



Insurance and Superannuation Commissioner Act 1987

No. 98 of 1987

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Insurance and Superannuation Commissioner Act 1987

No. 98 of 1987

An Act to establish an office of Insurance and Superannuation Commissioner, and for related purposes

[Assented to 5 November 1987]

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

Short title

1. This Act may be cited as the *Insurance and Superannuation Commissioner Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. In this Act:

“appoint” includes re-appoint;

“approved deposit fund” has the same meaning as in the *Occupational Superannuation Standards Act 1987*;

“Commissioner” means the Insurance and Superannuation Commissioner;
“insurance business” has the same meaning as in the *Insurance Act 1973*;

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

“superannuation fund” has the same meaning as in the *Occupational Superannuation Standards Act 1987*.

Insurance and Superannuation Commissioner

4. (1) There shall be an Insurance and Superannuation Commissioner who shall be appointed by the Governor-General.

(2) A person who has attained the age of 65 years shall not be appointed as Commissioner, and a person shall not be appointed as Commissioner for a period that extends beyond the day on which the person will attain the age of 65 years.

(3) A person who is:

(a) a director or employee of a body corporate that carries on insurance business or life insurance business in Australia, or of a body corporate that is related to such a body corporate;

(b) a trustee of a superannuation fund or an approved deposit fund; or

(c) a director or employee:

(i) of a body corporate that is a trustee of a superannuation fund or an approved deposit fund; or

(ii) of a body corporate that is related to a body corporate that is such a trustee;

shall not be appointed as Commissioner.

(4) For the purposes of subsection (3), 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 Act 1981*, are related to each other would be determined under that Act if, in section 7 of that Act:

(a) the reference to a corporation that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another corporation were a reference to a corporation that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and

(b) the reference to a corporation holding more than one-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.

Functions of Commissioner

5. The Commissioner has such functions as are conferred on the Commissioner by this Act or any other Act.

Terms and conditions of appointment

6. (1) The Commissioner holds office, subject to this Act, for such period, not exceeding 7 years, as is specified in the instrument of appointment.

(2) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Remuneration and allowances

7. Subject to the *Remuneration Tribunals Act 1973*, the Commissioner shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

Disclosure of interests

8. The Commissioner shall give written notice to the Minister of all direct or indirect pecuniary interests that the Commissioner has or acquires in:

- (a) any insurance business or life insurance business carried on in Australia or any body corporate carrying on any such business;
- (b) any superannuation fund or approved deposit fund or any body corporate that is a trustee of such a fund; or
- (c) any other business.

Leave of absence

9. The Minister may grant leave of absence to the Commissioner on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

10. The Commissioner may resign from office by writing delivered to the Governor-General.

Termination of appointment

11. (1) The Governor-General may terminate the appointment of the Commissioner for misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (c) becomes:

- (i) a director or employee of a body corporate of a kind referred to in paragraph 4 (3) (a) or (c); or
- (ii) a trustee of a superannuation fund or an approved deposit fund;
- (d) engages in paid employment outside the duties of the office without the approval of the Minister; or
- (e) contravenes section 8 without reasonable excuse.

Acting Commissioner

12. (1) The Minister may appoint a person who is eligible to be appointed as Commissioner to act as Commissioner:

- (a) during a vacancy in the office of Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Commissioner;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in specified circumstances.

(3) Where a person is acting in the office of Commissioner in accordance with paragraph (1) (b) and the office becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first occurs.

(4) While a person is acting in the office of Commissioner, the person has and may exercise all the powers, and shall perform all the functions, of the Commissioner.

(5) The Minister may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Commissioner; and
- (b) terminate such an appointment at any time.

(6) A person appointed under subsection (1) may resign the appointment by writing delivered to the Minister.

(7) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or

- (d) the occasion for the person to act had not arisen or had ceased.

Staff and consultants

13. (1) The staff required to assist the Commissioner in the performance of the Commissioner's functions shall be persons appointed under the *Public Service Act 1922*.

(2) The Commissioner has all the powers of, or exercisable by, a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

(3) The Commissioner may engage as consultants, on such terms and conditions as are determined by the Commissioner, persons having suitable qualifications and experience.

Regulations

14. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[*Minister's second reading speech made in—
House of Representatives on 18 September 1987
Senate on 6 October 1987*]