

SOUTH AUSTRALIA

STATE GOVERNMENT INSURANCE COMMISSION ACT, 1970

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **15 January 1992**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX LEGISLATIVE HISTORY

STATE GOVERNMENT INSURANCE COMMISSION ACT, 1970

being

State Government Insurance Commission Act, 1970, No. 24 of 1970
[Assented to 22 October 1970]¹

as amended by

State Government Insurance Commission Act Amendment Act, 1974, No. 88 of 1974 [Assented to 28 November 1974]
State Government Insurance Commission Act Amendment Act, 1977, No. 18 of 1977 [Assented to 5 May 1977]
State Government Insurance Commission Act Amendment Act, 1986, No. 29 of 1986 [Assented to 20 March 1986]
Statutes Amendment (Finance and Audit) Act, 1987, No. 13 of 1987 [Assented to 9 April 1987]²
State Government Insurance Commission Act Amendment Act, 1987, No. 19 of 1987 [Assented to 16 April 1987]

¹ Came into operation 23 December 1970: *Gaz.* 24 December 1970, p. 2870.

² Came into operation 1 October 1987: *Gaz.* 17 September 1987, p. 886.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to authorize the establishment of a State Government Insurance Commission; to authorize such Commission to carry on the General Business of Insurance; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title and commencement

1. This Act may be cited as the *State Government Insurance Commission Act, 1970*, and shall come into operation on a day to be fixed by proclamation.

Interpretation

2. In this Act, unless the context otherwise requires—

"Chairman" means Chairman of the Commission and includes the acting Chairman of the Commission:

"Commission" means the State Government Insurance Commission constituted pursuant to this Act:

"insurance" includes assurance, additional insurance, treaty and internal insurance, and re-insurance, guarantee and surety:

"Life Fund" means the fund kept under section 20 of this Act in relation to the life insurance business undertaken and carried on by the Commission:

"member" means member of the Commission and includes an acting member of the Commission.

The Commission

3. (1) For the purposes of this Act there shall be a commission which shall be known as the "State Government Insurance Commission".

(2) The Commission—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) subject to this Act, shall be capable of acquiring, taking or letting out on lease, holding, selling and otherwise dealing in or disposing of real and personal property;

(c) may in its name sue and be sued;

and

(d) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) In the exercise and discharge of its powers, duties, functions and authorities, the Commission shall, except for the purposes of section 16 and section 16a of this Act, be subject to the control and directions of the Government of the State acting through the Minister; but no such direction shall be inconsistent with this Act.

3.

(4) All courts and person acting judicially shall take judicial notice of the common seal of the Commission affixed to any document and shall presume that it was duly affixed.

(5) Subject to this Act, the Commission shall consist of five members appointed by the Governor, of whom one shall be nominated by the Governor as the Chairman of the Commission.

(6) No person who is a director of or who is actively engaged in the control of any company conducting the business of insurance shall be appointed or hold office as a member of the Commission.

(7) The Commission shall be constituted on the day on which the first members take office.

(8) A member shall not, as such, be subject to the *Public Service Act, 1967*, as amended, but this provision shall not affect the rights, duties and obligations under that Act of any member who is otherwise subject to that Act.

(9) The office of member of the Commission may be held in conjunction with any other appointment under the Government of the State.

Terms of office of members of the Commission

4. (1) Subject to this section, a member shall be appointed for a term of office of five years, except that, in the case of the first five members—

(a) the Chairman shall be appointed for a term of office of five years;

(b) one member shall be appointed for a term of four years;

(c) one member shall be appointed for a term of three years;

(d) one member shall be appointed for a term of two years;

and

(e) one member shall be appointed for a term of office of one year,

but a member appointed to fill a casual vacancy shall be appointed only for the balance of the term of office of the member in whose place he was appointed.

(2) On the expiration of his term of office as a member, a person shall be eligible for re-appointment.

Temporary appointments

5. In the case of the illness, suspension or absence of any member the Governor may appoint a person to act for the member during such illness, suspension or absence, and a person so appointed shall, while so acting, be deemed to be a member of the Commission and shall have all the powers, authority, responsibilities, duties and obligations of the member for whom the person is acting.

Suspension or removal from office of member

6. The Governor may, by notice in writing served on a member, suspend him from office for any period not exceeding the balance of his term of office, or remove him from office, on grounds of misconduct or incapacity to perform his duties or functions as a member.

Casual vacancies

7. The office of a member shall become vacant if—

- (a) he dies;
- (b) he resigns by written notice given to the Minister;
- (c) he is removed from office by the Governor pursuant to section 6 of this Act;
- (d) he is absent without leave of the Minister from four consecutive meetings of the Commission;
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar;
- (f) he is convicted of any indictable offence;

or

- (g) he is convicted of any other offence involving dishonesty and receives a notice in writing from the Minister discharging him from office on the ground of that conviction.

Common seal, meetings and quorum

8. (1) The common seal of the Commission shall not be affixed to any instrument except in pursuance of a resolution of the Commission, and the affixing of the seal shall be attested by the signatures of any two members.

(2) The procedure for the calling of meetings of the Commission and for the conduct of business at such meetings shall, subject to any directions that may be given by the Minister, be as determined by the Commission.

(3) Any three members shall constitute a quorum at any meeting of the Commission and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Commission and shall have and may exercise and discharge all the powers, duties, functions and authorities of the Commission.

(4) If the Chairman is not present at any meeting of the Commission, the members present at that meeting shall elect one of their number to be the Chairman for that meeting and the person so elected shall preside at such meeting and exercise the powers and perform the duties of the duly appointed Chairman.

(5) A decision carried by a majority of the votes cast by the members present at a meeting of the Commission shall be the decision of the Commission.

Chairman

9. (1) The Chairman shall preside at all meetings of the Commission at which he is present and shall, in the event of an equality of votes, have, in addition to a deliberative vote, a second or casting vote.

(2) The Chairman shall cause accurate minutes to be kept of the proceedings at all meetings of the Commission.

Validity of acts of Commission

10. No act, proceeding or determination of the Commission shall be invalid on the ground only of any vacancy in the office of any member or of any defect in the appointment of any member.

Remuneration of members

11. A member of the Commission shall be paid out of the funds of the Commission such fees or other remuneration as may from time to time be fixed by the Governor and shall be entitled to receive out of such funds such travelling and other expenses as are from time to time approved by the Minister.

Powers and functions of Commission

12. (1) Subject to this Act and the directions of the Minister not inconsistent with this Act, the Commission is hereby authorized and empowered—

- (a) to undertaken and carry on in the State the general business of insurance, including any class or form of insurance which is, at the commencement of this Act, being undertaken or carried on in the State by any person engaged in the business of insurance or which may be considered necessary or desirable;
- (b) to undertake and carry on in the State such general business of insurance or any class or form of insurance according to the practice, usage, form and procedure which is, for the time being, followed by other persons engaged in the like business or to undertake and carry on such business in such manner and form and according to such procedure as may be considered necessary or desirable;
- (c) to employ and terminate the services of officers, servants and agents;

* * * * *

- (e) with the approval of the Treasurer, to borrow money and to give security for the repayment of any loan;

and

- (f) to do or cause to be done such other things as are necessary or convenient for or incidental to the administration of this Act or the affairs of the Commission or to give effect to the objects of this Act.

(2) The powers and authorities conferred by subsection (1) of this section shall be in addition to any other power or authority conferred on the Commission by this Act or any other Act.

(3) The Commission shall be capable of becoming an approved insurer in accordance with and for the purposes of the *Motor Vehicles Act, 1959*, as amended.

(3a) The Commission—

- (a) is a public instrumentality to which a delegation may be made by the Workers Rehabilitation and Compensation Corporation ("the Corporation") under the *Workers Rehabilitation and Compensation Act, 1986*;
- (b) has the necessary power to exercise any power or function so delegated but in doing so must comply with—
 - (i) any conditions of the delegation;
 - (ii) any policies enunciated by the Corporation and communicated to the Commission in writing;and
 - (iii) any directions given by the Corporation under its common seal or through an authorized officer;
- (c) may, subject to any condition of the delegation, sub-delegate any of the delegated powers or functions to officers, employees or agents of the Commission.

* * * * *

(5) The Commission may, with the approval of the Minister and the consent of the Minister controlling any department of the public service of the State, and, on such terms as may be mutually agreed upon, make use of the services of any of the officers or employees of that department.

(6) A person whose services are employed by the Commission shall not, for that reason alone, be subject to the *Public Service Act, 1967*, as amended, but this provision shall not affect the rights, privileges, duties and obligations under that Act of any such person who is otherwise subject to that Act.

Limitation on powers of Commission

12a. (1) In the exercise of its powers and authorities the Commission shall not, without the approval of the Treasurer—

- (a) make a contract or arrangement or enter into an understanding in restraint of trade or commerce;
- or
- (b) give effect to a contract, arrangement or understanding to the extent that it is in restraint of trade or commerce whether or not the contract or arrangement was made on the understanding entered into before, on or after the commencement of the *State Government Insurance Commission Act, 1977*.

7.

(2) In the exercise of its powers and authorities the Commission shall not, without the approval of the Treasurer—

- (a) supply any service;
- (b) charge a price for any service;
- (c) give or allow a discount, allowance, rebate or credit in relation to the supply of any service,

on the condition, or subject to a contract, arrangement or understanding that the person to whom the Commission supplies the service will not, or will to a limited extent only, obtain services of a similar kind from a competitor of the Commission.

(3) In the exercise of its powers and authorities the Commission shall not discriminate between purchasers of like services in relation to—

- (a) the price charged by the Commission for that service;
- (b) any discounts, allowances, rebates or credits given in relation to the supply of those services;
- (c) the method of payments for those services,

if the nature of that discrimination is likely to have the effect of substantially lessening competition in the market for services of a similar kind.

(4) Where the Treasurer gives an approval under subsection (1) or subsection (2) of this section he shall forthwith publish in the *Gazette* notice of that approval setting out with reasonable particularity the matter approved of.

Delegation

12b. (1) The Commission may, by instrument in writing, delegate to any officer or employee of the Commission or to any body corporate in which the Commission holds shares any of its powers, functions or authorities.

(2) A delegation under this section—

- (a) may be made subject to such conditions as the Commission thinks fit;

and

- (b) does not derogate from the power of the Commission to act in any matter itself.

(3) The Commission may at any time and shall, if so required by the Minister, revoke a delegation under this section.

(4) In any legal proceedings, an apparently genuine certificate, purporting to be signed by an officer of the Commission, containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

Execution of contracts

13. Contracts on behalf of the Commission may be made, varied or discharged as follows:—

- (a) any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied or discharged in the name and on behalf of the Commission, in writing under the common seal of the Commission;
- (b) any contract which, if made between private persons, would be by law required to be writing and signed by the parties to be charged therewith, may be made, varied, or discharged in the name and on behalf of the Commission, in writing signed by any person acting under the express or implied authority of the Commission;
- (c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made, varied or discharged by parol, in the name and on behalf of the Commission, by any person acting under the express or implied authority of the Commission,

and all contracts made according to the provisions contained in this section shall be effectual in law, and shall be binding upon the Commission and on all other parties thereto, their heirs, executors or administrators as the case may be: But nothing in this section shall invalidate any contract executed on behalf of the Commission by any duly appointed attorney of the Commission if the contract would be valid if executed by the attorney on his own behalf.

Commission to hold property on behalf of Crown

14. All real and personal property of the Commission shall be held by the Commission for and on behalf of the Crown.

Guarantee by State

15. (1) Every policy or contract of insurance or indemnity issued or entered into within the authority of this Act is hereby guaranteed by the Government of the State and any liability arising under such guarantee shall, without further or other appropriation than this section, be paid out of Consolidated Revenue.

(2) Any amount paid out of Consolidated Revenue pursuant to subsection (1) of this section shall be deemed to be an advance to the Commission and shall be and remain a charge on the funds of the Commission to be recouped when funds are available.

Power to invest

16. The Commission may invest the moneys in the funds established under and for the purposes of this Act—

- (a) in any investments from time to time approved of by the Treasurer;
 - (b) in temporary deposits with the Treasurer upon such terms and conditions as the Treasurer may determine;
 - (c) with the approval of the Treasurer in real property;
- and
- (d) in a manner provided for in section 16a.

Powers in respect of bodies corporate

16a. (1) The Commission may, in accordance with guidelines set by the Treasurer—

- (a) purchase or otherwise acquire, and hold and dispose of, shares or other interests in a body corporate;
 - (b) participate in the promotion and formation of a body corporate;
- and
- (c) enter into partnership or any arrangement for sharing of profits, co-operation or joint venture with another person.

(2) The powers conferred by subsection (1) apply in relation to bodies corporate formed or to be formed within or outside the State.

(3) The Commission shall be deemed always to have had the powers conferred by subsection (1).

(4) Where by reason of the exercise, after the commencement of the *State Government Insurance Commission Act Amendment Act, 1986*, of a power conferred by subsection (1)—

- (a) the Commission holds, at any time during a financial year, more than 9.9 per cent (or such larger percentage as may be prescribed) of the share capital of a body corporate;
- (b) the Commission holds, at the end of a financial year, any shares in a body corporate which is a public company;
- (c) the Commission or a member, officer or employee of the Commission is, at any time during a financial year a member of the governing body of a body corporate;

or

- (d) any other prescribed relationship exists at any time during a financial year between the Commission and a body corporate,

the name of that body corporate together with a statement of the amount of the share holding or the relationship must be included in the annual report relating to that financial year.

Contributions in lieu of taxation, etc.

17. (1) Whilst any Act relating to income tax shall not apply to the Commission, the Commission shall from time to time pay to the Treasurer such sums as the Treasurer deems to be the equivalent of the amounts which would be payable by the Commission if the Commission in respect of its insurance business were liable as an insurance company for payment of income tax and other taxes under the provisions of any Act or Commonwealth Act.

(2) The Commission shall take out an annual licence in accordance with the provisions of subsection (1) of section 33 of the *Stamp Duties Act, 1923*, as amended, and shall pay the duty thereon in the same manner as other persons engaged in the business of insurance in the State and the Commission shall pay the duty applicable to all other instruments and transactions in accordance with the provisions of that Act in the same manner as other persons engaged in the business of insurance in the State.

(3) The provisions of the *Fire Brigades Act, 1936*, as amended, the *Bush Fires Act, 1960*, as amended, the *Volunteer Fire Fighters Fund Act, 1949*, as amended, the *Hospitals Act, 1934*, as amended and the *Hire-Purchase Agreements Act, 1960*, as amended, shall apply to and in relation to the Commission in the same manner and to the same extent as they apply to and in relation to other persons engaged in the business of insurance in the State.

Profits to be paid into reserve and Consolidated Revenue

18. Where at the end of any financial year a profit is disclosed in the accounts of the Commission such portion of such profit as the Chairman, the Under-Treasurer and the Auditor-General deem advisable shall be carried to a reserve and any balance shall be paid into Consolidated Revenue to the extent directed by the Governor.

Accounts and audit

19. (1) The Commission shall at all times keep proper books of account and records in such manner and form as are approved by the Treasurer showing at all times a true and accurate account of the affairs of the Commission.

(2) The Auditor-General must, in respect of each financial year of the Commission, audit the accounts of the Commission.

(3) The Auditor-General shall have and may exercise, in respect of the moneys and accounts of the Commission and the persons dealing with the Commission, the same powers as are vested by the *Audit Act, 1921*, as amended, in the Auditor-General in respect of public moneys and the public accounts.

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Funds

20. (1) There shall be such separate and distinct funds for the life insurance business and each other class or combination of classes of insurance business undertaken and carried on by the Commission as the Minister after consultation with the Commission may determine.

(2) All premiums and other moneys received by the Commission under this Act shall be paid into the proper fund.

(3) All payments in respect of contracts of insurance made by the Commission shall be paid out of the proper fund.

(4) All payments in respect of salaries, allowances, remuneration and other outgoings expended or incurred in the general management of the Commission and the conduct of its business and in the administration of this Act shall be apportioned between and payable out of the several funds established under this Act in such proportions as the Commission, with the approval of the Minister, from time to time determines and such payments shall include the recoupment to Consolidated Revenue of any payments made therefrom in respect of salaries, allowances or other remuneration payable to any officers or employees of the Public Service or of the Crown during and in relation to their employment by, and in relation to the business of, the Commission.

(5) Until there are sufficient moneys in the several funds established under this Act to meet the expenses of administering the affairs of the Commission, the Treasurer may, from time to time, make to the Commission, from moneys appropriated by Parliament for the purpose, such advances on such terms and conditions as he thinks fit.

Surpluses in life fund

20a. (1) The Commission shall not pay, apply or allocate any part of the assets of the Life Fund—

(a) pursuant to section 18 of this Act;

or

(b) as bonuses to the owners of any policies of life insurance,

otherwise than in accordance with this section.

(2) There shall be an actuarial investigation of the state and sufficiency of the Life Fund as at the thirtieth day of June in every year.

(3) The Commission shall ensure that following each actuarial investigation of the state and sufficiency of the Life Fund the sum of—

(a) the amount paid or allocated from that Fund to a reserve referred to in section 18 of this Act (not being a reserve established for the purposes of that Fund);

and

(b) the amount, if any, paid into Consolidated Revenue pursuant to that section,

arising from that part of the surplus in the Fund, which is derived from policies issued by the Commission which in their terms provide for sharing in the surplus or profits of the Fund, shall not exceed one-quarter of the amount paid or allocated from the Fund by way of bonuses to or for the benefit of the owners of those policies.

Regulations

21. The Governor may make such regulations as he considers necessary or expedient for the purpose of giving effect to the provisions and objects of this Act and without limiting the generality of the foregoing provisions for prescribing or providing for all matters which may or ought to be prescribed or provided for giving effect to the provisions and objects of this Act and fixing a penalty not exceeding Two hundred dollars for the breach of any regulation.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 10 of The Public General Acts of South Australia 1837-1975 at page 486.

Long title:	amended by 18, 1977, s. 2
Section 2:	definition of "Life Fund" inserted by 18, 1977, s. 3
Section 3(3):	amended by 29, 1986, s. 2
Section 12(1):	amended by 18, 1977, s. 4
Section 12(1)(d):	repealed by 29, 1986, s. 3(a)
Section 12(3a):	inserted by 19, 1987, s. 2
Section 12(4):	repealed by 29, 1986, s. 3(b)
Section 12a:	inserted by 18, 1977, s. 5
Section 12b:	inserted by 29, 1986, s. 4
Section 16:	amended by 29, 1986, s. 5
Section 16a:	inserted by 29, 1986, s. 6
Section 19(2):	substituted by 13, 1987, s. 9(a)
Section 19(4):	repealed by 13, 1987, s. 9(b)
Section 20(1):	amended by 18, 1977, s. 6
Section 20a:	inserted by 18, 1977, s. 7