



Western Australia

# **Insurance Commission of Western Australia Act 1986**

Compare between:

[01 Jul 2012, 03-f0-04] and [20 Aug 2013, 03-g0-04]



Western Australia

## **Insurance Commission of Western Australia Act 1986**

**An Act to provide for the constitution and functions of the Insurance  
Commission of Western Australia, and for related purposes.**

*[Long title inserted by No. 45 of 1996 s. 4.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Insurance Commission of Western Australia Act 1986*<sup>1</sup>.

*[Section 1 amended by No. 45 of 1996 s. 5.]*

### **2. Commencement**

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used**

In this Act, unless the contrary intention appears —

***board of commissioners*** means the governing body of the Commission provided for by section 5(1);

***borrow*** includes —

- (a) reborrow; and
- (b) obtain credit; and
- (c) arrange for financial accommodation;

***business undertaking*** includes any person, corporation, trust, joint venture, government agency or other entity engaging or intending to engage in economic activity;

***Commission*** means the body continued by section 4 under the corporate name “Insurance Commission of Western Australia”;

***Commission account*** means a Fund, a fund established under section 7(4)(a) or a trust of which the Commission is a trustee under section 7(4)(c);

***commissioner*** means —

- (a) a person appointed to the board of commissioners under section 5(1)(a), including the chairman and the deputy chairman of the board of commissioners; or
- (b) the managing director;

**community organisation** means —

- (a) an association incorporated under the *Associations Incorporation Act 1987*; or
- (b) a company limited by guarantee that is registered under section 150 of the *Corporations Act 2001* of the Commonwealth; or
- (c) a company holding a licence that continues in force under section 151 of the *Corporations Act 2001* of the Commonwealth;

**eligible community organisation** has the meaning given in section 3A;

**Fund** means a fund established under section 16;

**insurance** includes assurance, co-insurance, re-insurance, guarantee and surety;

**insurer** means a corporation carrying on business under the *Insurance Act 1973* or the *Life Insurance Act 1945*<sup>2</sup> of the Commonwealth or under each of those Acts;

**managing director** means the chief executive officer of the Commission appointed under section 11;

**policy** includes contract;

**public authority** means —

- (a) a department of the Public Service; or
- (b) an agency, authority or instrumentality of the Crown in right of the State; or
- (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose under a written law, other than a body, or a body of a class, that is excluded by regulation from the operation of this definition;

**risk management** does not include the management of risks associated with an investment;

**Treasurer** means the Treasurer of the State.

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*[Section 3 amended by No. 45 of 1996 s. 6; No. 34 of 2002 s. 4.]*

**3A. Eligible community organisations**

- (1) A community organisation is an eligible community organisation for the purposes of this Act if the Treasurer has made a determination under subsection (2) in respect of the organisation or a class of organisations of which it is a member.
- (2) The Treasurer may determine that an organisation, or all organisations of a particular class, is or are eligible to participate in an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.

*[Section 3A inserted by No. 34 of 2002 s. 5.]*

## **Part II — Insurance Commission of Western Australia**

*[Heading inserted by No. 45 of 1996 s. 7.]*

### **Division 1 — The Commission and the board of commissioners**

*[Heading inserted by No. 45 of 1996 s. 7.]*

#### **4. Insurance Commission of Western Australia: corporate identity and status**

- (1) The body corporate established under this section as enacted before the commencement of section 8 of the *Acts Amendment (ICWA) Act 1996*<sup>1</sup> is continued under the corporate name “Insurance Commission of Western Australia” without affecting its corporate identity or its rights and obligations.
- (2) The Commission is a body corporate with perpetual succession and a common seal.
- (3) Proceedings may be taken by or against the Commission in its corporate name.
- (4) The Commission may use and operate under one or more trading names approved by the Minister being —
  - (a) an abbreviation or adaptation of its corporate name; or
  - (b) a name other than its corporate name.

*[Section 4 inserted by No. 45 of 1996 s. 8.]*

#### **4A. Agent of Crown**

The Commission is an agent of the Crown in right of the State and has the status, immunities and privileges of the Crown except as otherwise prescribed.

*[Section 4A inserted by No. 45 of 1996 s. 8.]*

**5. Board of commissioners**

- (1) The Commission shall have a board of commissioners comprising —
  - (a) not less than 3 or more than 6 persons appointed as commissioners by the Governor on the nomination of the Minister; and
  - (b) the managing director who shall be a commissioner *ex officio*.
- (2) One of the commissioners referred to in subsection (1)(a) shall be appointed by the Governor on the nomination of the Minister to be chairman of the board of commissioners and another of those commissioners shall be so appointed to be deputy chairman of the board of commissioners.
- (3) The board of commissioners is the governing body of the Commission with authority, in the name of the Commission, to exercise and perform the powers, functions and duties conferred or imposed on the Commission under this Act.
- (4) Schedule 1 shall have effect with respect to the board of commissioners and the commissioners and with respect to the acts, proceedings and determinations of the board of commissioners.
- (5) A commissioner referred to in subsection (1)(a) shall be paid out of the funds of the Commission such remuneration and travelling and other allowances as are determined in the case of that commissioner by the Minister on the recommendation of the Public Sector Commissioner.

*[Section 5 amended by No. 45 of 1996 s. 9; No. 39 of 2010 s. 89.]*



## Division 2 — Functions and powers of the Commission

### 6. Functions

The functions of the Commission are —

- (a) to issue, or cause to be issued, and undertake liability under policies of insurance as required by the *Motor Vehicle (Third Party Insurance) Act 1943*; and
- (b) to issue and undertake liability under policies of insurance as required by the *Workers' Compensation and Injury Management Act 1981* section 163; and
- (c) to manage and administer insurance and risk management arrangements on behalf of public authorities; and
- (ca) to manage and administer insurance and risk management arrangements on behalf of eligible community organisations; and
- (d) to provide services, facilities and advice to public authorities in respect of the management of claims against them or against funds maintained or administered by them under any written law; and
- (e) to initiate, or participate in, and promote programmes and schemes for —
  - (i) research into the treatment of industrial diseases and personal injury; and
  - (ii) research into, education for, and promotion of public awareness relating to, the prevention of industrial diseases, personal injury and accidental death,

being programmes and schemes relevant to risks in respect of which the Commission is to provide insurance under paragraph (a) or (b) or manage and administer arrangements under paragraph (c) or (ca); and

- (f) to provide advice to the Government on matters relating to insurance and risk management; and
- (g) to invest and manage moneys and other property under its control; and
- (h) to do such other acts and things or engage in such other activities as it is authorised or required to do or engage in under any written law.

*[Section 6 amended by No. 49 of 1992 s. 28; No. 45 of 1996 s. 10; No. 34 of 2002 s. 6; No. 42 of 2004 s. 174; No. 8 of 2009 s. 79(2).]*

**7. Powers**

- (1) The Commission has power to do, in the State or elsewhere, all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1), the powers of the Commission referred to in that subsection include power —
  - (a) with the approval of the Treasurer, to borrow moneys in accordance with this Act and give or arrange security for such borrowings; and
  - (aa) to fix and collect such fees, charges or other payments as it considers appropriate for or in respect of services it provides; and
  - (b) to lend moneys and provide credit; and
  - (c) with the approval of the Treasurer and subject to such terms and conditions as the Treasurer may approve, to open, maintain and operate accounts in the name of the Commission with such bank or banks as the Treasurer may approve for the purposes of section 16(7) and for such other purposes as the Treasurer may approve; and
  - (d) to issue, draw, make, accept, endorse, and discount bills of exchange and promissory notes; and

- (e) to acquire, hold, lease, sublease, license, exploit, encumber, deal in, dispose of, divide, subdivide, improve, develop or alter property or do anything else that a natural person could do in respect of property; and
  - (f) to form or establish, or participate in the formation or establishment of, any business undertaking; and
  - (g) to subscribe for, invest in or otherwise acquire any investment and to deal in or dispose of any investment; and
  - (h) to enter into a partnership or an arrangement for sharing of profits; and
  - (i) to underwrite issues of shares in, or debentures or other securities of, any business undertaking; and
  - (j) to appoint or engage agents, custodians, brokers and attorneys; and
  - (k) to exercise any right conferred upon the Commission to appoint a director of, or hold office in, a business undertaking; and
  - (l) to establish advisory groups and act on the advice of such groups; and
  - (m) to act as agent for other persons or public authorities; and
  - (n) to do and suffer in relation to insurance policies that it has issued or caused to be issued, all such acts and things as an insurer may do and suffer in the course of carrying on business; and
  - [(o) deleted]*
  - (p) to do anything incidental to any of its powers.
- (3) For the purposes of section 6(b) the Commission shall be deemed to be an incorporated insurance office approved under section 161 of the *Workers' Compensation and Injury Management Act 1981* by the Minister to whom the administration of that Act is committed by the Governor.

- (4) Without limiting subsection (1) or (2), the Commission has power to arrange reinsurance of risks and, in relation to its functions under section 6(c) or (ca), has power —
- (a) to establish, manage and maintain any fund or funds (in addition to the Funds) for the management of insurance arrangements of, or for risk management for, public authorities or eligible community organisations; and
  - (b) to arrange insurance of risks for public authorities or eligible community organisations; and
  - (c) to act as trustee of any trust.
- (5) The Commission's powers of investment include —
- (a) power to invest in real or personal property of any kind; and
  - (b) power to be a party to any financial instrument or arrangement that relates to any investment and is, in the opinion of the board of commissioners, for the purpose of managing, limiting or reducing perceived risks or anticipated costs associated with the investment.

*[Section 7 amended by No. 49 of 1992 s. 28; No. 45 of 1996 s. 11; No. 34 of 2002 s. 7; No. 42 of 2004 s. 174.]*

**8. Commission to act efficiently and economically**

The Commission shall perform its functions and exercise its powers in an efficient and economic manner and shall use its best endeavours to ensure that its revenue is sufficient to meet its expenditure.

**9. Delegation**

The board of commissioners, in the name and on behalf of the Commission, may, by instrument in writing approved by resolution, delegate to a commissioner, to a committee of the board of commissioners, or to an officer or employee of the Commission all or any of the powers or duties of the Commission, except this power of delegation.

*[Section 9 amended by No. 49 of 1992 s. 28.]*

**10. Directions by Minister**

- (1) The Minister may give directions in writing to the Commission with respect to its functions, powers and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.
- (2) The text of any direction received by the Commission under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.
- (3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Section 10 amended by No. 5 of 1989 s. 16; No. 41 of 1996 s. 3; No. 77 of 2006 Sch. 1 cl. 91(1).]*

**10A. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Commission; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Commission to furnish information to the Minister;
  - (b) request the Commission to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff and facilities of the Commission to obtain the information and furnish it to the Minister.

- (3) The Commission is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Commission;
- staff** includes persons whose services are used under section 13.
- [Section 10A inserted by No. 45 of 1996 s. 12.]*

**10B. Confidential information**

- (1) Nothing in this Act entitles the Minister to have information in the possession of the Commission concerning the affairs of the Commission in a form that —
- (a) discloses the identity and affairs of any person who is or has been a customer of the Commission in the person's capacity as such a customer; or
  - (b) might enable the identity and affairs of any such person in that capacity to be ascertained.
- (2) Subsection (1) does not apply where disclosure of the information —
- (a) is required by some other written law; or
  - (b) is authorised by the customer.
- (3) In this section —
- Commission** includes the State Government Insurance Office established by the *State Government Insurance Office Act 1938*<sup>3</sup> and the Motor Vehicle Insurance Trust constituted by the *Motor Vehicle (Third Party Insurance) Act 1943*;

**customer** means a person who is or may become a current or former insured party of, or a claimant against, the Commission and an agent, broker or attorney appointed or engaged by the Commission.

*[Section 10B inserted by No. 45 of 1996 s. 12.]*

### **Division 3 — Staff of the Commission**

#### **11. Managing director**

- (1) There shall be an office of managing director of the Commission.
- (2) The managing director shall be the chief executive officer of the Commission and shall, subject to the control of the board, administer the day to day operations of the Commission.
- (3) The managing director shall be appointed by the Governor on the nomination of the Minister.
- (4) Subject to subsections (6) and (7) the managing director shall hold office for such period, not exceeding 5 years, as is specified in the instrument appointing him and is eligible for reappointment.
- (5) Subject to the *Salaries and Allowances Act 1975*, the remuneration and allowances payable to, and the conditions of service of, the managing director shall be such as are determined by the Minister on the recommendation of the Public Sector Commissioner.
- (6) The managing director may resign his office by notice in writing delivered to the Minister.
- (7) The managing director may be removed from office by the Governor for any reason mentioned in clause 2(4) of Schedule 1.

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- (8) The Minister may appoint a person to act in place of the managing director during any period when he is absent or unable to carry out his duties.

*[Section 11 amended by No. 39 of 2010 s. 89.]*

**12. Appointment of staff and consultants**

- (1) The Commission may appoint such officers and employees, either full-time or part-time, as the board considers necessary to enable the Commission to carry out its functions.
- (2) Subject to any relevant order, award or agreement under the *Industrial Relations Act 1979*, the Commission may determine the remuneration and other terms and conditions of service of its officers and employees.
- (3) The Commission may from time to time classify the positions to be held by officers and employees of the Commission and define the duties to be performed by the respective holders of those positions.
- (4) The Commission may engage under contract for services such professional and technical or other assistance as the board considers necessary to enable the Commission to carry out its functions.

*[Section 12 amended by No. 45 of 1996 s. 13.]*

**12A. Status of managing director and officers and employees of Commission**

Notwithstanding anything in this Division, to the extent that there is in the case of a person who is appointed under —

- (a) section 11 to be the managing director; or  
(b) section 12 to be an officer or employee of the Commission,

and who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994*<sup>5</sup> an



inconsistency between this Act and that Act that Act shall prevail.

*[Section 12A inserted by No. 113 of 1987 s. 32.]*

**13. Use of staff and facilities of departments and instrumentalities**

- (1) The Commission may, by arrangement made between the board of commissioners and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —
  - (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in the right of the State; or
  - (b) any facilities of a department of the Public Service of the State or of a State instrumentality.
- (2) Any such arrangement shall provide for an agreed amount by way of payment for the use of the services or facilities.

*[Section 13 amended by No. 32 of 1994 s. 19.]*

**13A. Use of staff and facilities of an insurer**

The Commission may arrange to make use, either full-time or part-time, of —

- (a) the services of any employee of an insurer; or
- (b) any services or facilities of an insurer,

on such terms and conditions (including payment) as may be mutually arranged by the board of commissioners with that insurer.

*[Section 13A inserted by No. 49 of 1992 s. 28.]*

**14. Superannuation**

- (1) The Commission may grant, or make provision for the grant of, pensions, gratuities and retirement benefits to its officers and employees and, for that purpose may establish, manage and control, or enter into an arrangement with an insurer or other person for the establishment, management and control by that insurer or other person either alone or jointly with the Commission of, any fund or scheme for the purpose of providing for such pensions, gratuities and benefits.
- (2) The Commission may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) *officers and employees* includes —
  - (a) dependants of officers and employees; and
  - (b) former officers and employees and their dependants.

*[Section 14 amended by No. 49 of 1992 s. 28.]*

**Division 3A — Strategic development plan and statement of corporate intent**

*[Heading inserted by No. 28 of 2006 s. 425.]*

**14A. Duty to observe policy instruments**

The Commission is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

*[Section 14A inserted by No. 28 of 2006 s. 425.]*

**14B. Strategic development plan and statement of corporate intent**

- (1) The board of commissioners must, at the prescribed times, prepare and submit to the Minister —
  - (a) a strategic development plan for the Commission; and
  - (b) a statement of corporate intent for the Commission.

- (2) The regulations may make provision for the following —
- (a) the manner and form in which the board of commissioners is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
  - (b) the period a strategic development plan or statement of corporate intent is to cover;
  - (c) the matters to be set out in a strategic development plan or statement of corporate intent;
  - (d) the functions of the board of commissioners, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
  - (e) the operation of a strategic development plan or statement of corporate intent.
- (3) If a regulation referred to in subsection (2) enables the Minister to give directions to the board of commissioners, the Minister must cause a copy of a direction given under the regulation to be laid before each House of Parliament or be dealt with in accordance with section 14C —
- (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

*[Section 14B inserted by No. 28 of 2006 s. 425.]*

**14C. Laying directions about strategic development plan or statement of corporate intent before Parliament**

- (1) If —

- (a) a House of Parliament is not sitting at the commencement of the applicable period referred to in section 14B(3) in respect of a direction; and
- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (2) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (4) The text of a direction referred to in section 14B(3) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.

*[Section 14C inserted by No. 28 of 2006 s. 425; amended by No. 77 of 2006 Sch. 1 cl. 91(2).]*

#### **Division 4 — Financial provisions relating to the Commission**

##### **Subdivision A — Income, expenditure and property of the Commission**

#### **15. Moneys available to Commission**

- (1) Subject to this Act the Commission shall be responsible for managing its own finances.
- (2) The moneys available to the Commission for the purposes of this Act are —
  - (a) moneys from time to time appropriated by Parliament for the purpose; and

- (b) moneys received by the Commission, pursuant to any written law, by way of premiums, charges, fees, interest or payment for services; and
- (c) moneys derived from the disposal of or dealing with real or personal property vested in or acquired by the Commission, or derived as the income of investment by the Commission or otherwise in the exercise of its functions; and
- [(d) deleted]*
- (e) moneys borrowed under this Act, or lent to the Commission under any other written law, or derived from financial accommodation entered into under and subject to this Act; and
- (f) such moneys as may be advanced by the Treasurer in any case where the moneys otherwise standing to the credit of any of the Funds would be insufficient; and
- (g) any other moneys lawfully received by the Commission.

*[Section 15 amended by No. 45 of 1996 s. 14.]*

**16. Establishment and composition of Funds**

- (1) The Commission shall establish, maintain and administer the following funds, namely —
  - (a) a fund to be called the “Third Party Insurance Fund”; and
  - (b) a fund to be called the “Compensation (Miscellaneous Risks) Insurance Fund”; and
  - (c) a fund to be called the “Compensation (Industrial Diseases) Fund”; and
  - (d) a fund to be called the “Government Insurance Fund”; and
  - (e) a fund to be called the “Insurance Commission General Fund”.

- (1a) The Commission may establish, maintain and administer a fund for the purposes of an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.
- (2) The Third Party Insurance Fund shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(a) or its functions under section 6(e) in so far as they relate to personal injury and accidental death; and
  - (b) other property received or acquired by the Commission in connection with the Commission's functions referred to in paragraph (a); and
  - (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions referred to in paragraph (a) and for that purpose only.

*[(3) deleted]*

- (4) The Compensation (Industrial Diseases) Fund shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(b)(ii) or its functions under section 6(e) in so far as they relate to industrial diseases; and
  - (b) other property received or acquired by the Commission in connection with the Commission's functions referred to in paragraph (a); and
  - (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions referred to in paragraph (a) and for that purpose only.

- (5) The Government Insurance Fund shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(c) other than moneys in a fund established under section 7(4)(a) or the subject of a trust of which the Commission is a trustee under section 7(4)(c); and
  - (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(c); and
  - (c) moneys or other property credited, apportioned or transferred to that Fund by the Commission under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions under section 6(c) and for that purpose only.

- (5a) A fund established under subsection (1a) shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(ca), other than moneys that are the subject of a trust of which the Commission is a trustee under section 7(4)(c); and
  - (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(ca); and
  - (c) moneys or other property credited, apportioned or transferred to the fund by the Commission under section 17 or 18.
- (6) The Insurance Commission General Fund shall consist of —
- (a) moneys available to the Commission that are not required to be credited to any other Commission account; and
  - (b) other property of the Commission that does not form part of any other Commission account; and

- (c) any moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18 may be applied for the purpose of carrying out the functions of the Commission under section 6(d), (f) and (h), and for the general administration of this Act, and for those purposes only.

- (7) One or more accounts are to be established in respect of each Fund —
- (a) as agency special purpose accounts under section 16 of the *Financial Management Act 2006*; or
- (b) with the approval of the Treasurer under section 7(2)(c), at a bank (as defined in section 3 of the *Financial Management Act 2006*) or banks.
- (8) One account may be established under subsection (7) in respect of 2 or more Funds.

*[Section 16 amended by No. 49 of 1996 s. 64; No. 45 of 1996 s. 15; No. 34 of 2002 s. 8; No. 77 of 2006 Sch. 1 cl. 91(3) and (4); No. 8 of 2009 s. 79(3).]*

**17. Apportionment of income, expenditure and assets**

- (1) Where money received or receivable or expenditure incurred by the Commission relates to the Commission's operations in relation to 2 or more Funds the receipts or payments in respect of that income or expenditure shall be apportioned by the Commission to the relevant Funds in such proportions as the board of commissioners thinks fit.
- (2) Where property (other than money) received or acquired by the Commission relates to the Commission's operations in relation to 2 or more Funds the value of that property shall be apportioned by the Commission to the relevant Funds in such proportions as the board of commissioners thinks fit.



- (3) Where moneys are appropriated by Parliament for the purposes of functions of the Commission, those moneys shall, subject to the terms of the appropriation Act, be credited by the Commission —
- (a) to such Commission account; or
  - (b) to such Commission accounts in such proportions,
- as the board of commissioners thinks fit.

*[Section 17 amended by No. 45 of 1996 s. 16.]*

**18. Transfer between Funds**

- (1) The Commission may temporarily transfer moneys or other property from one Fund to another Fund subject to appropriate adjustments being made at intervals not exceeding 12 months.
- (2) Where the financial statements prepared under the *Financial Management Act 2006* in respect of the Third Party Insurance Fund, the Government Insurance Fund, the Insurance Commission General Fund or a fund established under section 16(1a) indicate that there is a surplus in that Fund the Commission, with the approval of the Treasurer, may transfer the amount, or a portion of the amount, of that surplus to —
- (a) another of the Funds; or
  - (b) the Consolidated Account; or
  - (c) any other fund or account.

*[(3) deleted]*

- (4) Subject to this section no moneys or other property shall be transferred from a Fund to another Fund.
- (5) In this section **surplus** means any amount standing to the credit of a Fund which, in the opinion of the Treasurer, is in excess of that required as adequate provision for actual and contingent liabilities and the operating and other expenses of the Fund.

*[Section 18 amended by No. 6 of 1993 s. 11; No. 34 of 2002 s. 9; No. 77 of 2006 s. 4 and Sch. 1 cl. 91(5); No. 47 of 2011 s. 6.]*

**Subdivision Aa — Investment and property management**

*[Heading inserted by No. 45 of 1996 s. 17.]*

**19. Arrangements for appointment of investment managers**

- (1) The Commission may, with the written approval of the Treasurer, arrange for a person to invest or manage moneys or other property under the control of the Commission on such terms and conditions (including payment) as may be mutually arranged by the board of commissioners with that person.
- (2) The Commission is not to make an arrangement with a person under subsection (1) unless the board of commissioners considers that the person is suitably qualified to perform the functions required under the arrangement.
- (3) The Commission is to ensure that expressions of interest are invited from persons who are believed by the board of commissioners to be suitably qualified before an arrangement is made under subsection (1).

*[Section 19 inserted by No. 45 of 1996 s. 17.]*

**19A. Investment policy**

- (1) A person performing a function relating to the investment or management of moneys or other property under the control of the Commission shall observe such prudential requirements as to investment policy as the Treasurer may impose.
- (2) Subsection (1) applies to —
  - (a) the Commission performing its functions under section 6(g); and
  - (b) a person performing a function under an arrangement under section 19(1).

*[Section 19A inserted by No. 45 of 1996 s. 17.]*

**Subdivision B — Financial administration, audit and reporting**

**20. Application of *Financial Management Act 2006* and *Auditor General Act 2006* to Commission**

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 20 amended by No. 77 of 2006 Sch. 1 cl. 91(6).]*

**21. Provisions and reserves**

The Commission may, in its accounting records, establish and operate provisions for actual and contingent liabilities, reserve accounts and reserve funds for such purposes and within such limits as the Treasurer approves.

**22. Accounts**

The Commission shall cause separate and distinct accounts to be kept and maintained under the *Financial Management Act 2006* in respect of each Commission account.

*[Section 22 amended by No. 45 of 1996 s. 18; No. 77 of 2006 Sch. 1 cl. 91(7).]*

**23. Annual reports, financial statements**

The Commission shall, if so directed by the Treasurer —

- (a) cause a separate and distinct annual report to be prepared and submitted under Part 5 of the *Financial Management Act 2006*, in respect of a Commission account; or
- (b) cause separate and distinct financial statements referred to in section 61(1)(a) of the *Financial Management*

*Act 2006* to be prepared in respect of a Commission account for inclusion in the Commission's annual report under Part 5 of that Act.

*[Section 23 inserted by No. 45 of 1996 s. 19; amended by No. 77 of 2006 Sch. 1 cl. 91(8) and (9).]*

### **Subdivision C — Borrowing and financial accommodation**

#### **24. Power to borrow etc., generally**

- (1) Subject to this Act, the Commission may, with the approval of the Treasurer —
- (a) borrow, or re-borrow, moneys; or
  - (b) obtain credit; or
  - (c) arrange for financial accommodation to be extended to the Commission in ways additional to or other than borrowing moneys or obtaining credit,

for the purpose of performing its functions.

- (2) Any moneys borrowed by, credit obtained by, or financial accommodation extended to the Commission under this section may be raised or entered into, either in Australia or elsewhere, as one loan or transaction or as several loans or transactions.

#### **25. Power to make provision to pay off loans**

For the purpose of making provision to pay off either the whole or any part of the moneys comprised in a loan raised by the Commission, the Commission may, with the approval of the Treasurer, convert or re-negotiate that loan or otherwise borrow moneys in accordance with this Act before the loan or that part of it becomes repayable.

#### **26. Borrowing power, from Treasury sources**

The Commission may borrow from the Treasurer such amounts as the Treasurer approves, on such conditions as to repayment,

payment of interest or any other matter, as the Treasurer imposes.

**27. Specific State guarantees**

- (1) The Treasurer on behalf of the State may guarantee the performance by the Commission, in the State or elsewhere, of any obligation of the Commission, however or wherever arising, entered into or to be entered into by the Commission.
- (2) An instrument of guarantee given pursuant to subsection (1) shall be executed by —
  - (a) the Treasurer; or
  - (b) a person authorised —
    - (i) by the Treasurer in writing; or
    - (ii) by operation of law.
- (3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Commission of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Commission and any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.
- (4) The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act is hereby authorised, and the due payment of moneys payable thereunder with all interest thereon shall be charged to the Consolidated Account which is hereby to the extent necessary appropriated accordingly, and any sums received or recovered by the Treasurer from the Commission or otherwise in respect of payment so charged shall be credited to the Consolidated Account.
- (5) By virtue of this subsection any sum paid by the Treasurer under any guarantee given by him on behalf of the State under

this Act, and any obligation of the Commission arising pursuant to an advance made under section 26 constitutes a floating charge upon the revenue and assets of the Commission, and such revenue and those assets are charged with the performance and observance by the Commission of the terms and the conditions which the Treasurer may have imposed or approved in relation to that guarantee or that advance.

*[Section 27 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]*

**Subdivision D — Dividends to State**

*[Heading inserted by No. 7 of 2013 s. 4.]*

**28. Interim dividend**

(1) Not later than the last day of February in each financial year, the Commission must give the Minister a written report that —

(a) sets out a forecast of the Commission's net profits for that financial year, prepared in accordance with generally accepted accounting practice; and

(b) states any factors or circumstances that the Commission has taken into account in accordance with subsection (2) in preparing the forecast and the report's recommendation; and

(c) recommends —

(i) whether the Commission should pay the State an interim dividend for that financial year; and

(ii) the amount of the interim dividend (if any).

(2) The profit forecast and recommendation may take into account any factors or circumstances that in the Commission's opinion may have a material effect on the Commission's financial position (either positively or negatively) as at the end of that financial year.

(3) On receiving a report under subsection (1), the Minister must —



(a) whether the Commission should pay the State a dividend for that financial year; and

(b) the amount of the dividend (if any).

(3) On receiving a report under subsection (2), the Minister must —

(a) with the Treasurer's concurrence, either —

(i) accept the report's recommendation on the amount of the dividend; or

(ii) after consulting the Commission, reject the report's recommendation and fix a different amount (which may be a nil amount) as the amount of the dividend;

and

(b) notify the Commission of the Minister's decision and the amount of the dividend (if any) payable by the Commission.

(4) On receiving a notice under subsection (3)(b), the Commission must pay to the State the amount of the dividend (if any) notified to the Commission —

(a) as soon as practicable; but

(b) in any event not later than —

(i) 6 months after the end of the financial year concerned; or

(ii) any later time agreed on by the Treasurer and the Commission.

[Section 29 inserted by No. 7 of 2013 s. 4.]

**30. Provisions for s. 28 and 29**

(1) The accountable authority of the Commission under the *Financial Management Act 2006* must include the text of each notice given under section 28(3)(b) or 29(3)(b) in relation to a financial year in the annual report for that year submitted under Part 5 of that Act.



(2) If under section 28(3)(b) or 29(3)(b) the Minister notifies the Commission that the Minister rejects a report's recommendation and fixes a different amount (other than a nil amount) as the amount of the interim dividend or dividend payable by the Commission, that notification is to be taken to be a direction by the Minister to the Commission for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*, and that Act applies accordingly.

(3) Any interim dividend or dividend paid under section 28 or 29 must be credited to the Consolidated Account.

[Section 30 inserted by No. 7 of 2013 s. 4.]

**31. Transitional provisions for *Insurance Commission of Western Australia Amendment Act 2013: interim dividends***

(1) Section 28 applies in respect of the financial year in which the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation and subsequent financial years, subject to subsections (2) and (3).

(2) If the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation on or after 1 March and before the close of 30 June in a financial year, section 28 applies in respect of that financial year with the following modifications —

(a) the Commission must give the Minister the report referred to in section 28(1) not later than 14 days after section 4 of that Act comes into operation;

(b) the Minister must notify the Commission in accordance with section 28(3)(b) as soon as practicable after receiving that report;

(c) the Commission must pay to the State the amount of the interim dividend (if any) notified to the Commission in accordance with section 28(3)(b) —

(i) as soon as practicable; but

(ii) in any event not later than a date determined by the Treasurer and notified to the Commission.

(3) If the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation on or after 1 July and before 1 September in a financial year, section 28 also applies in respect of the previous financial year with the following modifications —

(a) the Commission must give the Minister the report referred to in section 28(1) not later than 14 days after section 4 of that Act comes into operation;

(b) the Minister must notify the Commission in accordance with section 28(3)(b) as soon as practicable after receiving that report;

(c) the Commission must pay to the State the amount of the interim dividend (if any) notified to the Commission in accordance with section 28(3)(b) —

(i) as soon as practicable; but

(ii) in any event not later than a date determined by the Treasurer and notified to the Commission.

[Section 31 inserted by No. 7 of 2013 s. 4.]

**32. Transitional provisions for *Insurance Commission of Western Australia Amendment Act 2013*: annual dividends**

(1) Section 29 applies in respect of the financial year immediately before the financial year in which the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation, the financial year in which section 4 of that Act comes into operation, and subsequent financial years, subject to subsections (2) and (3).

(2) If the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation on or after 1 September and before the close of 30 June in a financial year (the ***current***

*financial year*), sections 29 and 30(1) apply in respect of the previous financial year with the following modifications —

- (a) the Commission must give the Minister the report referred to in section 29(2) as soon as practicable after section 4 of that Act comes into operation;
- (b) on receiving a notice under section 29(3)(b) in respect of that report, the Commission must pay to the State the amount of the dividend (if any) notified to the Commission —
  - (i) as soon as practicable; but
  - (ii) in any event not later than a date determined by the Treasurer and notified to the Commission;
- (c) the accountable authority of the Commission under the *Financial Management Act 2006* must include the text of the notice referred to in paragraph (b) in the annual report for the current financial year submitted under Part 5 of that Act.

- (3) If the *Insurance Commission of Western Australia Amendment Act 2013* section 4 comes into operation before 1 July 2013, section 29 applies only in respect of the financial year ending on 30 June 2013 and subsequent financial years.

[Section 32 inserted by No. 7 of 2013 s. 4.]

[Part III: s. ~~31-33~~ deleted by No. 49 of 1992 s. 28;

s. ~~28-30 and 34-41~~ deleted by No. 45 of 1996 s. 20.]

## Part IV — General

### 42. Secrecy

- (1) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a function or duty under or in connection with this or any other written law or as required by any other legal duty —
- (a) 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 Act; or
  - (b) produce to any person any document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2 500.

- (2) This section applies to every person who is or has been a commissioner or alternate commissioner, is or has been an officer or employee of the Commission, or is rendering, or has rendered services to the Commission under section 12, 13 or 13A.

*[Section 42 amended by No. 49 of 1992 s. 28; No. 45 of 1996 s. 21.]*

### 43. Execution of documents and entry into contracts

- (1) A document is duly executed by the Commission if —
- (a) it is sealed with the seal of the Commission in accordance with the regulations; or
  - (b) it is executed on behalf of the commission by a person empowered to do so under subsection (4).
- (2) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.

- (3) Where a document is produced bearing a seal purporting to be the common seal of the Commission it shall be presumed that the seal is the common seal of the Commission until the contrary is shown.
- (4) The Commission may, by writing under its common seal, empower a commissioner, officer, employee or other person, either generally or in respect of a specified matter, or specified matters, to execute deeds on its behalf, and a deed executed by such a person on behalf of the Commission binds the Commission and has the same effect as if it were under the common seal of the Commission.
- (5) The authority of a person empowered by the Commission under subsection (4) shall be deemed as between the Commission and a person dealing with him, to have continued during the period (if any) specified in the instrument conferring his authority or, if no period is so specified, until notice of the revocation or termination of his authority was given to the person dealing with him.
- (6) Insofar as the formalities of making, varying or discharging a contract are concerned a person acting under the express or implied authority of the Commission may make, vary or discharge a contract in the name of or on behalf of the Commission in the same manner as if the Commission were a natural person.
- (7) The making, varying or discharging of a contract in accordance with subsection (6) is effectual in law and binds the Commission and other parties to the contract.
- (8) Subsection (6) does not prevent the Commission from making, varying or discharging a contract under its common seal.

*[(9) deleted]*

*[Section 43 amended by No. 45 of 1996 s. 22.]*

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**44.        Exemption of certain public authorities from workers' compensation insurance requirements**

For the purposes of any enactment other than sections 165, 166 and 168 of the *Workers' Compensation and Injury Management Act 1981* (the **WC&IM Act**), public authorities for which insurance arrangements are managed and administered by the Commission under section 6(c) of this Act, are to be regarded as a group of employers that have been exempted by the Governor under section 164 of the WC&IM Act from the obligation to insure pursuant to the WC&IM Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151(a)(iii) of the WC&IM Act.

*[Section 44 inserted by No. 45 of 1996 s. 23; amended by No. 42 of 2004 s. 174; No. 8 of 2009 s. 79(4).]*

**45.        Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may provide for the use of the common seal of the Commission in Western Australia and elsewhere.

*[Section 45 amended by No. 45 of 1996 s. 24.]*

## **Part V — Repeal, amendments, saving, validation and transitional**

### **46. Repeal and amendments**

- (1) The *State Government Insurance Office Act 1938* is hereby repealed.

*[(2) Omitted under the Reprints Act 1984 s. 7(4)(e).]*

### **47. Saving, validation and transitional provisions**

Schedule 4 shall have effect.

### **48. Oversight by Public Accounts Committee**

- (1) The Public Accounts Committee, for the time being, of the Legislative Assembly shall oversee the conduct and management of the affairs of the Commission and the Corporation to the extent necessary to determine and report whether the Commission and the Corporation receive any improper or unfair advantage or preference over their competitors in the insurance industry.
- (2) The Terms of Reference of the Public Accounts Committee in relation to its function under subsection (1) shall be as agreed to by both Houses of Parliament.

## **Schedule 1 — Provisions as to commissioners**

[s. 5(4)]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **1. Terms used**

In this Schedule —

**board** means the board of commissioners of the Commission;

**ordinary commissioner** means a commissioner other than the managing director, and includes the chairman and the deputy chairman of the board of commissioners.

### **2. Commissioners — terms and vacation of office**

- (1) Subject to subclauses (2), (3) and (4), an ordinary commissioner shall hold office for such period, not exceeding 3 years, as is specified in the instrument appointing him as a commissioner, and is eligible for reappointment.
- (2) An ordinary commissioner, unless he sooner resigns or is removed from office, shall continue in office until his successor comes into office, notwithstanding that the period for which he was appointed may have expired.
- (3) An ordinary commissioner may resign his office by notice in writing delivered to the Minister.
- (4) An ordinary commissioner may be removed from office by the Governor —
  - (a) for mental or physical disability, incompetence, neglect of duty or misconduct proved to the satisfaction of the Governor; or
  - (b) if he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (c) if he is absent without leave of the board from 3 consecutive meetings of the board of which he has had notice.



- (5) An ordinary commissioner shall carry out his duties on a part-time basis unless there is any requirement to the contrary in the instrument appointing him as a commissioner or as chairman or deputy chairman of the board.

*[Clause 2 amended by No. 18 of 2009 s. 47(2).]*

**3. Alternate commissioners**

- (1) Where an ordinary commissioner, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his place, and while so acting according to the tenor of his appointment that other person is deemed to be a commissioner.
- (2) Except where there is a person acting in his place pursuant to section 11(8), the managing director may, in writing delivered to the chairman of the board, nominate a senior officer of the Commission to represent him at any meeting of the board which he is unable to attend by reason of sickness, absence or other cause, and while so attending the person so nominated is deemed to be a commissioner.
- (3) No act or omission of a person acting in place of another under this clause shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

**4. Chairman and deputy chairman — term and vacation of office**

- (1) Subject to subclauses (2) and (3) the chairman or deputy chairman of the board shall hold office as chairman or deputy chairman for such period not exceeding 3 years as is specified in the instrument appointing him as chairman or deputy chairman, as the case may be, and is eligible for reappointment.
- (2) The office of the chairman or deputy chairman of the board becomes vacant if he ceases to be a commissioner.
- (3) The chairman or deputy chairman of the board may resign his office as chairman or deputy chairman by notice in writing delivered to the Minister.

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**5. Disclosure of pecuniary interests**

- (1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the board.
- (2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the board and the commissioner shall not, unless the board otherwise determines —
  - (a) be present during any deliberation of the board with respect to that matter; or
  - (b) take part in any decision of the board with respect to that matter.
- (3) For the purpose of the making of a determination by the board under subclause (2) in relation to a commissioner who has made a disclosure under subclause (1), a commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not —
  - (a) be present during any deliberation of the board for the purpose of making the determination; or
  - (b) take part in the making by the board of the determination.

**6. Meetings**

- (1) The first meeting of the board shall be convened by the chairman of the board and thereafter, subject to subclause (2), meetings shall be held at such times and places as the board determines.
- (2) A special meeting of the board may at any time be convened by the chairman of the board.
- (3) The chairman of the board shall preside at all meetings of the board at which he is present.
- (4) If the chairman of the board is absent from a meeting the deputy chairman of the board shall, if present, preside at the meeting.

- (5) If the chairman and the deputy chairman of the board are both absent from a meeting the commissioners present shall appoint one of their number to preside.
- (6) At any meeting of the board 3 commissioners constitute a quorum.
- (7) At any meeting of the board the person presiding shall have a deliberative vote, and in the case of an equality of votes, shall also have a casting vote.

*[Clause 6 amended by No. 45 of 1996 s. 26(a).]*

**6A. Telephone and video meetings**

Despite anything in this Schedule, a communication between commissioners constituting a quorum under clause 6(6) by telephone or audio-visual means is a valid meeting of the board, but only if each participating commissioner is capable of communicating with every other participating commissioner instantaneously at all times during the proceedings.

*[Clause 6A amended by No. 45 of 1996 s. 26(b).]*

**7. Committees**

- (1) The board may from time to time, by resolution, appoint committees of such commissioners, or such commissioners and other persons, as it thinks fit and may discharge, alter, continue or reconstitute any committee so appointed.
- (2) Subject to the directions of the board and to the terms of any delegation under section 9, each committee may determine its own procedures.
- (3) Clause 6A applies, with such modifications as are necessary, in relation to a committee.

*[Clause 7 amended by No. 45 of 1996 s. 26(c).]*

**8. Resolution may be passed without meeting**

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all commissioners and is assented to by not less than

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3 commissioners that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.

- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
    - (i) if the commissioners assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a commissioner; or
    - (ii) if the commissioners assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a commissioner;
- and
- (b) 2 or more separate documents in identical terms each of which is assented to by one or more commissioners are to be taken to constitute one document; and
  - (c) a commissioner may signify assent to a document by signing the document or by notifying the Commission of the commissioner's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.
- (3) Where a commissioner signifies assent to a document otherwise than by signing the document, the commissioner must by way of confirmation sign the document at the next meeting of the board attended by that commissioner, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

*[Clause 8 amended by No. 45 of 1996 s. 26(d).]*

**8A. Minutes of meetings etc.**

The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 8.

*[Clause 8A amended by No. 45 of 1996 s. 26(d).]*

**9. Leave of absence**

The board may grant leave of absence to a commissioner on such terms and conditions as it thinks fit.

**10. Board to determine own procedures**

Subject to this Act, the board shall determine its own procedures.

**11. Protection of commissioners**

(1) A commissioner is not personally liable for any act done or omitted to be done in good faith by the Commission, the board, a committee of the board or a delegate of the Commission or by him acting as a commissioner.

(2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Clause 11 amended by No. 41 of 1996 s. 3.]*

*[Schedule 2 deleted by No. 45 of 1996 s. 27.]*

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Schedule 4 — Saving, validation and transitional provisions**

[s. 47]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **1. Terms used**

In this Schedule, unless the contrary intention appears —

**assets** includes funds, rights and property;

**commencement day** means the day of commencement of section 46<sup>1</sup>;

**liabilities** includes debt and obligations;

**MVIT** means the Motor Vehicle Insurance Trust constituted by the Third Party Insurance Act;

**prescribed period** means the period commencing on 1 July 1986 and ending immediately before the commencement day;

**SGIO** means the State Government Insurance Office established by the *State Government Insurance Office Act 1938*<sup>3</sup>;

**Third Party Insurance Act** means the *Motor Vehicle (Third Party Insurance) Act 1943*.

### **2. Transfer of assets, liabilities and records of MVIT**

On the commencement day —

- (a) all assets that were, immediately before that day, vested in, under the control of, or standing to the credit of the MVIT (including the Motor Vehicle Insurance Fund but excluding the moneys in the Premium Surcharge Account kept under section 3P(4a) of the Third Party Insurance Act) are, by force of this clause, vested in the Commission; and
- (b) the Commission becomes, by force of this clause, liable to pay, bear or discharge all the liabilities of the MVIT that existed immediately before that day; and
- (c) the Commission shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the MVIT.

**3. MVIT insurance policies**

Without limiting the generality of clause 4(1), on and from the commencement day any policy of insurance issued under the Third Party Insurance Act in force immediately before that day shall be deemed to be, and, subject to that Act and the terms and conditions of the policy, shall continue to have effect as if it were, a policy issued by the Commission under that Act.

**4. Agreements, instruments, determinations and proceedings generally**

- (1) Any agreement or instrument subsisting immediately before the commencement day to which the MVIT was a party has effect on and after that day as if—
  - (a) the Commission were substituted for the MVIT as a party to the agreement or instrument; and
  - (b) any reference in the agreement or instrument to the MVIT were (unless the context otherwise requires) a reference to the Commission.
- (2) Any determination of the MVIT made under or for the purposes of the Third Party Insurance Act and subsisting immediately before the commencement day has effect on and from that day as if it were a determination made by the Commission.
- (3) Where anything has been lawfully commenced by or under the authority of the MVIT before the commencement day that thing may be carried on and completed by or under the authority of the Commission.
- (4) Without limiting the generality of subclause (3), any proceedings, pending immediately before the commencement day to which the MVIT was a party may be continued on or after that day as if the Commission were a party thereto in lieu of the MVIT.

**5. Final reports on operations of MVIT**

- (1) If sections 3QA and 3QB of the Third Party Insurance Act (as applied by section 4 of the *Acts Amendment (Financial Administration and Audit) Act 1985*) have not been complied with before the commencement day in respect of the year ending on 30 June 1986, the

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MVIT, the auditor of the MVIT and the Minister to whom the Administration of the Third Party Insurance Act is committed shall comply with those sections (as so applied) in respect of that year as soon as practicable after the commencement day.

- (2) As soon practicable after the commencement day the MVIT shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985*<sup>8</sup> to be complied with in relation to the MVIT in respect of the prescribed period, and a report prepared under this subclause shall be deemed to be an annual report for the purposes of section 69 of that Act.
- (3) Notwithstanding section 46(2) and Schedule 3, the MVIT as constituted immediately before the commencement day shall continue in existence for the purposes of subclauses (1) and (2).
- (4) The Commission shall provide such clerical and other assistance as is reasonably required for the purposes of subclauses (1) and (2).

**6. Assessment as to sufficiency of income**

If the MVIT has complied with subsection (1) of section 3T of the Third Party Insurance Act at least once during the prescribed period, the Commission is not obliged to comply with that subsection until the financial year beginning on 1 July 1987.

**7. Employment of current officers**

- (1) A person who was, immediately before the commencement day, an employee of the MVIT shall be entitled to be employed pursuant to this Act with remuneration corresponding with or higher than that which he received immediately before the commencement day.
- (2) A person who becomes an officer or employee of the Commission pursuant to subclause (1) is entitled to retain his existing and accruing rights (including any rights in relation to retirement benefits) and for the purpose of determining such rights his service with the Commission shall be regarded as continuous with his service with the MVIT.



**8. References to MVIT in laws**

References to the MVIT in a written law, other than this Act or an Act amended by section 46(2) and Schedule 3, shall, unless because of the context it would be inappropriate so to do, be read and construed as references to the Commission.

**9. Transfer of assets, liabilities and records of SGIO**

On the commencement day —

- (a) all assets that were, immediately before that day, vested in, under the control of, or standing to the credit of the SGIO (including the Trading Fund, the Life Insurance Fund and the Government Insurance Fund) are, by force of this clause, vested in the Commission; and
- (b) the Commission becomes, by force of this clause, liable to pay, bear or discharge all the liabilities of the SGIO that existed immediately before that day; and
- (c) the Commission shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the SGIO.

**10. SGIO insurance policies and re-insurance**

- (1) In this clause —

*existing policy* means a policy of insurance subsisting immediately before the commencement day being a policy that was issued by the SGIO or a policy under which the SGIO had undertaken liability;

*existing re-insurance policy* means a policy of re-insurance subsisting immediately before the commencement day being a policy that was issue by another insurer and under which the SGIO was re-insured in respect of a liability or risk.

- (2) On and after the commencement day —

- (a) any existing policy that relates to the Commission's functions under section 6(b), (c), or (g) is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy issued by the Commission;

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- (b) any existing policy that relates to the Corporation's function under section 30 is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy issued by the Corporation.
- (3) Any doubt or dispute as to whether an existing policy is one to which subclause (2)(a) applies or is one to which subclause (2)(b) applies shall be resolved by determination of the Minister and the Minister's determination on the matter shall be final and not subject to appeal, review or challenge in any way.
- (4) On or as soon as practicable after the commencement day, the Commission shall, in respect of each existing policy referred to in subclause (2)(b), transfer to the Corporation, out of the assets vested in the Commission under clause 9(a), an amount that bears the same proportion to the current premium for that policy as the unexpired portion of the current term of that policy bears to the whole of that term.
- (5) Subject to subsections (4) and (5) of section 161 of the *Workers' Compensation and Assistance Act 1981*<sup>9</sup>, the approval of the SGIO granted by the Minister under that section current immediately before the commencement day shall subsist in favour of the Corporation in respect of existing policies referred to in subclause (2)(b) and in that respect only.
- (6) On and after the commencement day —
  - (a) any existing re-insurance policy that relates to the Commission's functions under section 6(b), (c), or (g) is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy that re-insures the Commission;
  - (b) any existing re-insurance policy that relates to the Corporation's function under section 30 is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy that re-insures the Corporation.
- (7) Any doubt or dispute as to whether an existing re-insurance policy is one to which subclause (6)(a) applies or is one to which subclause (6)(b) applies shall be resolved by determination of the Minister and the Minister's determination on the matter shall be final and not subject to appeal, review or challenge in any way.

**11. Agents and brokers**

- (1) Where any person has been appointed as an agent by the SGIO —
- (a) that appointment; and
  - (b) the terms and conditions of the agreement or instrument (if any) by which that appointment was made; and
  - (c) any act or thing done by or in relation to that person whilst he was acting under that appointment,

is, and shall be deemed to have always been, as valid and effectual as it would have been if, when the appointment was made, the SGIO had had the power conferred on the Commission by section 7(2)(j) and on the Corporation by section 31(2)(k)<sup>10</sup>.

- (2) Where any person is acting under an appointment referred to in subclause (1) immediately before the commencement day that appointment and the terms and conditions of the agreement or instrument by which that appointment was made have effect on and after that day as if the appointment were 2 separate and distinct appointments —
- (a) one appointing the person as an agent of the Commission; and
  - (b) the other appointing the person as an agent of the Corporation.
- (3) An agreement between the SGIO and an insurance broker subsisting immediately before the commencement day has effect on and after that day as if it were 2 separate and distinct agreements —
- (a) one between the Commission and the broker; and
  - (b) the other between the Corporation and the broker.

**12. Agreements, instruments and proceedings generally**

- (1) Unless clause 10 or 11 or an order under subclause (4) applies, any agreement or instrument subsisting immediately before the commencement day to which the SGIO was a party, has effect on and after that day as if —
- (a) the Commission were substituted for the SGIO as a party to the agreement or instrument; and

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- (b) any reference in the agreement or instrument to the SGIO were (unless the context otherwise requires) a reference to the Commission.
- (2) Where anything has been lawfully commenced by or under the authority of the SGIO before the commencement day that thing may, unless an order under subclause (5) applies, be carried on and completed by or under the authority of the Commission.
- (3) Without limiting the generality of subclause (2), any proceedings pending immediately before the commencement day to which the SGIO was a party may, unless an order under subclause (5) applies, be continued on or after that day as if the Commission were a party thereto in lieu of the SGIO.
- (4) Except where clause 10 or 11 applies, the Minister may, by order published in the *Gazette*, declare that an agreement or instrument mentioned in subclause (1) shall have effect on and after the day specified in the order as if —
  - (a) the Corporation were substituted for the SGIO as a party to the agreement or instrument; and
  - (b) any reference in the agreement or instrument to the SGIO were (unless the context otherwise requires) a reference to the Corporation.
- (5) The Minister may, by order published in the *Gazette*, declare that a thing mentioned in subclause (2) may be carried on and completed by or under the Authority of the Corporation on and after the day specified in the order.
- (6) An order under subclause (4) or (5) shall operate according to its tenor and the operation of subclause (1) or (2), as the case may be, shall be modified accordingly.

**13. Final reports on operations of SGIO**

- (1) If sections 21(1), (2) and (3) and 22 of the *State Trading Concerns Act 1916* (as applied by section 7(7) of the *State Government Insurance Office Act 1938*<sup>3</sup> and section 4 of the *Acts Amendment (Financial Administration and Audit) Act 1985*) have not been complied with before the commencement day in respect of the year ending on 30 June 1986, the SGIO and the Auditor General shall

comply with those provisions (as so applied) in respect of that year as soon as practicable after the commencement day.

- (2) As soon as practicable after the commencement day the SGIO shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985*<sup>8</sup> to be complied with in relation to the SGIO in respect of the prescribed period, and a report prepared under this subclause shall be deemed to be an annual report for the purposes of section 69 of that Act.
- (3) Notwithstanding section 46(1) the SGIO as constituted immediately before the commencement day shall continue in existence for the purposes of subclauses (1) and (2).
- (4) The Commission shall provide such clerical and other assistance as is reasonably required for the purposes of subclauses (1) and (2).
- (5) The Corporation shall incorporate in, or attach to, the first accounts and statements that it supplies under section 33(a) such accounts and statements as the SGIO would have been required to supply under section 7A(8) of the *State Government Insurance Office Act 1938*<sup>3</sup> in respect of the prescribed period if that Act had not been repealed by section 46(1).

**14. Certain outstanding obligations to be met by Commission**

- (1) The first return submitted by the Commission under section 25(1) of the *Employers' Indemnity Supplementation Fund Act 1980* shall consist of or contain, as the case may require, the payments made, and expenses incurred by the SGIO under that Act during the month to which the statement relates and, without limiting the generality of clause 9(a), those payments and expenses shall be deemed to be payments and expenses to which the Commission is entitled to reimbursement under section 25(2) of that Act.
- (2) Before 1 January 1988 the Commission shall pay to the Treasurer the amount (if any) that the SGIO would have been required to pay under section 7B(1) of the *State Government Insurance Office Act 1938*<sup>3</sup> in respect of the prescribed period if that Act had not been repealed by section 46(1).

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**15. Saving of presumption and protection**

Notwithstanding section 46(2) and Schedule 3 —

- (a) section 26 of the *Employers' Indemnity Supplementation Fund Act 1980* shall continue to have effect in relation to documents created before the commencement day;
- (b) the protection afforded by section 39 of the *Employers' Indemnity Supplementation Fund Act 1980* extends to acts of things done by the SGIO before the commencement day.

**16. Employment of staff of SGIO**

- (1) A person who was, immediately before the commencement day an officer within the meaning of the *Public Service Act 1978*<sup>11</sup> employed in the SGIO shall be entitled to be employed pursuant to this Act with remuneration corresponding with or higher than that which he received immediately before the commencement day.
- (2) A person who becomes an officer or employee of the Commission pursuant to subclause (1) is entitled to retain all his existing and accruing rights (including, if he is a contributor under the *Superannuation and Family Benefits Act 1938*<sup>12</sup>, his rights under that Act) as if his service as an officer or employee of the Commission were a continuation of his service as an officer of the Public Service.
- (3) A person who becomes an officer or employee of the Commission pursuant to subclause (1) shall, subject to a suitable vacancy being available, be entitled to be reappointed by the Public Service Board<sup>13</sup> at the termination of his employment with the Commission, to an office in the Public Service with a classification and remuneration corresponding with that of the office which he last held in the Public Service.
- (4) Subclause (3) does not apply to a person whose employment as an officer or employee of the Commission is terminated for mental or physical disability, incompetence, neglect of duty or misconduct.

**17. References to the SGIO in laws**

References to the SGIO in a written law, other than this Act or an Act amended by section 46(2) and Schedule 3, shall, unless because of the

context it would be inappropriate so to do, be read and construed as references to the Commission.

**18. Apportionment of assets and liabilities**

Assets vested in the Commission under clauses 2(a) and 9(a) and liabilities taken over by the Commission under clauses 2(b) and 9(b) shall, in the first instance, be held to the credit of or against the Insurance Commission General Fund but the Commission may, on or after the commencement day, apportion those assets and liabilities or their value to that Fund and the other Funds in such proportions as the board of commissioners thinks most conducive to the efficient performance of the various functions conferred on the Commission by section 6.

**19. Interpretation Act to apply**

With respect to the repeals and amendments effected by section 46 and Schedule 3, this Schedule is supplementary to, and does not displace the operation of, the *Interpretation Act 1984*.



### Notes

<sup>1</sup> This is a compilation of the *Insurance Commission of Western Australia Act 1986* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>State Government Insurance Commission Act 1986</i> <sup>1a</sup>	51 of 1986	5 Aug 1986	s. 1 and 2: 5 Aug 1986; Act other than s. 1 and 2: 21 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Acts Amendment (Public Service) Act 1987</i> s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Accountability) Act 1989</i> Pt. 6	5 of 1989	26 Apr 1989	1 Jul 1989 (see s. 2 and <i>Gazette</i> 30 Jun 1989 p. 1893)
<i>SGIO Privatisation Act 1992</i> s. 28	49 of 1992	9 Dec 1992	7 Jan 1993 (see s. 2(3) and <i>Gazette</i> 7 Jan 1993 p. 15)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> s. 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)



Short title	Number and year	Assent	Commencement
<i>Acts Amendment (ICWA) Act 1996</i> Pt. 2 (other than s. 25 and 28) <sup>15, 16</sup>	45 of 1996	25 Oct 1996	s. 3, 6(b) (to the extent it inserts definition of <i>Commission Account</i> ), 6(c), 9-12, 15-19, 23 and 26: 14 Dec 1996 (see s. 2 and <i>Gazette</i> 13 Dec 1996 p. 6901); s. 4, 5, 6(b) (to the extent it inserts the definition of <i>Commission</i> ), 7, 8 and 29-37: 1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357); s. 6(a), 13, 14, 20-22, 24 and 27: 1 Jul 2012 (see s. 2 and <i>Gazette</i> 8 Jun 2012 p. 2385)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>State Enterprises (Commonwealth Tax Equivalents) Act 1996</i> s. 10(1)	55 of 1996	11 Nov 1996	1 Jul 1996 (see s. 2 and 3(3))
<b>Reprint of the Insurance Commission of Western Australia Act 1986 as at 12 Nov 1999</b> (includes amendments listed above except those in the <i>Acts Amendment (ICWA) Act 1996</i> s. 6(a), 13, 14, 20-22, 24 and 27)			
<i>Insurance Commission of Western Australia Amendment Act 2002</i> <sup>17</sup>	34 of 2002	20 Nov 2002	20 Nov 2002 (see s. 2)
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 17 Div. 5	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 2: The Insurance Commission of Western Australia Act 1986 as at 8 Sep 2006</b> (includes amendments listed above except those in the <i>Acts Amendment (ICWA) Act 1996</i> s. 6(a), 13, 14, 20-22, 24 and 27)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 91	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 18	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 79	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 47	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<b>Reprint 3: The Insurance Commission of Western Australia Act 1986 as at 1 Oct 2010</b> (includes amendments listed above except those in the <i>Acts Amendment (ICWA) Act 1996</i> s. 6(a), 13, 14, 20-22, 24 and 27)			
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 6	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<a href="#"><i>Insurance Commission of Western Australia Amendment Act 2013</i></a>	<a href="#">7 of 2013</a>	<a href="#">19 Aug 2013</a>	<a href="#">s. 1 and 2: 19 Aug 2013 (see s. 2(a)); Act other than s. 1 and 2: 20 Aug 2013 (see s. 2(b))</a>

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (ICWA) Act 1996</i> s. 25 and 28 <sup>18</sup>	45 of 1996	25 Oct 1996	To be proclaimed (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 50 <sup>19</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

- <sup>2</sup> Repealed by the *Life Insurance (Consequential Amendments and Repeals) Act 1995* s. 5. Now the *Life Insurance Act 1995* of the Commonwealth.
- <sup>3</sup> Repealed by the *Insurance Commission of Western Australia Act 1986* s. 46(1).
- <sup>4</sup> Footnote no longer applicable.
- <sup>5</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).
- <sup>6</sup> The *SGIO Privatisation Act 1992* Pt. 3 came into operation on 24 December 1992.
- <sup>7</sup> The appointed day under the *SGIO Privatisation Act 1992* was 7 January 1993.
- <sup>8</sup> Repealed by the *Financial Legislation Amendment and Repeal Act 2006*.
- <sup>9</sup> Now cited as the *Workers' Compensation and Injury Management Act 1981*.
- <sup>10</sup> Section 31(2)(k) was repealed by the *SGIO Privatisation Act 1992* s. 28.
- <sup>11</sup> Under the *Public Sector Management Act 1994*, a reference in a written law to the *Public Service Act 1978* is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the *Public Sector Management Act 1994*.
- <sup>12</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26. See also note 19.
- <sup>13</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*).
- <sup>14</sup> Now known as the *Insurance Commission of Western Australia Act 1986*; short title changed (see note under s. 1).
- <sup>15</sup> The *Acts Amendment (ICWA) Act 1996* s. 11(9) reads as follows:
- (9) Anything done before the commencement of a provision of this section, is as valid and has the same force and effect, and is to be regarded as having always been as valid and had the same force and effect, as if that provision and section 10 of this Act had come into operation before the thing was done.

<sup>16</sup> The *Acts Amendment (ICWA) Act 1996* Pt. 3 contained transitional and savings provisions that are of no further effect.

<sup>17</sup> The *Insurance Commission of Western Australia Amendment Act 2002* s. 10 reads as follows:

**10. Transition and savings**

The functions conferred on the Insurance Commission of Western Australia by section 6(ca) and (e) of the *Insurance Commission of Western Australia Act 1986* as amended by this Act are taken always to have been functions of the Commission.

<sup>18</sup> On the date as at which this compilation was prepared, the *Acts Amendment (ICWA) Act 1996* s. 25 and 28 had not come into operation. They read as follows:

**25. Sections 47 and 48 repealed**

Sections 47 and 48 of the principal Act are repealed.

**28. Schedule 4 repealed**

Schedule 4 to the principal Act is repealed.

<sup>19</sup> On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 50 had not come into operation. It reads as follows:

**50. Insurance Commission of Western Australia Act 1986 amended**

Clause 16(2) of Schedule 4 to the *Insurance Commission of Western Australia Act 1986* is amended by deleting “(including, if he is a contributor under the *Superannuation and Family Benefits Act 1938*, his rights under that Act)”.