

South Australia

SGIC (Sale) Act 1995

An Act to provide for privatisation of SGIC; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *SGIC (Sale) Act 1995*.

3—Interpretation

In this Act, unless the contrary intention appears—

amortisation principle—see section 23;

asset means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

(and includes, in relation to SGIC or an SGIC subsidiary, a present or future cause of action in favour of SGIC or the SGIC subsidiary);

cause of action includes any right to bring, defend or participate in legal proceedings;

date of divestiture—see section 4;

designated transferee company means a transferee company classified by proclamation as a designated transferee company;

document includes a disc, tape or other medium in which information is stored;

employee includes an officer;

instrument includes a legislative instrument and a judgment order or process of a court;

legal proceedings includes an arbitration and an administrative proceeding;

liability means a present, future or contingent liability (arising either at law or in equity) and includes—

- (a) a duty or non pecuniary obligation; and
- (b) in relation to SGIC or an SGIC subsidiary, a present or future cause of action against SGIC or the SGIC subsidiary;

Newco means a public company incorporated under the *Corporations Law* and nominated by the Treasurer by notice in the Gazette as the company to which this Act refers under the name Newco;

Newco subsidiary means a subsidiary of Newco;

Part A policy, Part B policy, Part C policy, Part D policy, Part E policy—see Schedule 5;

policy means a contract or policy of insurance and includes a contract providing for the investment or deposit of money and a fidelity bond or guarantee;

security means—

- (a) a mortgage or charge; or
- (b) a guarantee or indemnity; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of a liability;

SGIC means the body corporate established as the *State Government Insurance Commission* that continues (or is to continue) in existence as the *Motor Accident Commission*;

SGIC subsidiary—see section 5;

subsidiary—

- (a) of SGIC—means an SGIC subsidiary;
- (b) of any other body corporate—means a subsidiary within the meaning of the *Corporations Law* (Part 1.2, Division 6);

transfer date means the date an asset or liability of SGIC or an SGIC subsidiary is transferred to Newco or a Newco subsidiary under this Act;

transfer order—see section 8(1);

transfer period means a period commencing on the commencement of this Act and ending on a date fixed by proclamation;

transferee company means Newco or a Newco subsidiary;

transferred asset means an asset transferred to Newco or a Newco subsidiary under this Act (but not if the asset is re-transferred to SGIC or an SGIC subsidiary);

transferred employee means a person transferred to the employment of Newco or a Newco subsidiary under this Act;

transferred instrument—see section 8(2);

transferred liability means a liability transferred to Newco or a Newco subsidiary under this Act (but not if the liability is re-transferred to SGIC or an SGIC subsidiary);

variation to a policy includes the exercise by the insured of an option to vary the policy contained in the policy.

4—Date of divestiture

In this Act, the *date of divestiture* is—

- (a) for Newco—
 - (i) if Newco's shares are sold by or at the direction of the Treasurer—the date the sale is completed; or
 - (ii) if Newco's shares are offered for public subscription—the date shares are first allotted to subscribers who respond to the public offer;
- (b) for a Newco subsidiary—
 - (i) if the subsidiary's shares are sold by or at the direction of the Treasurer before the date of divestiture for Newco—the date the sale is completed; or
 - (ii) if not—the date of divestiture for Newco.

5—SGIC subsidiaries

- (1) The *SGIC subsidiaries* are—
 - (a) the bodies corporate specified in Schedule 2; and
 - (b) the bodies corporate classified by proclamation as SGIC subsidiaries.
- (2) The Governor may, by proclamation—
 - (a) classify a body corporate specified in the proclamation as an SGIC subsidiary; or
 - (b) vary or revoke a classification under this section.

6—Territorial operation of Act

- (1) This Act applies both within and outside the State.
- (2) This Act applies outside the State to the full extent of the extra-territorial legislative power of the State.

Part 2—Newco

7—Provision of capital to Newco

- (1) Any one or more Ministers of the Crown may subscribe capital to Newco.
- (2) The Treasurer may, on conditions the Treasurer considers appropriate—
 - (a) advance loan capital to Newco; and
 - (b) transfer non-pecuniary assets of the Crown to Newco.
- (3) Capital subscriptions and advances are, subject to any contrary direction by the Treasurer, to be paid out of the Consolidated Account (which is appropriated to the necessary extent).
- (4) An instrument to give effect to a transaction under this section is exempt from stamp duty.

Part 3—Transfer and sale of assets and liabilities

8—Transfer of assets and liabilities to Newco and Newco subsidiaries

- (1) The Treasurer may, by order in writing (a *transfer order*), transfer assets or liabilities (or both) of SGIC or an SGIC subsidiary to Newco or a Newco subsidiary.
- (2) A transfer order may provide that references to SGIC or an SGIC subsidiary in a specified instrument or an instrument of a specified class (a *transferred instrument*) are to be read as references to Newco or a Newco subsidiary, and in that case—
 - (a) the effect of the instrument is modified as provided in the order; and
 - (b) Newco or the Newco subsidiary accordingly succeeds to the rights and liabilities of SGIC or the SGIC subsidiary under the instrument as from the date on which the instrument takes effect.
- (3) An order under this section may take effect prospectively or retrospectively but must be made before the end of the transfer period and must take effect within the transfer period.
- (4) A transferred asset is not subject to any statutory trust in favour of the Crown under the *State Government Insurance Commission Act 1992*.
- (5) The transfer of an asset or liability under this section operates by force of this Act and despite the provisions of any other law or instrument.
- (6) The transfer of a liability from SGIC or an SGIC subsidiary discharges SGIC or the SGIC subsidiary from the liability.

9—Re-transfer of assets or liabilities

- (1) The Treasurer may, by order in writing (a *re-transfer order*), re-transfer assets or liabilities (or both) from Newco or a Newco subsidiary to SGIC or an SGIC subsidiary.

- (2) A re-transfer order may reverse the construction placed on a transferred instrument, or transferred instruments of a specified class, by a transfer order and, in that case—
 - (a) the original effect of the instrument (or instruments) is restored as from the date the re-transfer order takes effect; and
 - (b) SGIC or the SGIC subsidiary accordingly succeeds to the rights and liabilities of Newco or the Newco subsidiary under the instrument (or instruments) as from the date on which the re-transfer order takes effect.
- (3) A re-transfer order may take effect prospectively or retrospectively but must be made before the end of the transfer period and must take effect within the transfer period.
- (4) If a re-transfer order provides that it is to take effect contemporaneously with the relevant transfer order—
 - (a) the transfer of a relevant asset or liability is cancelled and the asset or liability is taken never to have been transferred; and
 - (b) a transferred instrument to which the re-transfer order applies is to be construed as if it had never been affected by the transfer order.
- (5) The re-transfer of a liability from Newco or a Newco subsidiary discharges Newco or the Newco subsidiary from the liability.

10—Conditions of transfer (or re-transfer)

- (1) The Treasurer may, by order in writing, fix the conditions on which assets or liabilities are transferred to (or re-transferred from) Newco or a Newco subsidiary under this Act.
- (2) An order under this section must be made within the transfer period and may be varied or revoked by the Treasurer by further order made within that period.
- (3) The conditions of transfer (or re-transfer) may, for example, do one or more of the following—
 - (a) assign a value to particular assets, or assets of a particular class;
 - (b) assign a value to particular liabilities, or liabilities of a particular class;
 - (c) assign a net value to particular assets and liabilities, or assets and liabilities of particular classes;
 - (d) impose on the transferee of assets, or assets and liabilities, a liability (in terms set out in the order) to the body from which transfer is made reflecting the value or net value assigned by the Treasurer to the assets, or the assets and liabilities.

11—Supplementary provisions

- (1) If a security held by SGIC or an SGIC subsidiary is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability—
 - (a) the security is available to the transferee company as security for the discharge of the liabilities to which it relates including, where the security relates to future liabilities, liabilities incurred after the transfer; and

- (b) the transferee company is entitled to the same rights and priorities and is subject to the same liabilities under the security as those to which SGIC or the SGIC subsidiary would have been entitled or subject if there had been no transfer.
- (2) If a transferred asset consists of a right to the possession or use of property under a lease or other instrument, SGIC or an SGIC subsidiary incurs no liability (nor does the right to possession become liable to forfeiture) because SGIC or the SGIC subsidiary has parted with possession of the property, or permitted the possession or use of the property by another person, contrary to the terms of the lease or instrument.
- (3) In legal proceedings about a transferred asset or liability, evidence that would have been admissible by or against SGIC or an SGIC subsidiary if there had been no transfer may be given in evidence by or against the transferee company.

12—Legal proceedings

Subject to any contrary provision in a transfer order, legal proceedings that had commenced before the transfer date in respect of a transferred asset or liability may be continued and completed by or against the transferee.

13—Evidence

- (1) The Treasurer (or the Treasurer's delegate) may certify—
 - (a) whether specified assets or liabilities are or are not transferred assets or liabilities and the identity of the transferee;
 - (b) whether specified instruments are or are not transferred instruments and the identity of the transferee.
- (2) An apparently genuine document purporting to be a certificate under subsection (1) must be accepted in legal proceedings or by an administrative official as proof of the matter certified in the absence of proof to the contrary.

14—Transfer of shares in Newco or a Newco subsidiary

- (1) While all shares in Newco are held by the Treasurer and other Ministers of the Crown, the Treasurer may by agreement (a *sale agreement*) with another (the *purchaser*) sell and transfer to the purchaser—
 - (a) shares in Newco; or
 - (b) shares in a Newco subsidiary held by or on behalf of Newco; or
 - (c) assets and liabilities of Newco or a Newco subsidiary.
- (2) A sale of shares, or assets and liabilities, under this section will be on terms and conditions the Treasurer thinks fit.
- (3) A sale agreement vests the shares, or the assets and liabilities, to which it relates in the purchaser in accordance with its terms.
- (4) If a transferee company is entitled to possession of land under a lease or agreement, the transfer of shares in the transferee company on sale under this section—
 - (a) does not constitute a default under the lease or other agreement; and
 - (b) cannot be treated as an assignment under the provisions of the lease or other agreement; and

- (c) gives rise to no right or power to require anything to be done under the lease or agreement; and
- (d) gives rise to no right to forfeiture or termination of the lease or other agreement; and
- (e) gives rise to no right to compensation or damages.

15—Application of proceeds of sale etc

- (1) The Treasurer may apply proceeds of a sale of shares, or assets and liabilities, under this Part and any money paid to the Treasurer by direction under subsection (2), as follows:
 - (a) in discharging or recouping liabilities of SGIC or an SGIC subsidiary (other than liabilities relating to the Compulsory Third Party Fund or the compulsory third party insurance business); and
 - (b) in payment to the *Asset Management Task Force Operating Account* at the Treasury to be used for the purpose of retiring State debt.
- (2) The Treasurer may direct SGIC or an SGIC subsidiary to pay to the Treasurer surplus funds arising from the discharge of liabilities by Newco or a Newco subsidiary.

Part 4—Staff

16—Transfer of staff

- (1) The Treasurer may, by order in writing, transfer employees of SGIC to positions in the employment of Newco or a Newco subsidiary.
- (2) An order under this section may take effect prospectively or retrospectively but must be made before the end of the transfer period and must take effect within the transfer period.
- (3) An order under this section may be varied or revoked by the Treasurer by further order in writing made before the order takes effect.
- (4) A transfer under this section does not—
 - (a) affect the employee's remuneration; or
 - (b) interrupt continuity of service; or
 - (c) constitute a retrenchment or redundancy.
- (5) A transfer under this section must not involve—
 - (a) any reduction in the employee's status; or
 - (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, ability and experience; or
 - (c) any change in the employee's place of employment unless the new place of employment is within reasonable commuting distance from the employee's former place of employment.
- (6) However, an employee's status is not reduced by—
 - (a) a reduction of the scope of business operations for which the employee is responsible; or

- (b) a reduction in the number of employees under the employee's supervision or management,

if the general nature of the employee's responsibility after the transfer remains the same as, or similar to, the employee's responsibility before the transfer.

- (7) An employee's terms and conditions of employment are subject to variation after the transfer in the same way as before the transfer.
- (8) A person who is transferred from SGIC's employment to the employment of Newco or a Newco subsidiary under this section is taken to have accrued as an employee of Newco or the Newco subsidiary an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of SGIC.
- (9) A transfer under this section does not give rise to any remedy or entitlement arising from cessation or change of employment.
- (10) For the purposes of construing a contract applicable to the employment of a person who is transferred from SGIC to Newco or a Newco subsidiary under this section, a reference to SGIC is to be construed as a reference to Newco or the Newco subsidiary.

Part 5—Government guarantee

17—General guarantee

The Treasurer guarantees a liability of a designated transferee company if—

- (a) the liability falls due before the transferee company's date of divestiture; and
- (b) a written demand on the transferee company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).

18—Government guarantee (Part A policies—general insurance)

- (1) The Treasurer guarantees the liability of a designated transferee company under a Part A policy if—
 - (a) the policy was issued before the transferee company's date of divestiture; and
 - (b) a written demand for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (2) This guarantee does not apply to a liability—
 - (a) that arises under a policy after its renewal or reinstatement after the company's date of divestiture; or
 - (b) that arises under a policy from an event occurring after an extension or variation of the policy after the company's date of divestiture.
- (3) A payment or transfer of money under a Part A policy that diminishes a transferee company's liability under the policy is taken to diminish a liability guaranteed under this section before it diminishes any other liability.

19—Government guarantee (Part B policies—term life and other insurance)

- (1) The Treasurer guarantees the liability of a designated transferee company under a Part B policy if—
 - (a) the policy was issued before the transferee company's date of divestiture; and
 - (b) the liability falls due after the date of divestiture; and
 - (c) a written demand on the transferee company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (2) This guarantee—
 - (a) is subject to the amortisation principle; and
 - (b) does not apply to—
 - (i) a policy that has been reinstated after the company's date of divestiture; or
 - (ii) to any increase in liability under the policy arising after the date of divestiture under the terms of the policy or from an agreement made before, on or after the date of divestiture (in exercise of an option or otherwise); or
 - (iii) to a liability for life insurance if the person whose life is insured was not covered by the policy as at the date of divestiture.
- (3) A payment or transfer of money under a Part B policy that diminishes a transferee company's liability under the policy is taken to diminish a liability guaranteed under this section before it diminishes any other liability.

20—Government guarantee (Part C policies—continuous insurance)

- (1) The Treasurer guarantees the liability of a designated transferee company under a Part C policy if—
 - (a) the policy was issued before the transferee company's date of divestiture; and
 - (b) an event giving rise to a liability under the policy occurs after the date of divestiture but within 12 months after the date of divestiture; and
 - (c) a written demand for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (2) This guarantee does not apply to a liability—
 - (a) that arises under a policy after its renewal or reinstatement after the company's date of divestiture; or
 - (b) that arises under a policy from an event occurring after an extension or variation of the policy after the company's date of divestiture.
- (3) A payment or transfer of money under a Part C policy that diminishes a transferee company's liability under the policy is taken to diminish a liability guaranteed under this section before it diminishes any other liability.

21—Government guarantee (Part D policies—investment contracts—deposits)

- (1) Subject to this section, the Treasurer guarantees the liability of a designated transferee company under a Part D policy if—
 - (a) the policy was issued before the company's date of divestiture; and
 - (b) the liability falls due within 5 years after the company's date of divestiture; and
 - (c) a written demand on the company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (2) However, the guarantee under subsection (1) does not extend to—
 - (a) a liability guaranteed under subsection (3); or
 - (b) a liability to the extent that it arises from a contribution or deposit made on or after the date of divestiture; or
 - (c) a liability for interest accrued on or after the date of divestiture.
- (3) The Treasurer also guarantees, subject to the amortisation principle, a designated transferee company's liability to pay optional term life insurance or insurance against total and permanent disablement under a Part D policy if—
 - (a) the policy was issued before the transferee company's date of divestiture; and
 - (b) a written demand on the transferee company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (4) A guarantee under subsection (1) or (3) does not apply to a liability—
 - (a) that arises under a policy after its renewal or reinstatement after the company's date of divestiture; or
 - (b) that arises under a policy from an event occurring after an extension or variation of the policy after the company's date of divestiture.
- (5) A payment or transfer of money under a Part D policy that diminishes a transferee company's liability under the policy is taken to diminish a liability guaranteed under this section before it diminishes any other liability.

22—Government guarantee (Part E policies—unit investment contracts)

- (1) The Treasurer guarantees, to the extent prescribed by subsection (2), a designated transferee company's liability under a Part E policy to redeem an investment out of a particular fund if—
 - (a) the policy was issued before the company's date of divestiture; and
 - (b) the liability falls due within 5 years after the company's date of divestiture; and

- (c) a written demand on the company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (2) The guaranteed liability is limited to an amount equal to the value of the investment as at the designated transferee company's date of divestiture less the amount of any withdrawal from the investment.
- (3) The Treasurer also guarantees, subject to the amortisation principle, a designated transferee company's liability to pay optional term life insurance or insurance against total and permanent disablement under a Part E policy if—
 - (a) the policy was issued before the transferee company's date of divestiture; and
 - (b) a written demand on the transferee company for payment is made within 12 months after the liability falls due (but if the liability falls due on the making of a written demand for payment, no further demand is required under this paragraph).
- (4) A guarantee under subsection (1) or (3) does not apply to a liability—
 - (a) that arises under a policy after its renewal or reinstatement after the company's date of divestiture; or
 - (b) that arises under a policy from an event occurring after an extension or variation of the policy after the company's date of divestiture.
- (5) A payment or transfer of money under a Part D policy that diminishes a transferee company's liability under the policy is taken to diminish a liability guaranteed under this section before it diminishes any other liability.

23—Amortisation principle

A guarantee that is subject to the amortisation principle is reduced or extinguished as follows:

- (a) if the liability to which the guarantee relates falls due 5 years or more but less than 6 years after the company's date of divestiture, the liability that would, apart from this section, exist under the guarantee is reduced by 20%;
- (b) if the liability to which the guarantee relates falls due 6 years or more but less than 7 years after the company's date of divestiture, the liability that would, apart from this section, exist under the guarantee is reduced by 40%;
- (c) if the liability to which the guarantee relates falls due 7 years or more but less than 8 years after the company's date of divestiture, the liability that would, apart from this section, exist under the guarantee is reduced by 60%;
- (d) if the liability to which the guarantee relates falls due 8 years or more but less than 9 years after the company's date of divestiture, the liability that would, apart from this section, exist under the guarantee is reduced by 80%;
- (e) if the liability to which the guarantee relates falls due 9 years or more after the company's date of divestiture, liability under the guarantee is entirely extinguished.

24—Appropriation of Consolidated Account

Any money required under a guarantee is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

25—Subrogation

If the Treasurer makes a payment to a person under the guarantee, the Treasurer is subrogated, to the extent of the payment, to the person's rights (including rights of priority as a creditor in a winding-up) in respect of the guaranteed liability.

26—Agreement that this Part will not apply

A designated transferee company may agree with a person proposing to enter into a policy or make an investment with the company that the policy or investment is not to be subject to the guarantee contained in this Part and, in that event, this Part does not apply to the policy or investment concerned.

27—Restrictions on the application of this Part

The Treasurer may, after consultation with the Board of directors of Newco, by order in writing made within the transfer period impose restrictions binding on a designated transferee company about—

- (a) the terms and conditions upon which insurance policies and investments offered by the company may be entered into or made; or
- (b) the variation by agreement at any time of the terms and conditions governing a guaranteed liability.

28—Government guarantee under the *State Government Insurance Commission Act 1992*

The guarantee under section 21 of the *State Government Insurance Act 1992* has no application to transferred liabilities.

29—Schedule 5 proclamation

The Governor may, by proclamation made during the transfer period, amend Schedule 5 by the addition of further items.

Part 6—Miscellaneous

30—Transfer of assets and liabilities to other authorities

- (1) The Governor may, by proclamation—
 - (a) transfer assets and liabilities of SGIC or an SGIC subsidiary, or assets and liabilities of a trust administered by SGIC or an SGIC subsidiary, to an authority or person nominated in the proclamation; or
 - (b) establish a scheme (a *rectification scheme*) for the rectification of irregularities (or possible irregularities) in the administration of a trust, or the exercise of fiduciary duties, by SGIC or an SGIC subsidiary.
- (2) A proclamation transferring assets and liabilities may fix terms and conditions of transfer (which may include provision for the payment of money or the giving of other consideration).

- (3) A rectification scheme—
- (a) confers rights on persons affected by the irregularities (or possible irregularities) to which the scheme relates, and on other persons (if any) to whom the scheme is expressed to apply, in accordance with the terms and conditions of the scheme; and
 - (b) varies or excludes, as provided by the terms and conditions of the scheme, other rights of persons for whose benefit the trust or the fiduciary duties exist or existed in respect of the irregularities (or possible irregularities) to which the scheme relates.
- (4) The terms and conditions of a transfer or rectification scheme under this section are enforceable as if the proclamation making the transfer or establishing the scheme were a deed binding on all persons to whom it is expressed to apply.

31—Payment to be made to Consolidated Account

- (1) If the results achieved by a transferee company from its operations over a designated period give rise to a presumptive liability for income tax, the company must, within 6 months from the end of the designated period, pay to the Treasurer, for the credit of the Consolidated Account a sum equal to the amount of the presumptive liability.
- (2) The Treasurer may require a transferee company to make other payments in respect of a designated period in lieu of taxes under the law of the State or the Commonwealth from which the company was exempt during the designated period because of the Crown's ownership or control.
- (3) In this section—

designated period is a period of 12 months or less falling before the date of the company's divestiture—

- (a) extending from the date of the company's incorporation to the following 30 June or the date of the company's divestiture (whichever is first);
- (b) extending from 1 July in one year to 30 June in the next;
- (c) extending from 30 June to the date of the company's divestiture;

presumptive liability to income tax in relation to a transferee company, means a liability for income tax that would have existed under the *Income Tax Assessment Act 1936* (Cwth) if—

- (a) the company were liable to income tax under that Act; and
 - (b) the designated period were a year of income within the meaning of that Act.
- (4) This section does not apply to income derived by a transferee company after the company's date of divestiture.

32—Registering authorities to note transfer

The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Treasurer or a person nominated by the Treasurer for the purpose, register or record the transfer of an asset or liability under this Act.

33—Stamp duty

- (1) No stamp duty is payable under a law of the State in respect of—
 - (a) a transfer of assets or liabilities under this Act (other than a transfer on sale of shares in, or assets and liabilities of, Newco or a Newco subsidiary);
 - (b) any transfer or assignment of assets or liabilities by SGIC or an SGIC subsidiary to Newco or a Newco subsidiary.
- (2) No person has an obligation under the *Stamp Duties Act 1923*—
 - (a) to lodge a statement or return relating to the transfer or assignment of assets or liabilities from SGIC or an SGIC subsidiary to a transferee company; or
 - (b) to include information about such a transfer or assignment in a statement or return.

34—Act overrides other laws

This Act has effect despite the provisions of the *Real Property Act 1886* or any other law.

35—Effect of things done or allowed under Act

Nothing done or allowed under this Act or a sale agreement under this Act—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or any other obligee wholly or in part from an obligation.

36—Regulations and proclamations

- (1) The Governor may make regulations and proclamations for the purposes of this Act.
- (2) A proclamation cannot be amended or revoked by a later proclamation unless this Act specifically contemplates its amendment or revocation.

Schedule 2—SGIC subsidiaries

Austrust Limited
Bouvet Pty Limited
Executor Trustee Australia Ltd
SA Projects Pty Limited
SGIC Financial Services Pty Limited
SGIC Health Pty Limited
SGIC Nominees Pty Ltd
SGIC Pty Limited

SGIC Superannuation Pty Ltd
Southern Group Insurance Corporation Ltd

Schedule 3—Superannuation

1—Definitions

In this Schedule—

Existing Fund means the superannuation fund known as the SGIC Occupational Superannuation Plan constituted by deed made the 9th day of January 1989 by SGIC as employer and Joan Lynette Wilkinson and others as trustees;

new scheme contributor has the meaning given by the *Superannuation Act 1988*;

old scheme contributor has the meaning given by the *Superannuation Act 1988*;

SGIC Fund means a superannuation fund constituted or to be constituted and identified as the SGIC Fund for the purposes of this Schedule by notice in writing signed by the Treasurer and published in the Gazette;

State Scheme means the scheme within the meaning of the *Superannuation Act 1988*;

State Scheme contributor means a contributor within the meaning of the *Superannuation Act 1988*;

Superannuation Board means the South Australian Superannuation Board constituted under the *Superannuation Act 1988*;

transfer date in relation to a transferred employee, means the date on which that employee becomes an employee of a transferee company;

transferred means transferred under Part 4;

transferred employee means an employee transferred by an order under this Act from the employment of SGIC or an SGIC subsidiary to a transferee company.

2—Existing Fund members transferred to a transferee company

- (1) An employee of SGIC or an SGIC subsidiary who is a member of the Existing Fund and is transferred to a position in the employment of a transferee company is, on the transfer date, taken to have become a member of the SGIC Fund, if not already a member of that fund.
- (2) As soon as practicable after the transfer date, the trustee of the Existing Fund must pay or transfer an amount or assets equal to the value of the employee's accrued benefit in the Existing Fund (as determined by the trustee) to the trustee of the SGIC Fund and the amount paid or the value of the assets transferred must be credited to the account of the employee in the SGIC Fund.
- (3) On the payment of an amount or the transfer of assets under subclause (2)—
 - (a) the trustee of the Existing Fund is discharged from its obligations as trustee of the Existing Fund in respect of the employee concerned; and
 - (b) the employee ceases to have any entitlement to a benefit from the Existing Fund.

3—State Scheme contributors who have reached the age of 55 years

- (1) Within one month after the transfer date (the *election period*), a transferred employee who has reached the age of 55 years as at the transfer date and who is a State Scheme contributor may elect, by notice in writing to the Superannuation Board, either—
 - (a) to have paid immediately to the SGIC Fund an amount (to be charged against the transferred employee's contribution account in the State Scheme) equivalent to the balance of the contribution account; or
 - (b) to defer the payment of benefits.
- (2) If a transferred employee fails to make an election under subclause (1) within one month after the transfer date, the employee is taken to have made an election under subclause (1)(a).
- (3) If a transferred employee makes an election under subclause (1)(a)—
 - (a) the Treasurer must transfer the amount referred to in subclause (1)(a) to the SGIC Fund to the credit of the account of the transferred employee in that fund; and
 - (b) if the transferred employee is a new scheme contributor, section 32A of the *Superannuation Act 1988* will also apply except that any benefit otherwise payable under that section must be paid immediately to the SGIC Fund to the credit of the account of the transferred employee in that fund.
- (4) On the making of the payments to the SGIC Fund under subclause (3), the transferred employee concerned ceases to be a State Scheme contributor.
- (5) If a transferred employee elects to defer payment of benefits under subclause (1)(b), clause 4 applies to the employee.

4—State Scheme contributors who have reached the age of 55—deferment of benefits

- (1) A transferred employee to whom this clause applies is taken, for the purposes of the *Superannuation Act 1988* (but for no other purpose)—
 - (a) to have continued in the employment of SGIC or the SGIC subsidiary concerned until his or her employment with the transferee company is terminated for any reason; and
 - (b) to have elected to make and to have made no contribution to the State Scheme after the transfer date.
- (2) A transferred employee to whom this clause applies is, on termination of his or her employment with a transferee company for any reason other than death—
 - (a) taken for the purposes of the *Superannuation Act 1988* (but for no other purpose) to have retired from SGIC or an SGIC subsidiary on the date of termination of employment with the transferee company; and
 - (b) entitled to a benefit under either section 34 or 27 (as may be appropriate) of the *Superannuation Act 1988* as modified under subclause (6); and
 - (c) in the case of a new scheme contributor—entitled to a further benefit under section 32A of the *Superannuation Act 1988*.

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- (3) Where an old scheme contributor who is a transferred employee and who has reached the age of 55 years as at the transfer date dies after the transfer date, a benefit must be paid in accordance with section 38 of the *Superannuation Act 1988* (as modified under subclause (6)).
- (4) Where a new scheme contributor who is a transferred employee and who has reached the age of 55 years as at the transfer date dies after the transfer date, a benefit must be paid in accordance with section 32 of the *Superannuation Act 1988* (as modified under subclause (6)).
- (5) Where a new scheme contributor who is a transferred employee and who has reached the age of 55 years as at the transfer date dies after the transfer date while in the employment of a transferee company, a further benefit must be paid pursuant to section 32A of the *Superannuation Act 1988*.
- (6) For the purposes of subclauses (2), (3) and (4)—
- (a) the item *FS* wherever appearing in sections 32(3) and 34 of the *Superannuation Act 1988* has the following meaning—
- FS* is the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's employment with the transferee company; and
- (b) the item *FS* wherever appearing in sections 27, 32(2), 32(3a), 32(5), and 38 of the *Superannuation Act 1988* has the following meaning—
- FS* is the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's employment with the transferee company; and
- (c) section 32(3a)(a)(i)(B) of the *Superannuation Act 1988* applies as if amended to read as follows—
- (B) an amount equivalent to twice the amount of the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's employment with the transferee company; and
- (d) section 34(5) of the *Superannuation Act 1988* applies as if amended to read as follows—
- (5) The amount of a retirement pension will be the amount calculated under this section or 75% of the contributor's actual or attributed salary (expressed as an amount per fortnight) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's employment with the transferee company (whichever is the lesser).; and

- (e) the expressions *transfer date* and *transferee company* in the above provisions have the same meanings as in this Schedule.

5—State Scheme contributors who have not reached the age of 55 years

- (1) Within one month after the transfer date (the *election period*), a transferred employee who has not reached the age of 55 years as at the transfer date and who is a State Scheme contributor may elect by notice in writing to the Superannuation Board, either—
- (a) to have paid immediately to the SGIC Fund an amount (to be charged against the transferred employee's contribution account in the State Scheme) equivalent to the balance of the contribution account; or
 - (b) to have his or her accrued superannuation benefits preserved under section 39 or 28 of the *Superannuation Act 1988* (whichever may apply to the transferred employee).
- (2) If a transferred employee who is a State Scheme contributor fails to make an election under subclause (1) within one month after the transfer date, the employee is taken to have made an election under subclause (1)(a).
- (3) If a transferred employee who is a State Scheme contributor makes an election under subclause (1)(a)—
- (a) the Treasurer must transfer the amount referred to in subclause (1)(a) to the SGIC Fund to the credit of the account of the transferred employee in that fund; and
 - (b) if the transferred employee is a new scheme contributor, section 32A of the *Superannuation Act 1988* will also apply except that any benefit otherwise payable under that section must be paid immediately to the SGIC Fund to the credit of the account of the transferred employee concerned in that fund.
- (4) On the making of the payments to the SGIC Fund under subclause (3), the transferred employee concerned ceases to be a State Scheme contributor.
- (5) If a transferred employee who is a State Scheme contributor makes an election under subclause (1)(b), the employee will be taken for the purposes of the *Superannuation Act 1988* to have elected under section 39 or 28 of that Act (whichever may apply to the employee) to preserve accrued benefits and that section will apply but subject to this Schedule.
- (6) Despite section 39 or 28 of the *Superannuation Act 1988* (whichever may apply to the transferred employee), where accrued benefits are preserved under that section in respect of a transferred employee who is a State Scheme contributor, those benefits are not payable until the transferred employee—
- (a) ceases to be an employee of a transferee company and reaches the age of 55; or
 - (b) dies; or
 - (c) becomes totally and permanently incapacitated for work and ceases to be an employee of a transferee company.

- (7) For the purposes of this clause—
- (a) the items *AFS* and *FS* wherever appearing in sections 28(4), 28(5) and 39(3) of the *Superannuation Act 1988* mean the contributor's actual or attributed salary (expressed as an annual amount) immediately before the transfer date adjusted to reflect changes in the Consumer Price Index from the transfer date to the date of termination of the contributor's employment with the transferee company; and
 - (b) section 39(6)(b) of the *Superannuation Act 1988* applies as if amended to read as follows—
 - (b) the contributor's actual or attributed salary for the purposes of calculating the pension were that salary immediately before the transfer date adjusted to reflect changes in the Consumer Price Index between the transfer date and the date on which the pension first became payable; and
 - (c) the expressions *transfer date* and *transferee company* in the above provisions have the same meanings as in this Schedule.

6—Application of certain provisions of the *Superannuation Act 1988*

The provisions of Parts 4 and 5 of the *Superannuation Act 1988* are applicable only to the extent that they are made applicable by the operation of the provisions of clauses 3, 4 and 5 of this Schedule.

7—Extension of time

If the Superannuation Board is of opinion that any limitation period referred to in this Schedule would unfairly prejudice a State Scheme contributor, the Superannuation Board may (whether or not the limitation period has expired) extend the period as it applies to the contributor.

8—Disability pension

As from the transfer date, any disability pension payable under either section 30 or 36 of the *Superannuation Act 1988* ceases in relation to a transferred employee.

9—Existing pensions and preserved benefits

- (1) The Treasurer may, from time to time determine amounts to be paid by SGIC to the Treasurer having regard to the net present day value of—
- (a) all pensions continuing to be payable under the *Superannuation Act 1988* and all accrued superannuation benefits which have been preserved under that Act in relation to former employees of SGIC or SGIC subsidiaries (other than transferred employees) as at the date of the first transfer of employees of SGIC or an SGIC subsidiary under Part 4 of this Act (the *operative date*); and
 - (b) all pensions under the *Superannuation Act 1988* first payable after the operative date and all accrued benefits which have been preserved under that Act after the operative date in relation to former employees of SGIC or SGIC subsidiaries (other than transferred employees).
- (2) The first determination under subclause (1) must be made as soon as practicable after the end of the election period.

- (3) The amounts from time to time determined under subclause (1) must be paid forthwith by SGIC to the Treasurer.

10—Payment by SGIC to trustees and the Treasurer

- (1) As soon as practicable after the end of the election period—
- (a) SGIC must pay to the trustees of the SGIC Fund an amount fixed by the Treasurer (having regard to the net present day value of the accrued benefit under the State Scheme) in relation to each transferred employee who was on the transfer date a State Scheme contributor and who has made an election under either clause 3(1)(a) or 5(1)(a) of this Schedule; and
 - (b) SGIC must pay to the Treasurer an amount fixed by the Treasurer (having regard to the net present day value of all accrued benefits that have been either deferred or preserved) in relation to each transferred employee who was on the transfer date a State Scheme contributor and who has made an election under either clause 3(1)(b) or 5(1)(b) of this Schedule.
- (2) An amount paid under subclause (1)(a) must be credited to an account of the transferred employee concerned in the books of the SGIC Fund.

Schedule 5—Policies subject to Government guarantee and referred to in Part 5

Part A policies—General insurance

Insurance policies that are within any of the following categories:

Baggage Policy

Construction Insurance Policy

Marine (Hull) Policy

Marine (Cargo) Policy

Mechanical Breakdown Policy

Pluvius Policy

SGIC Worldwide Travel Insurance

Aussietravelcover Worldwide Travel Insurance

Travellers' Insurance

Ski Travel Insurance

Travel Insurance to Kangaroo Island and Wirrina Cove

Snow Holiday Insurance

Snow Holiday Insurance [Aussietravelcover]

Travel Insurance to Lord Howe or Norfolk Island [Oxley Airlines Limited]

Travel Insurance to Lord Howe or Norfolk Island [Fastbook Holidays]

Travel Insurance to Tonga, Samoa or Cook Islands

Statutory Cover Policy (Owner's Policy) [South Australia]

Extended Benefits Policy (Builder's Policy) [South Australia]

Building Indemnity Insurance Policy [Western Australia]

Residential Building Work Insurance Policy [Tasmania]

Residential Building Work Insurance Policy (Owner - Builder Policy) [Tasmania]

Residential Building Work Insurance Policy [Australian Capital Territory]

Any fidelity bond or guarantee issued by SGIC or the designated transferee company or to which either of them is a party.

Other policies that are not within any of the following Parts and are renewable at intervals of not more than 18 months.

Part B policies—Term life and other insurance

50 Plus Life Insurance Plan
(No reference)

50 Plus Life Insurance Plan
(WLLTD)

Yearly Renewable Term Life Assurance
(TYO)

CPI Adjustable Assurance
(TIW)

Level Term Assurance
(TLO)

Term Life Insurance
(W)

Term Life Insurance
(5YR1S/M)

Term Life Insurance
(5YR 2S/M 5YR 3S/M)

Term Life Insurance Policy
(5YR2S/M5YR3S/M/KP37126)

Inflation Proof Life Insurance Policy
(SGL 156 KP 4000 11/91)

Personal Superannuation Term Life Policy
(SGL 157 KP 500 11/91)

Life and Crisis Care Plan
(FOR 408/SGL 345/NS/5000/12–93)

Life and Crisis Care Plan
(FOR 408/SGL 345/NS 5,001/12–93)

SGIC Inflation Proof Life Insurance Policy
(SGL 156 KP 4000 11/91)

SGIC Funeral Bond
(FOR 426/SGL 411/1m/NS/9–94)

Three Way Accident Plan
(HOS*M HOS*S)

Major Accident Plan
(ACSO ACMO KP29049)

SGIC Life Cover Plus Living Benefit Policy
(KP40986/9.94)

SGIC Accident Income Plan
(DIS7S/M, DIS8S/M, DIS9S/M and KP33061)

Pay Cheque Plus
(D110S/M, D111S/M, D112S/M, D113S/M and KP35394)

Accidental Death Plan
(GAP 01, GAP 02, GAP 03, GAP 04, KP42434/3.95)

SGIC Major Illness Cash Plan
(KP38462/4.94)

Whole of Life Insurance Plan
(WOL60 WOL50 KP40985/9.94)

Whole of Life Insurance Plan
(WOL60 WOL50 KP40302/6.94)

Statewide Superannuation Trust Group Life Plan (Policy No G006 dated 24 August 1989)

Statewide Superannuation Trust Group Life Plan (Policy No G006 dated 18 January 1987)

Hindmarsh Building Society Group Mortgage Protection Insurance Scheme (Policy No G003 dated 1 March 1985)

S Smith & Son Group Life Insurance Policy (Policy No G004 dated 22 November 1993)

Independent Schools Superannuation Trust Group Life Insurance Plan (Policy No G005/2 dated 12 February 1991)

Independent Schools Superannuation Trust Group Life Insurance Plan (Policy No 0089 dated 29 September 1988)

Mitsubishi Motors Australia Staff Superannuation Fund Group Life Insurance Plan (Policy No G006 dated 1 June 1989)

Mitsubishi Motors Australia Employees' Superannuation Fund Group Life Insurance Plan (Policy No G007 dated 1 June 1989)

Kokums Pacific Pty Limited Group Life Insurance Policy (Policy No G008 dated 26 March 1990)

Hardmart Group Superannuation Fund Group Life Insurance Policy (Policy No 6004285 dated 2 August 1985)

Mitsubishi Motors Australia Executive Group Life Plan (Policy No 6010 dated 1 June 1989)

McKechnie Iron Foundry Pty Ltd Group Life Insurance Policy (Policy No G011 dated 20 June 1990)

National Jet Systems Pty Ltd Group Life Insurance Policy (Policy No G0012 dated 12 May 1991)

Chevron Glass Group Life Insurance Policy (Policy No G019 dated 17 June 1992)

Fisher Jeffries Equity Partners' Group Life Insurance Policy (Policy No G021 dated 3 November 1993)

Part C policies—Continuous insurance

Accident Cash Insurance Policy
(85–86)

Accident Cash Insurance Policy with no claim refund after 10 years
(32, 33, 35, 38)

Part D policies—Investment contracts—deposits

Personal Savings Plan
(20)

Money Certificate
(SGL 158 KP 500 11/91)

Money Certificate
(SGL 158 KP 2000 6/93)

Money Plan Policy
(FOR 414/SGL 359/1000/NS/2–94)

Single Premium Money Certificate (Capital Guaranteed)
(BOND M/KP 31531)

Single Premium Money Certificate (Capital Guaranteed)
(SGL 159KP 500 11/91)

Investment Bond Certificate
(No reference)

Personal Investment Bond Certificate
(BOND1-SI)

Personal Investment Bond Certificate (Capital Guaranteed)
(BOND2-KP31199)

Personal Investment Bond Certificate (Capital Guaranteed)
(SGL 160KP1000 11/91)

Superannuation Bond Certificate
(SUPBD)

Personal Superannuation Bond Certificate (Capital Guaranteed)
(SGL 161 KP500 11/91)

Personal Superannuation Plan
(25)

Superannuation Certificate
(SUPMY STAFS KP29211)

Personal Superannuation Certificate (Capital Guaranteed)
(SGL 151 KP1500 11/91)

Capital Guaranteed No Fee Rollover Certificate
(SGL 152 KP500 11/91)

Roll-over Deposit Certificate
(No Reference)

Roll-over Deposit Certificate
(Roll-1 S2)

Rollover Deposit Plan Certificate
(SGL 154 KP 1000 11/91)

Hindmarsh Adelaide Tax Saver Bond
(No Reference)

Hindmarsh Adelaide Tax Saver Passbook
(HAPSB)

Police Credit Union Tax Advantage Savings Plan
(PCUSR KP 30187)

Personal Superannuation Plan
(FOR 413/SGL 360/700/NS/2–94)

SGIC Capital Guaranteed Fund Policy
(BC02)

Part E policies—Unit investment contracts

Personal Investment Bond Policy
(FOR 375/7/92/2m/SGL 172 NS)

Personal Investment Bond Policy
(FOR 375/SGL 396/1m/NS/6–94)

Personal Investment Bond Policy
(FOR 375/GDSAO/SGL 453 12–94)

Retirement Plus Account Policy
(FOR 389/SGL 282/NS/2,000/4–93)

Retirement Plus Account Policy
(FOR 389/SGL383/NS/3m/6–94)

Retirement Plus Account Policy
(FOR 389/GDSAO/SGL 455 12/94)

Personal Superannuation Bond Policy
(FOR 374/7/92/2m/SGL 174 NS)

Personal Superannuation Bond Policy
(FOR 374/SGL 382/3m/NS/6–94)

Personal Superannuation Bond Policy
(FOR 374/GDSAO/SGL 456 12–94)

Rollover Deposit Plan
(FOR 376/7/92/2m/SGL 175/NS)

Rollover Deposit Plan Policy
(FOR 376/SGL 375/3m/NS/6–94)

SGIC (Sale) Act 1995—1.7.1995

Schedule 5—Policies subject to Government guarantee and referred to in Part 5

Rollover Deposit Plan Policy
(FOR 376/GDSAO/SGL 454 12–94)

SGIC Managed Fund Policy
(BC03)

Note—

The code in brackets is SGIC's reference for the policy type.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	47	<i>SGIC (Sale) Act 1995</i>	22.6.1995	1.7.1995 (<i>Gazette 29.6.1995 p2972</i>) except Sch 4—1.5.1995: Sch 4 cl 1(2)
1995	—	proclamation (<i>Gazette 29.6.1995 p2973</i>)	—	1.7.1995

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Schs 1 and 4	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Sch 5		
Pt D policies	amended by <i>Gazette 29.6.1995 p2973</i>	1.7.1995
Pt E policies	amended by <i>Gazette 29.6.1995 p2973</i>	1.7.1995