;
- (b) has, within the period of three months after that date, made an application under section 22 for an authority to carry on insurance business; and
- (c) has not been refused an authority under section 27,

is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carries on such business after the expiration of the period of three months after that date.

109. A body corporate is not required to lodge with the Commissioner—

- (a) accounts or statements under sub-section 44 (1) or (3) in respect of a financial year of the body corporate that commenced before the date of commencement of that sub-section; or
- (b) a statement under sub-section 44 (4), (5) or (6) in respect of a day before, or a period that commenced before, that date.

Transitional provision relating to accounts and statements under Part IV.

110. (1) It is the intention of the Parliament that this Act shall not, during the period of three months after the date of commencement of section 21, apply to the exclusion of the law of a State or Territory in so far as that law makes provision for or in relation to all of the following matters:—

- (a) prohibiting a corporation from undertaking or carrying on as an insurer any business of insurance unless it is licensed under that law as an insurer;
- (b) the grant to a corporation of a licence as an insurer;
- (c) the cancellation or suspension of such a licence;
- (d) imposing obligations on a corporation licensed under that law as an insurer.

Transitional provisions relating to certain State and Territory laws after commencement of s. 21.

(2) In sub-section (1), "corporation" means a body corporate that is not authorized under this Act to carry on insurance business or is so authorized but is not subject to all the conditions referred to in paragraphs 29 (a), (b), (c) and (d).

(3) It is the intention of the Parliament that this Act shall not, during the period of six months after the date of commencement of section 21, apply to the exclusion of a law of a State or Territory in so far as that law prohibits a person, not being a body corporate or a Lloyd's underwriter, from undertaking or carrying on as an insurer any business of insurance.

Transitional provisions relating to certain State and Territory laws in respect of bodies corporate authorized under s. 25.

111. (1) It is the intention of the Parliament that this Act shall not, during the period of two years after the date of commencement of section 21, apply to the exclusion of the law of a State or Territory of the Commonwealth in so far as that law makes provision for or in relation to all of the following matters:—

- (a) prohibiting a corporation from undertaking or carrying on as an insurer any business of insurance unless it is licensed under that law as an insurer;
- (b) the cancellation or suspension of a licence as an insurer granted under that law to a corporation;
- (c) imposing obligations on a corporation licensed under that law as an insurer.

(2) In sub-section (1), "corporation" means a body corporate that is authorized under this Act to carry on insurance business but is not subject to all the conditions referred to in paragraphs 29 (a), (b), (c) and (d).

Transitional provisions relating to certain State and Territory laws in respect of bodies corporate that have made application under s. 22.

112. (1) It is the intention of the Parliament that this Act shall not, after the expiration of the period of three months after the date of commencement of section 21, apply to the exclusion of the law of a State or Territory in so far as that law makes provision for or in relation to all of the following matters:—

- (a) prohibiting a corporation from undertaking or carrying on as an insurer any business of insurance unless it is licensed under that law as an insurer;
- (b) the grant to a corporation of a licence as an insurer;
- (c) the cancellation or suspension of such a licence;
- (d) imposing obligations on a corporation licensed under that law as an insurer.

(2) In sub-section (1), "corporation" means a body corporate that—

- (a) has, within the period of three months after the date of commencement of section 21, made an application under section 22 for an authority to carry on insurance business;
- (b) is not authorized under this Act to carry on insurance business; and
- (c) has not been refused an authority under section 27.

PART X - MISCELLANEOUS

Person not to act as agent for unauthorized person.

113. (1) A person shall not, as agent for another person, whether that other person is in Australia or not, enter into a contract of insurance under which that other person is the insurer unless that other person is authorized under this Act to carry on insurance business.

(2) In sub-section (1), "insurance" has a meaning that corresponds to the definition of "insurance business" in section 3.

(3) A body corporate which contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding Ten thousand dollars and a person, other than a body corporate, who contravenes that sub-section is guilty of an offence punishable, on conviction, by a fine not exceeding Two thousand dollars.

114. Where a body corporate authorized under this Act to carry on insurance business carries on any business of insurance in a place outside Australia and—

- (a) its right to carry on that business ceases; or
- (b) under a law of that place relating to the carrying on of a business of insurance, the right of the body corporate to carry on a business of insurance in that place has ceased, is limited or is affected,

the body corporate shall forthwith, by notice in writing given to the Commissioner, inform the Commissioner accordingly.

Body corporate to give notice of certain matters relating to business outside Australia.

115. (1) For the purpose of ascertaining whether a body corporate authorized under this Act to carry on insurance business is complying with the provisions of this Act, the Commissioner or a person authorized by him may inspect, and may require an officer of the body corporate to produce to him, any books required by or under this Act to be kept by the body corporate.

Power to inspect books.

(2) The officer shall comply with the requirement so made.

(3) In sub-sections (1) and (2), "officer" includes a director or secretary, or an employee concerned in the management of the body corporate.

(4) A person shall not obstruct or hinder the Commissioner or person authorized by the Commissioner while the Commissioner or that person is exercising a power referred to in sub-section (1).

Penalty: One thousand dollars or imprisonment for three months.

116. (1) Where a body corporate authorized under this Act to carry on insurance business is commenced to be wound up, the body corporate shall not, after the date of commencement of the winding up, carry on insurance business.

Body corporate not to carry on insurance business after commencement of winding up.

(2) A body corporate is not guilty of a contravention of sub-section (1) by reason only that it is carrying on business for the purpose of discharging liabilities assumed by it before the date of commencement of the winding up.

(3) In the winding up of a body corporate authorized under this Act to carry on insurance business, the assets in Australia of the body corporate shall not be applied in the discharge of its liabilities other than its liabilities in Australia unless it has no liabilities in Australia.

(4) Section 31 has effect for the purposes of this section.

(5) Nothing in this section affects the validity of a contract entered into by a body corporate after it is commenced to be wound up.

(6) This section has effect and shall be complied with notwithstanding anything in any law of a State or Territory.

Address for
service in
Australia.

117. (1) A body corporate that is not incorporated in Australia and is authorized under this Act to carry on insurance business shall, at all times while it is so authorized, have an address in Australia for service for the purposes of this Act.

(2) The address does not become the address for service of the body corporate until the body corporate has given notice in writing of the address to the Commissioner and an address so notified continues to be the address for service of the body corporate until another address has been so notified.

Agent in
Australia.

118. (1) A body corporate that is not incorporated in Australia and is authorized under this Act to carry on insurance business shall, at all times while it is so authorized, be represented for the purposes of this Act by a person (not being a body corporate) resident in Australia and appointed by the body corporate as the agent of the body corporate for the purposes of this Act.

(2) Where the agent of a body corporate appointed under sub-section (1) is, or is about to be, absent from Australia or, for any reason, unable to perform his duties as such an agent, the body corporate shall, if it does not revoke the appointment and appoint another person under that sub-section, appoint another person (not being a body corporate) resident in Australia to act as the agent of the body corporate for the purposes of this Act during the absence or inability.

(3) Where a person appointed under sub-section (2) to act as the agent of a body corporate is, or is about to be, absent from Australia or, for any reason, unable to perform the duties of such an agent, the body corporate shall revoke the appointment and appoint another person under that sub-section.

(4) An appointment under this section shall be deemed not to have been duly made or revoked until the body corporate has given notice in writing of the appointment or revocation to the Commissioner, specifying the name and, in the case of an appointment, the place of residence of the person appointed.

(5) Everything done by the agent, or a person acting as the agent, of a body corporate in his representative capacity shall, for the purposes of this Act, be deemed to have been done by the body corporate, but this sub-section does not affect any liability of the agent or person under this Act.

Principal
banker.

119. (1) A body corporate authorized under this Act to carry on insurance business in Australia shall, at all times while it is so authorized, have as its principal banker for the purposes of this Act a bank within the meaning of the *Banking Act 1959-1967* or a bank constituted by a law of a State.

(2) A bank referred to in sub-section (1) does not become the principal banker of the body corporate until the body corporate has given to the Commissioner notice in writing of the appointment of the bank and, subject to sub-section (3), a bank so notified continues to be the principal banker of the body corporate until another bank has been so notified.

(3) During a period during which a principal banker so notified is not authorized to buy foreign currency from, and sell foreign currency to, a person other than the Reserve Bank of Australia, the principal banker so notified is not the principal banker of the body corporate and the principal banker of the body corporate is such bank as the Commissioner determines.

120. If Part VII ceases to have effect, a Lloyd's underwriter is not guilty of an offence against sub-section 21 (3) by reason only that he is carrying on business for the purpose of discharging liabilities assumed by him before that Part ceased to have effect. Saving if Part VII ceases to have effect.

121. (1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, except Part VII, may be served or given-- Service of documents and notices.

- (a) in the case of a person other than a body corporate, by serving it personally upon the person or by sending it by registered post to the person at his usual or last known place of abode or business;
- (b) in the case of a body corporate incorporated in Australia, by leaving it at or sending it by registered post to the registered office of the body corporate; or
- (c) in the case of a body corporate not incorporated in Australia, by leaving it at the address for service of the body corporate notified to the Commissioner in accordance with section 117 or by sending it by registered post to the body corporate at that address.

(2) In sub-section (1), "registered office" means the office of the body corporate that is the registered office in accordance with the law of the State or Territory by or under which the body corporate is incorporated.

122. (1) For the purposes of this Act, the Commissioner shall cause to be kept a register to be known as the Register of Authorized Insurers. Register to be kept.

(2) Subject to this Act and to any regulations, the Register shall be kept in such form and manner as the Commissioner directs.

123. A person may, on application in accordance with the regulations and on payment of the prescribed fee (if any)— Inspection of Register and accounts.

- (a) inspect the Register of Authorized Insurers;
- (b) inspect an underwriting account, profit and loss account or balance-sheet lodged with the Commissioner under section 44; and
- (c) make a copy of, or take extracts from, such an underwriting account, profit and loss account or balance-sheet.

Evidence and
judicial
notice.

124. (1) A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of the Register of Authorized Insurers shall be received in all courts as evidence of the matter certified.

(2) All courts shall take judicial notice of the official signature of any person who is or has been the Commissioner and of the fact that that person is or was the Commissioner.

(3) In this section, " court " includes a Federal court and a court of a State or Territory and all persons authorized by a law of the Commonwealth, of a State or of a Territory or by consent of parties to receive evidence.

Annual
report.

125. (1) The Commissioner shall, within three months after each year ending on 30th June, furnish to the Treasurer for presentation to the Parliament a report on the working of this Act during that year.

(2) The first report under the last preceding sub-section shall relate to the period commencing on the date of commencement of section 21 and ending on the next succeeding 30th June.

Secrecy.

126. (1) This section applies to every person who is or has been the Commissioner or a member of the staff assisting the Commissioner.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty: One thousand dollars or imprisonment for three months.

(3) This section does not prevent the communication of information or the production of a document, by the Commissioner or by a member of the staff assisting the Commissioner authorized by him in that behalf to a person to whom, in the opinion of the Treasurer, it is in the public interest that the information be communicated or the document produced.

Statistics.

127. (1) Notwithstanding section 126, the Commissioner or a member of the staff assisting the Commissioner authorized by him in that behalf may—

(a) furnish to the Commonwealth Statistician information obtained from a body corporate authorized under this Act to carry on insurance business; and

(b) furnish to the prescribed authority of Papua New Guinea information obtained from a body corporate authorized under this Act to carry on insurance business, being information in respect of insurance business carried on in Papua New Guinea.

(2) Section 24 of the *Census and Statistics Act* 1905-1966 applies in relation to information furnished under paragraph (1) (a) as if that information had been furnished in pursuance of that Act.

128. (1) Where an offence against this Act is committed by a body corporate and the offence is committed with the consent or connivance of, or facilitated by neglect on the part of, a director, officer or auditor of the body corporate, the director, officer or auditor is guilty of an offence punishable, on conviction—

Offences.

- (a) where the maximum penalty applicable to the body corporate is Ten thousand dollars for each day during which the contravention continues—by a fine not exceeding One thousand dollars for each day during which the offence by the body corporate continues; or
- (b) where the maximum penalty applicable to the body corporate is Ten thousand dollars—by a fine not exceeding Two thousand dollars.

(2) A person shall not sign a document required by or under this Act to be signed if he knows that the document is false or misleading in a material particular.

Penalty: One thousand dollars or imprisonment for three months.

(3) In this section, “ officer ” in relation to a body corporate has the same meaning as it has in relation to a corporation in the *Companies Ordinance* 1962–1973 of the Australian Capital Territory.

129. Notwithstanding anything in any other Act, proceedings for the summary prosecution of an offence against this Act may be brought at any time within the period of three years after the commission of the offence or, with the consent in writing of the Attorney-General, at any later time.

Time for bringing proceedings.

130. Strict compliance with a prescribed form is not necessary and substantial compliance is sufficient.

Preparation of forms.

131. The expenses of and incidental to an investigation under section 52, 53 or 105 shall be paid by the Commonwealth.

Costs of investigations.

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

Regulations.

- (a) prescribing matters in connexion with an application to the Commissioner for an authority under Part III;
- (b) prescribing forms for the purposes of Part IV;
- (c) prescribing other matters in connexion with accounts and statements required under Part IV to be lodged with the Commissioner;
- (d) prescribing matters in connexion with an appeal to the Tribunal and the procedure of the Tribunal;
- (e) prescribing matters in connexion with access to documents lodged with the Commissioner and the supplying of copies of such documents; and
- (f) providing for penalties, not exceeding a fine of One thousand dollars or imprisonment for a period not exceeding three months, for offences against the regulations.

SCHEDULE

Section 93

PROVISIONS APPLICABLE TO LLOYD'S

1. (1) Lloyd's shall, within the period of twenty-eight days after the date of commencement of section 93, deposit with the Treasurer securities of the Commonwealth the market value of which on that date is not less than Five hundred thousand dollars.

(2) Where the market value of the securities deposited in accordance with this paragraph is, on 31st December in any year, less than Five hundred thousand dollars, Lloyd's shall, within twenty-eight days after that day, deposit with the Treasurer securities of the Commonwealth the market value of which on that day was not less than the amount by which the market value of the first-mentioned securities was on that day less than Five hundred thousand dollars.

(3) Where securities deposited with the Treasurer in accordance with this paragraph are applied in satisfaction of a judgment in accordance with Part VII, Lloyd's shall, within twenty-eight days after the day on which the securities were so applied, deposit with the Treasurer securities of the Commonwealth the market value of which on that day was not less than the market value of the securities so applied.

(4) Where the market value of the securities deposited in accordance with this paragraph is, on 31st December in any year more than Five hundred thousand dollars, the Treasurer may, upon receiving a request in writing from Lloyd's, return to Lloyd's such of these securities as he determines being securities the market value of which did not on that day exceed the amount by which the market value of the first-mentioned securities on that day exceeded Five hundred thousand dollars.

(5) A reference in this paragraph to the market value of securities on a particular day is a reference to the value of those securities on that day as ascertained—

(a) by reference to—

(i) the sale of securities of the same class last recorded on that day by the Sydney Stock Exchange; or

(ii) the selling offer for securities of the same class last recorded on that day by that stock exchange,

whichever is the less; or

(b) by reference to the buying bid for securities of the same class last recorded on that day by that stock exchange,

whichever is the greater or, if on that day there was no such record of that stock exchange, by reference to such records on the day last preceding the first-mentioned day on which such a sale, selling offer or buying bid was recorded by that stock exchange.

2. (1) Lloyd's shall, within the period of twenty-eight days after the date of commencement of section 93, lodge and shall ensure that at all times thereafter there is lodged, with the Treasurer a covenant in accordance with the form set out in paragraph 12 given by a bank within the meaning of the *Banking Act 1959-1967*.

(2) The covenant referred to in sub-paragraph (1) shall provide for the payment to the Treasurer of an amount in respect of each year ending on 30th June that is not less than the amount of the premium income in Australia of Lloyd's underwriters during the year ending on the 31st December last preceding the 31st December last preceding that 30th June.

(3) In sub-paragraph (2), the reference to each year ending on 30th June shall, in relation to the 30th June next succeeding the date of commencement of section 94, be read as a reference to the period from that date to that 30th June.

(4) Where, under section 94, the Treasurer applies an amount paid by a bank in accordance with a covenant referred to in sub-paragraph (1), Lloyd's shall, within the period of sixty days after service of the notice referred to in sub-section 94 (2) of the intention to apply that amount was served on Lloyd's, lodge with the Treasurer a covenant in accordance with the form set out in paragraph 13 given by a bank within the meaning of the *Banking Act 1959-1967*.

(5) The covenant referred to in sub-paragraph (4) shall provide for the payment to the Treasurer of an amount in respect of the period commencing on the date on which the covenant is lodged and ending on the expiration of the period of sixty days after that date or on the succeeding 30th June, whichever is the later, that is not less than the amount referred to in sub-paragraph (4).

SCHEDULE—continued

3. (1) Subject to sub-paragraph (5), Lloyd's shall furnish to the Commissioner before each 30th April, accounts and statements with respect to the insurance business carried on by Lloyd's underwriters in Australia during the year ending on the preceding 31st December.

(2) The accounts and statements to which sub-paragraph (1) applies are such of the following as the Treasurer, by notice in writing served on Lloyd's, determines:—

- (a) an underwriting account;
- (b) a statement of premium income and earned premiums;
- (c) a statement of unearned premiums;
- (d) a statement of claims;
- (e) a statement of provision made for claims;
- (f) a statement of underwriting expenses;
- (g) a statement of management expenses;
- (h) a statement of the cost of meeting claims;
- (i) an account or statement corresponding, as far as practicable, to an account or statement that a body corporate authorized under this Act to carry on insurance business is, under sub-section 44 (1) and paragraph 44 (2) (m), required to lodge with the Commissioner in respect of insurance business carried on in Australia, not being a profit and loss account, balance-sheet or statement of assets and liabilities in Australia.

(3) Subject to sub-paragraph (4), Lloyd's shall, if the Treasurer so determines, by notice in writing served on Lloyd's, within the period of six weeks after the last day of each month of the year, furnish to the Commissioner, in respect of the insurance business carried on by Lloyd's underwriters in Australia, a statement of premiums, claims, revenue and expenses in respect of that month and of policies issued, renewed or cancelled or that terminated during that month.

(4) A reference in sub-paragraph (2), except clause (i), or in sub-paragraph (3), to an account or statement is a reference to an account or statement corresponding, as far as practicable, to an account or statement that a body corporate authorized under this Act to carry on insurance business is, under Part IV, required to lodge with the Commissioner in respect of insurance business carried on in Australia.

(5) Lloyd's is not, by this paragraph, required to furnish to the Commissioner—

- (a) an account or statement in respect of a year before—
 - (i) the year ending on the 31st December next succeeding the 31st December next succeeding the date on which the Treasurer determines, by notice under sub-paragraph (2), that Lloyd's shall furnish that account or statement; or
 - (ii) where the Treasurer specifies in the notice a year ending on a later 31st December—that year; or
- (b) a statement in respect of a month of a year before—
 - (i) the month of January in the year ending on the 31st December next succeeding the 31st December next succeeding the date on which the Treasurer determines, by notice under sub-clause (a) (i), that Lloyd's shall furnish that statement; or
 - (ii) where the Treasurer specifies in the notice a year ending on a later 31st December—the month of January in that year.

(6) An account or statement furnished under this paragraph shall be in accordance with the prescribed form.

(7) The Commissioner may, on the application of Lloyd's, extend, or further extend, the time for lodging an account or statement under this paragraph.

4. (1) Lloyd's shall furnish to the Commissioner before each 31st March a statement, in accordance with the prescribed form, of the premium income in Australia of Lloyd's underwriters received by or due to Lloyd's underwriters during the year ending on the preceding 31st December.

SCHEDULE - continued

(2) Lloyd's shall, within the period of twenty-eight days after the date of commencement of section 93, furnish to the Commissioner—

- (a) where that date is in the last nine months of the year, a statement, in accordance with the prescribed form, of the premium income in Australia of Lloyd's underwriters received by or due to Lloyd's underwriters during the year ending on the preceding 31st December; and
- (b) where that date is in the first six months of the year, a statement, in accordance with the prescribed form, of the premium income in Australia of Lloyd's underwriters received by or due to Lloyd's underwriters during the year ending on the 31st December last preceding the last preceding 31st December.

5. Where the Commissioner, by notice in writing served on Lloyd's, directs Lloyd's to furnish to him a copy of documents specified in the notice, being documents furnished under an Imperial Act relating to insurance companies, Lloyd's shall, within the period of twenty-eight days after the service of the notice, comply with the direction.

6. (1) Lloyd's shall, at all times after the expiration of fourteen days after the date of commencement of section 93, be represented for the purposes of this Act by a person (not being a body corporate) resident in Australia and appointed by Lloyd's as the agent of Lloyd's for the purposes of this Act.

(2) Where the agent of Lloyd's appointed under sub-paragraph (1) is, or is about to be, absent from Australia or, for any reason, unable to perform his duties as the agent of Lloyd's, Lloyd's shall, if it does not revoke the appointment and appoint another person under that sub-paragraph, appoint another person (not being a body corporate) resident in Australia to act as the agent of Lloyd's for the purposes of this Act during the absence or inability.

(3) Where a person appointed under sub-paragraph (2) to act as the agent of Lloyd's is, or is about to be, absent from Australia or, for any reason, unable to perform the duties of the agent of Lloyd's, Lloyd's shall revoke the appointment and appoint another person under that sub-paragraph.

(4) An appointment under this paragraph shall be deemed not to have been duly made or revoked until Lloyd's has given notice in writing of the appointment or revocation to the Commissioner, specifying the name and, in the case of an appointment, the place of residence or business, of the person appointed.

7. (1) Lloyd's shall, at all times after the expiration of fourteen days after the date of commencement of section 93, have an address in Australia for service for the purposes of this Act.

(2) The address does not become the address for service of Lloyd's until Lloyd's has given notice in writing of the address to the Commissioner and an address so notified continues to be the address for service of Lloyd's until another address has been so notified.

8. Where—

- (a) there is enacted an Imperial Act relating specifically to Lloyd's; or
- (b) a by-law is made under the Imperial Acts known as Lloyd's Acts 1871-1951 or any subsequent Imperial Act relating to Lloyd's,

Lloyd's shall, within the period of twenty-one days after the enactment of the Act or the making of the by-law, give notice to the Commissioner accordingly.

9. (1) Lloyd's shall, after the date of commencement of section 93, have a bank within the meaning of the *Banking Act 1959-1967* or a bank constituted by a law of a State as its principal banker for the purposes of this Act.

(2) A bank does not become the principal banker of Lloyd's until Lloyd's has given to the Commissioner notice in writing of the appointment of the bank and, subject to sub-paragraph (3), a bank so notified continues to be the principal banker of Lloyd's until another bank has been so notified.

(3) During a period during which a principal banker so notified is not authorized to buy foreign currency from, and sell foreign currency to, a person other than the Reserve Bank of Australia the principal banker so notified is not the principal banker of Lloyd's and the principal banker of Lloyd's is such bank as the Commissioner determines.

SCHEDULE—continued

10. For the purposes of this Schedule, a reference to the premium income in Australia of Lloyd's underwriters during a year is a reference to the amount that is the amount of premiums for insurance received by, or due to, Lloyd's underwriters during that year being premiums to which Division 15 of Part III of the *Income Tax Assessment Act 1936-1972* applies, less the sum of—

- (a) the amount of those premiums included in the income of Lloyd's underwriters in respect of a previous year;
- (b) the amount of the first-mentioned premiums that, during the first-mentioned year, Lloyd's underwriters refunded or were liable to refund, not including an amount that Lloyd's underwriters were, during a preceding year, liable to refund;
- (c) the amount of commissions paid or payable during the first-mentioned year by Lloyd's underwriters to brokers, not including an amount payable during a preceding year;
- (d) the amount paid or payable during the first-mentioned year by Lloyd's underwriters under a law of a State or Territory relating to payments by insurers for or with respect to fire brigades, not including an amount payable during a preceding year;
- (e) the amount of stamp duty paid or payable during the first-mentioned year by Lloyd's underwriters under a law of a State or Territory with respect to the carrying on by them of insurance business in that State or Territory, not including an amount payable during a preceding year; and
- (f) the amount of tax paid by Lloyd's underwriters during the first-mentioned year under Division 15 of Part III of the *Income Tax Assessment Act 1936-1972* in respect of premiums to which that Division applies.

11. Strict compliance with a prescribed form or with a form set out in either paragraphs 12 or 13 is not necessary and substantial compliance is sufficient.

12. The form of covenant referred to in sub-paragraph 2 (1) is as follows:—

BY THIS DEED entered into the _____ day of _____ One thousand nine hundred and _____ the bank or banks named in the Schedule hereto (in this deed referred to as "the Covenantor") at the request of Lloyd's in order that Lloyd's may comply with the provisions of sub-paragraphs 2 (1) and (2) of the Schedule to the Act HEREBY COVENANTS AND AGREES with the Commonwealth of Australia that in each and every case in which after the commencement of section 93 of the Act a final judgment has been or at any time is obtained in Australia against a Lloyd's underwriter in respect of a liability under a policy of insurance, the Covenantor will pay to the Commonwealth on demand by the Treasurer an amount equal to the amount of the final judgment or to so much thereof as is unpaid at the time the demand is made, BUT so that the foregoing covenant shall have effect and shall be binding upon the Covenantor subject to and in accordance with the following conditions and stipulations:—

1. A demand made by the Treasurer shall not be effective for the purposes of this deed unless it is made after the expiration of the period of thirty days that is required by sub-section 94 (2) of the Act to elapse after the Treasurer has by notice in writing informed Lloyd's of the intention to apply amounts paid in accordance with this deed in satisfaction of the relevant judgment.

2. The Covenantor shall not be liable to pay under this deed in respect of a final judgment an amount for the payment of which moneys are available to the Treasurer by the application in satisfaction of the final judgment of the securities deposited by Lloyd's in accordance with the provisions of the Schedule to the Act.

3. Where the Covenantor consists of more than one bank, none of those banks shall be liable under this deed to pay to the Commonwealth a percentage of the amount demanded by the Treasurer that is greater than the percentage set out in the second column of the Schedule hereto opposite the name of the bank where it appears in the first column of the Schedule.

4. The total amount that may become payable by the Covenantor under this deed during a year ending on 30th June shall not exceed the amount of the premium income in Australia of Lloyd's underwriters during the year ending on the 31st December last preceding the 31st December last preceding the first-mentioned day.

SCHEDULE—continued

5. If the Covenantor has given to the Treasurer notice in writing signed on behalf of each bank constituting the Covenantor that the Covenantor desires to be released from liability under this deed, the Covenantor shall not be liable for or in respect of any demand by the Treasurer that has not been made on or before the expiration of the three successive whole years ending on the 30th June that next occur after the date on which the notice was received by the Treasurer.

6. This deed shall not cease to be binding on a bank unless—

- (a) the Treasurer consents in writing to the discharge of the Covenantor from its covenant hereunder;
- (b) another deed that provides a covenant in accordance with the provisions of sub-paragraphs 2 (1) and (2) of the Schedule to the Act is lodged with the Treasurer in substitution for the covenant provided by this deed; or
- (c) the Covenantor has given to the Treasurer a notice as provided in paragraph 5 above and the period of three years referred to in that paragraph has expired,

but any consent, lodgment or expiration shall not release the bank from, nor affect, any liability of the bank arising out of the covenant contained in this deed as a result of a demand made before the consent, lodgment or expiration.

7. A demand by the Treasurer on a bank shall be deemed to have been duly made for the purposes of this deed if it is in writing signed by or on behalf of the Treasurer and is delivered to or sent by prepaid post addressed to the bank at its head office in Australia.

8. In this deed—

- (a) the expression “the Act” means the *Insurance Act 1973* or, if that Act is amended, that Act as amended and in force for the time being; and
- (b) words and expressions used in this deed shall, unless the contrary intention appears, have the respective meanings that would be attributed to them if used in the Act.

THE SCHEDULE

Name of Bank	Percentage

13. The form of covenant referred to in sub-paragraph 2 (4) is as follows:—

BY THIS DEED entered into the _____ day of _____ One thousand nine hundred and _____ the bank or banks named in the Schedule hereto (in this deed referred to as “the Covenantor”) at the request of Lloyd’s in order that Lloyd’s may comply with the provisions of sub-paragraphs 2 (4) and (5) of the Schedule to the Act HEREBY COVENANTS AND AGREES with the Commonwealth of Australia that in each and every case in which, during the period commencing on the date of lodgment of this deed with the Treasurer and ending on the expiration of the period of sixty days after that date or on the 30th June next succeeding that date, whichever is the later, demand is made on the Covenantor by the Treasurer as hereinafter provided in respect of a final judgment that has been or is obtained in Australia against a Lloyd’s underwriter in respect of a liability under a policy of insurance, the Covenantor will pay to the Commonwealth on the demand an amount equal to the amount of the final judgment or to so much thereof as is unpaid at the time the demand is made BUT so that the foregoing Covenant shall have effect and shall be binding on the Covenantor subject to and in accordance with the following conditions and stipulations:—

1. A demand made by the Treasurer shall not be effective for the purposes of this deed unless it is made after the expiration of the period of thirty days that is required by subsection 94 (2) of the Act to elapse after the Treasurer has by notice in writing informed Lloyd’s of the intention to apply amounts paid in accordance with this deed in satisfaction of the relevant judgment.

SCHEDULE—continued

2. The Covenantor shall not be liable to pay under this deed in respect of a final judgment an amount for the payment of which—
- (a) moneys are available to the Treasurer by the application in satisfaction of the final judgment of the securities deposited by Lloyd's in accordance with the provisions of the Schedule to the Act;
 - (b) a demand may be made by the Treasurer in respect of the final judgment under a covenant contained in a deed dated _____ entered into with the Commonwealth by _____; or
 - (c) a demand may be made by the Treasurer in respect of the final judgment under a supplementary covenant contained in a deed (deeds) dated _____ entered into with the Commonwealth by _____.
3. The total amount payable by the Covenantor under this deed shall not exceed the sum of _____ dollars (\$ _____).
4. Where the Covenantor consists of more than one bank, none of those banks shall be liable under this deed to pay to the Commonwealth a percentage of the amount demanded by the Treasurer that is greater than the percentage set out in the second column of the Schedule hereto opposite the name of the bank where it appears in the first column of the Schedule.
5. This deed shall not cease to be binding on a bank unless—
- (a) the Treasurer consents in writing to the discharge of the Covenantor from its covenant hereunder; or
 - (b) another deed that provides a covenant in accordance with the provisions of subparagraphs 2 (a) and (c) of the Schedule to the Act is lodged with the Treasurer in substitution for the covenant provided by this deed,
- but any consent or judgment shall not release the bank from, nor affect, any liability of the bank arising out of the covenant contained in this deed as a result of a demand made before the consent or judgment.
6. A demand by the Treasurer on a bank shall be deemed to have been duly made for the purposes of this deed if it is in writing signed by or on behalf of the Treasurer and is delivered to or sent by prepaid post addressed to the bank at its head office in Australia.
7. In this deed—
- (a) the expression "the Act" means the *Insurance Act 1973* or, if that Act is amended, that Act as amended and in force for the time being; and
 - (b) words and expressions used in this deed shall, unless the contrary intention appears, have the respective meanings that would be attributed to them if used in the Act.

THE SCHEDULE

Name of Bank	Percentage