

# **SGIO PRIVATISATION ACT 1992**

(No. 49 of 1992)

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## **ARRANGEMENT**

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**SGIO PRIVATISATION  
ACT 1992**

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**No. 49 of 1992**

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**AN ACT to provide for certain government insurance business to be vested in a public company and for the public float of all shares in that company, to amend the *State Government Insurance Commission Act 1986* and certain other Acts and for related purposes.**

*[Assented to 9 December 1992.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *SGIO Privatisation Act 1992*.

### **Commencement**

2. (1) This section, the long title, sections 1, 4 and 5, and Part 2 come into operation on the day on which this Act receives the Royal Assent.

(2) The other provisions of this Act, except sections 28 and 29, come into operation on such day as is fixed by proclamation, but the proclamation cannot be made until the Treasurer has certified to the Governor that the Treasurer is satisfied that the public company referred to in section 6 is in existence and complies with that section.

- (3) Sections 28 and 29 come into operation on the appointed day.

### **Act binds the Crown**

3. This Act binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **Definitions**

4. (1) In this Act, unless the contrary intention appears —

“**allotment day**” means the day notified in the *Gazette* under section 21;

“**appointed day**” has the meaning given by subsection (2);

**“assets”** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and without limiting the generality of the foregoing includes choses in action, goodwill, rights, interests and claims of every kind in or to property, prepaid expenses and future income tax benefits, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**“Commission”** and **“Corporation”** have the same meanings as in the principal Act;

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

**“liability”** means any liability, duty or obligation whether actual, contingent or prospective, and includes an unearned premium reserve;

**“life policy”** has the same meaning as in the *Life Insurance Act 1945* of the Commonwealth, and also means approved deposit funds, annuities and other superannuation policies;

**“policy”** includes contract;

**“pre-allotment period”** means the period between the appointed day and the allotment day if they are not the same day;

**“principal Act”** means the *State Government Insurance Commission Act 1986*;

**“right”** means any right, power, privilege or immunity whether actual, contingent or prospective;

**“SGIO Insurance Limited”** means the public company incorporated in accordance with section 6;

**“transfer statement”** means the statement and any amendments to it approved by the Treasurer under section 8 (3).

(2) For the purposes of this Act the Treasurer is to fix an appointed day by order published in the *Gazette* which day —

- (a) cannot be a day that is before the publication in the *Gazette* under section 8 (5) of the statement approved under section 8 (3);
- (b) may be fixed by specifying that it is the same day as the allotment day.

### **Additional functions of Commission and Corporation**

**5.** In addition to its functions and powers under the principal Act each of the Commission and the Corporation —

- (a) has the functions conferred on it by this Act; and
- (b) may do, in the State or elsewhere, all things necessary or convenient to be done for or in connection with the performance of those functions.

## **PART 2 — ESTABLISHMENT OF SGIO INSURANCE LIMITED**

### **Establishment of SGIO Insurance Limited**

6. (1) The Commission is to ensure that, as soon as is practicable after the commencement of this Part, such steps are taken as are required to bring into existence a public company limited by shares incorporated under the Corporations Law.

(2) The name of the company is to be “SGIO Insurance Limited” or such other name as the Commission, with the approval of the Treasurer, may determine.

(3) The memorandum and articles of association of the SGIO Insurance Limited at the time when it is incorporated are to be as approved by the Treasurer.

(4) The Commission may delegate to any person any of the duties to be performed under this section.

(5) Shares in SGIO Insurance Limited are to be held by or on behalf of the Commission.

### **Name**

7. (1) On the commencement of this Part, the name “SGIO Insurance Limited” is taken to have been reserved under section 374 of the Corporations Law for the company referred to in section 6 (1).

(2) Subsection (1) has effect despite any provision of the Corporations Law.

**Statement to be prepared**

**8.** (1) As soon as is practicable after SGIO Insurance Limited comes into existence, the Commission, the Corporation and SGIO Insurance Limited are to jointly prepare and submit to the Treasurer a statement showing, as at a date specified in the statement —

- (a) a description of the assets and rights of the Commission and of the Corporation that are to vest in the SGIO Insurance Limited under section 9;
- (b) a description of the liabilities of the Commission and of the Corporation that are to become the liabilities of SGIO Insurance Limited under section 9;
- (c) any proceedings in which SGIO Insurance Limited is to be substituted as a party under section 9;
- (d) the manner of payment of the amount which SGIO Insurance Limited is to pay to the Commission under section 23 (c) and the allocation of all or part of that amount to the assets, rights and liabilities referred to in paragraphs (a) and (b);
- (e) the amount, or the manner of calculation of the amount, that is to be retained by SGIO Insurance Limited under section 23 (a);
- (f) the arrangements to be made or indemnities to be given in respect of taxation under subsection (2) (c).

(2) The Commission, the Corporation and SGIO Insurance Limited may agree on terms and conditions, not inconsistent with the transfer statement, relating to the vesting and transfer of assets, rights and liabilities that occur by operation of sections 9 and 10 including arrangements for —

- (a) the allocation of income in respect of the assets referred to in section 9 (a);



- (b) unearned premium income relating to existing policies under section 10;
  - (c) any actual or prospective liability of SGIO Insurance Limited for Commonwealth tax which may include arrangements to indemnify SGIO Insurance Limited in respect of such liability.
- (3) The Treasurer may approve a statement as submitted or, after consultation with the Commission, approve it with such modifications as the Treasurer thinks fit.
- (4) The Commission, the Corporation and SGIO Insurance Limited may before the appointed day prepare and submit to the Treasurer a proposed amendment to the statement approved under subsection (3) and that subsection applies to a proposed amendment in the same way as it applies to the statement.
- (5) The statement as approved by the Treasurer under subsection (3), and any amendment made to it as so approved, are to be published in the *Gazette* before the appointed day.

## **PART 3 — TRANSITION FROM CORPORATION TO SGIO INSURANCE LIMITED**

### **Transfer of assets and liabilities**

#### **9. On and after the appointed day —**

- (a) the assets and rights of the Commission and the Corporation described in the transfer statement are, by force of this section, vested in SGIO Insurance Limited;
- (b) the liabilities of the Commission and the Corporation described in the transfer statement become, by force of this section, the liabilities of SGIO Insurance Limited so far as they have not been paid or discharged;
- (c) agreements and instruments relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) have effect, by force of this section, as if SGIO Insurance Limited were substituted for the Commission or the Corporation as a party to the agreement or instrument;
- (d) all proceedings commenced before the appointed day by or against the Commission or the Corporation and described in the transfer statement are to be taken to be proceedings by or against SGIO Insurance Limited;
- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the appointed day by, to or in respect of the Commission or the Corporation (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of SGIO Insurance Limited;

- (f) the Commission and the Corporation are to deliver to SGIO Insurance Limited all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
  - (i) the assets, rights and liabilities referred to in paragraphs (a) and (b); and
  - (ii) proceedings referred to in paragraph (d).

**Transfer of liabilities  
under insurance policies**

10. (1) In this section —

**“existing policies”** means all policies of insurance (other than inwards re-insurance policies or life policies) existing immediately before the appointed day being policies that were issued by the Corporation or policies under which the Corporation had undertaken liability;

**“existing outwards re-insurance policies”** means all re-insurance policies existing immediately before the appointed day issued by another person under which the Corporation was re-insured in respect of all or part of its liabilities or risks under existing policies;

**“inwards re-insurance policies”** means all policies of re-insurance issued by the Corporation under which the Corporation re-insured the liability or risk of another person under a policy of insurance and includes any liability or risk identified immediately before the appointed day in the inwards re-insurance account of the Corporation.

## (2) On and after the appointed day —

- (a) all existing policies are to be taken to be, and, subject to the terms and conditions of the policy, continue to have effect as if they were policies issued by SGIO Insurance Limited; and
- (b) all existing outwards re-insurance policies that relate to existing policies are to be taken to be and, subject to the terms and conditions of the outwards re-insurance policy, continue to have effect as if they were policies that re-insure SGIO Insurance Limited in respect of existing policies.

**Liability of Corporation continued for transferred policies**

11. (1) The liability of the Corporation existing immediately before the appointed day under an existing policy, as defined in section 10 (1), continues after that day, but only to the extent that SGIO Insurance Limited is in default of its obligations under the policy.

(2) The liability referred to in subsection (1), other than a claim, or a right to claim, that has actually arisen before the appointed day —

- (a) ceases on a variation of the policy or contract after the allotment day; and
- (b) does not apply to a policy or contract that is renewed on its expiry after the allotment day.

(3) Any liability discharged under this section constitutes a debt due by SGIO Insurance Limited to the Corporation.

## **Saving**

**12.** The operation of sections 9, 10, and 11 is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (d) as releasing, or allowing the release of, any surety.

## **Completion of necessary transactions**

**13.** Where any asset, right or liability cannot be properly vested in or succeeded to by the SGIO Insurance Limited by the operation of this Part (whether because the matter is governed otherwise than by the law of the State, or for any other reason) the Commission and the Corporation must take all practicable steps for the purpose of securing that such asset, right or liability is effectively vested in or succeeded to by the SGIO Insurance Limited.

## **Registration of documents**

**14.** (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978*, and any other person authorized by a written

law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Part.

(2) Without limiting subsection (1) a statement in an instrument executed by the SGIO Insurance Limited that any estate or interest in land or other property has become vested in it under section 9 is evidence of that fact.

### **Corporation to cease insurance business**

**15.** (1) After the appointed day the Corporation is not to engage in the business of issuing, and undertaking liability under, policies of insurance.

(2) Nothing in subsection (1) limits section 30 of the principal Act.

### **Operation during pre-allotment period**

**16.** (1) During any pre-allotment period SGIO Insurance Limited is an agency through which the State engages in State insurance, as referred to in section 51 (xiv) of the Commonwealth Constitution, but is not an agent of the Crown.

(2) Nothing in subsection (1) limits the application of Chapter 7 of the Corporations Law to SGIO Insurance Limited, its directors or its shares and SGIO Insurance Limited is not an exempt public authority for the purposes of the Corporations Law.

(3) The Commission is liable to the same extent as SGIO Insurance Limited under a policy of insurance issued by SGIO Insurance Limited during any pre-allotment period, but only to

the extent that SGIO Insurance Limited is in default of its obligations under the policy.

(4) The liability referred to in subsection (3), other than a claim, or a right to claim, that has actually arisen before the allotment day —

- (a) ceases on a variation of the policy or contract after the allotment day; and
- (b) does not apply to a policy or contract that is renewed on its expiry after the allotment day.

(5) Any liability discharged under this section constitutes a debt due by SGIO Insurance Limited to the Commission.

### **Workers compensation**

17. SGIO Insurance Limited is by this section taken to have, immediately before the appointed day, applied for and been granted approval as an approved insurance office under section 161 (4) of the *Workers' Compensation and Rehabilitation Act 1981*, but the operation of that section is not otherwise affected by this section.

### **Use of staff and facilities**

18. (1) Officers and employees of the Commission employed under section 12 of the principal Act who are, before the appointed day, employed wholly or partly in performing the function of the Corporation may be made available to SGIO Insurance Limited until the allotment day on such terms as are agreed between the Commission and SGIO Insurance Limited.

(2) Facilities and services of the Commission and the Corporation may be made available to SGIO Insurance Limited

until the allotment day on such terms as are agreed between the Commission and SGIO Insurance Limited.

## Superannuation

19. (1) This section applies to a person who —

- (a) becomes an employee of SGIO Insurance Limited on or before the allotment day;
- (b) immediately before doing so was an employee of the Commission and a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* (“the 1938 Act”) or the *Government Employees Superannuation Act 1987* (“the 1987 Act”); and
- (c) is, or is eligible to be, a member of a superannuation scheme established, or to be established, for the benefit of employees of SGIO Insurance Limited (“the SGIO Insurance Limited Scheme”).

(2) A person to whom this section applies who becomes entitled to a deferred benefit under section 35 or clause 13 of Schedule 4 of the 1987 Act may, within 3 months of becoming an employee of SGIO Insurance Limited, request the Government Employees Superannuation Board (“the Board”) to acknowledge that it will transfer the value of that deferred benefit to the SGIO Insurance Limited Scheme.

(3) A person to whom this section applies may, within 3 months of becoming an employee of SGIO Insurance Limited, request the Board to acknowledge that it will transfer to the SGIO Insurance Limited Scheme the entitlement of the person under the 1938 Act on resignation from employment with the Commission.



(4) The Treasurer may after consultation with the Board determine that a person who has made a request under subsection (2) or (3) is to be treated as —

- (a) having a greater contributory period under the 1987 Act than the person actually had; or
- (b) being entitled to a benefit or entitlement under the 1938 Act or the 1987 Act greater than his or her actual entitlement.

(5) The Board is to comply with a request under subsection (2) or (3) and is also to notify a person of the effect of any determination in respect of that person under subsection (4).

(6) The actual amount to be paid to the SGIO Insurance Limited Scheme under this section in respect of persons to whom this section applies, and the time of payment, are to be agreed between the Board, the Commission and SGIO Insurance Limited, or failing agreement are to be fixed by the Treasurer.

(7) The Commission and the Board are to pay the amount agreed or fixed under subsection (6) in such shares as is agreed between them or failing agreement in such shares as the Treasurer determines having regard to the amount that the Commission ought to bear in respect of the employer's contribution to the funding of the benefits and entitlements.

(8) For the purposes of subsection (7), the Commission is to bear the cost of an increase in any benefit or entitlement under subsection (4).

**PART 4 — SALE OF SGIO INSURANCE LIMITED  
BY PUBLIC FLOAT**

**Public float**

**20.** (1) The Directors of SGIO Insurance Limited are to make arrangements for the sale of SGIO Insurance Limited by public float comprising the issue of shares by SGIO Insurance Limited.

(2) The arrangements may include underwriting agreements and the issue of a prospectus.

**Allotment day**

**21.** (1) The day fixed by the Directors of SGIO Insurance Limited for the allotment of shares on the public float is to be published by notice in the *Gazette*.

(2) This section does not restrict the Directors' power to change the allotment day but any such change is to be published in the same way.

(3) The allotment day cannot be a day that is before the appointed day.

**Restriction on maximum shareholding for 2 years**

**22.** (1) A person must not (whether as principal or agent) apply for the issue of shares in SGIO Insurance Limited on the public float if the issue would have the result that any person would be entitled to more than 15% of the voting shares in SGIO Insurance Limited after the allotment of all shares in the public float.

Penalty: \$200 000 or imprisonment for 12 months.

(2) Subsection (1) does not apply to the issue of shares pursuant to an underwriting agreement referred to in section 20 (2).

(3) A person must not acquire shares in SGIO Insurance Limited after the allotment day if any person who —

- (a) is not entitled to any voting shares in SGIO Insurance Limited; or
- (b) is entitled to less than 15% of the voting shares in SGIO Insurance Limited,

would, immediately after the acquisition, be entitled to more than 15% of the voting shares in SGIO Insurance Limited.

Penalty: \$200 000 or imprisonment for 12 months.

(4) Subsection (3) does not apply to an acquisition of shares that occurs after the second anniversary of the allotment day.

(5) In this section “**entitled**” and “**acquire**” have the same meanings as they have for the purposes of section 615 of the Corporations Law.

(6) If a body corporate is guilty of an offence against subsection (1) or (3) every director or other officer concerned in the management of the body corporate is guilty of the like offence unless he or she proves that —

- (a) the offence was committed without his or her consent; and
- (b) he or she exercised all such due diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

(7) Despite any provision of the articles of association of SGIO Insurance Limited, the Directors of SGIO Insurance Limited may refuse to issue or allot or register any transfer or transmission of any shares which in the opinion of the Directors would or might result in a contravention of this section.

(8) A contract, dealing or other transaction affecting shares in SGIO Insurance Limited is not unenforceable, voidable or void merely because the contract, dealing or other transaction was entered into in contravention of this section.

### **Proceeds**

**23.** SGIO Insurance Limited is to apply the proceeds of sale under section 22 as follows —

- (a) the amount referred to in section 8 (1) (e) is to be retained by SGIO Insurance Limited;
- (b) such of the expenses of the float as the Commission determines are to be paid; and
- (c) the balance is to be paid to the Commission in accordance with the transfer statement.

### **Disposal of Commission's shares**

**24.** On the allotment day the Commission is to dispose of its shares in SGIO Insurance Limited on such terms and to such persons as it thinks fit.

**PART 5 — MISCELLANEOUS****Use of names**

**25.** On and after the allotment day, SGIO Insurance Limited or any subsidiary, within the meaning of the Corporations Law, is not to use in connection with its business the name “State Government Insurance Office” or any other name or expression (apart from “SGIO”) which suggests that it is associated with the Government.

**Provision of services etc. to SGIO Insurance Limited**

**26.** The Commission and the Corporation may enter into arrangements with SGIO Insurance Limited on such terms as they think fit for the provision of services, facilities and office accommodation to or by SGIO Insurance Limited after the allotment day.

**Crown Solicitor may continue to act**

**27.** Where the Crown Solicitor is acting as solicitor on instructions from the Corporation before the appointed day in respect of any matter and the matter has not been concluded before that day the Crown Solicitor may, subject to any direction of SGIO Insurance Limited, continue to act in respect of that matter on and after the appointed day and the allotment day; and SGIO Insurance Limited, in respect of that matter only and for the purposes of the recovery of legal costs (if any), is to be treated as if it were an agent of the Crown.

**Consequential amendments to principal Act**

**28.** The principal Act is amended as set out in Schedule 1.

### **Consequential amendments to other Acts**

**29.** The Acts referred to in Schedule 2 are amended as set out in that Schedule.

### **Regulations**

**30.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out this Act.

## SCHEDULE 1

[section 28]

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

*Provision amended or  
nature of amendment**Amendment*

section 6 (d)

Delete and substitute —

“ (d) to provide services and facilities to the Corporation to enable it to perform its function; ”.

section 7 (5)

Delete “and is not directed preferentially to the Corporation”.

section 7 (6)

Repeal the subsection.

section 9

Delete “to the Corporation”.

new section

After section 13, insert —

“ **Use of staff and facilities of an insurer**

**13A.** 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 14 (1)

Delete “the Corporation or any company for the establishment, management and control by such company” and substitute —

“ an insurer or other person for the establishment, management and control by that insurer or other person ”.

section 28

Insert after subsection (5) —

“ ( 6 ) A f t e r t h e commencement of Part 3 of the *SGIO Privatisation Act 1992* the Corporation is not to use the trading name “SGIO”, or a trading name that includes “SGIO”, except by agreement with SGIO Insurance Limited and in accordance with the terms of any such agreement. ”.

sections 30, 31, 32  
and 33

Repeal the sections and substitute —

“ **Function and powers**

**30.** (1) The function of the Corporation is to manage the existing inwards re-insurance policies and life insurance business of the Corporation and to do anything related to that function.

(2) Notwithstanding subsection (1), the Corporation may make such arrangements



as it thinks fit with such persons as it thinks fit for the disposal of life policies issued by the Corporation or their continuance by another insurer, and for the disposal and assignment of assets, rights and liabilities relating to those policies.

(3) The Corporation 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 function.

(4) Nothing in this section limits section 5 of the *SGIO Privatisation Act 1992*.

(5) In this section —

**“existing”** means  
e x i s t i n g  
i m m e d i a t e l y  
b e f o r e t h e  
a p p o i n t e d d a y  
u n d e r t h e *SGIO  
Privatisation Act  
1992*;

**“inwards re-  
insurance  
policy”** means  
a p o l i c y o f  
r e - i n s u r a n c e  
i s s u e d b y t h e  
C o r p o r a t i o n u n d e r  
w h i c h t h e  
C o r p o r a t i o n h a s  
r e - i n s u r e d t h e

liability or risk of another person under a policy of insurance and includes any liability or risk identified immediately before the appointed day in the inwards re-insurance account of the Corporation;

“life policy” has the same meaning as it has in the *Life Insurance Act 1945* of the Commonwealth, and also means approved deposit funds, annuities and other superannuation policies.”.

section 38 (2) and (3)

Repeal the subsections.

section 42 (2)

Repeal and substitute —

“ (2) This section applies to every person who —

(a) is or has been a commissioner or alternate commissioner;

(b) is or has been a director or alternate director

o f t h e  
Corporation;

(c) is or has been an  
o f f i c e r o r  
employee of the  
Commission; or

(d) is rendering or  
has rendered  
services to the  
Commission or  
Corporation under  
section 12, 13,  
13A or 38.

”.

**SCHEDULE 2**

[section 29]

**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS***Short title of Act**Amendment**Fire Brigades Act 1942*

In section 4 (1), in the definition of “insurance company”, delete “and includes the State Government Insurance Corporation established by the *State Government Insurance Commission Act 1986*”.

*Stamp Act 1921*

In section 92, in the definition of “insurance company”, delete “and the State Government Insurance Corporation established”.

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