

GENERAL INSURANCE BROKERS AND AGENTS ACT 1981.

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GENERAL INSURANCE BROKERS AND AGENTS.

No. 17 of 1981.

**AN ACT relating to brokers and agents engaged in
the transaction of general insurance business.**

[Assented to 26 May 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *General Insurance Brokers and Agents Act 1981.* Short title.

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation. Commencement.

“insurer” means a person who carries on general insurance business either alone or as part of or in connection with any other business and includes The State Government Insurance Office established by the State Government Insurance Office Act 1938;

“licence” means a licence under this Act;

“licensed insurance broker” means a person licensed under this Act;

“member” means a member of the Board and includes the chairman and deputy chairman of the Board;

“secretary” means the secretary to the Board;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein the term is used;

“the Board” means the Insurance Brokers Licensing Board.

(2) In subsection (1)—

“gain” includes any commission, hire, profit, reward, fee, payment, remuneration or valuable consideration whatsoever, whether paid or payable in cash or kind;

“general insurance business” has the same meaning as the expression “insurance business” has in and for the purposes of the Insurance Acts 1973 of the Parliament of the Commonwealth, as amended from time to time.

(3) For the purposes of paragraph (b) of the interpretation of “insurance broker” in subsection (1), and subsections (4), (5) and (6) of section 4, and for those purposes only, an insurance agent who carries on business in partnership or in concert with another person shall be deemed to be a party to any agency agreement to which that other person is a party.

(6) An insurance agent in respect of whom an exception has been granted under subsection (4)—

- (a) shall, when entering into negotiations with an intending insured, immediately identify to the intending insured the insurers that he is representing; and
- (b) shall immediately advise the Board in writing in the event of his becoming a party to a further agency agreement with an insurer or of the termination or variation of an agency agreement with an insurer to which he is a party.

(7) Subject to this section, an exception granted under subsection (4) shall have effect for such period not exceeding 2 years as is specified in the notice by which it is granted and may be renewed.

(8) The Board may by notice published in the *Government Gazette* cancel an exception granted in respect of an insurance agent under subsection (4) if in the opinion of the Board—

- (a) paragraph (a), (b), (c) or (d) of subsection (5) has ceased to apply to or in relation to him; or
- (b) he has failed to comply with paragraph (a) or (b) of subsection (6).

PART II.—INSURANCE BROKERS LICENSING BOARD.

5. (1) For the purposes of this Act there shall be a board to be known as the “Insurance Brokers Licensing Board”. The Board.

(2) The Board—

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) shall be the licensing and supervisory authority for the purposes of this Act; and
- (c) shall have the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.

- (b) an approved policy or approved policies of fidelity guarantee insurance in respect of liabilities amounting to not less than the prescribed sum or such greater sum as the Board may in any particular case require.

(2) "Prescribed sum" as used in paragraph (a) or (b) of subsection (1) means such sum as is from time to time fixed by proclamation for the purposes of that paragraph, or, if a sum has not been so fixed, the sum of \$100 000.

18. (1) Subject to section 19 the Board may, if proper cause exists, by order suspend or cancel the licence of an insurance broker and disqualify the insurance broker either temporarily or permanently, or until the fulfilment of any condition, or until the further order of the Board, from holding a licence.

Suspension
or
cancellation
of licence.

(2) Proper cause exists for the making of an order under subsection (1) if—

- (a) the Board is satisfied that the licence has been obtained by fraud, dishonesty or misrepresentation;
- (b) a relevant person has been convicted of any offence the commission of which, in the opinion of the Board, renders the insurance broker unfit to hold a licence;
- (c) a relevant person has been found by any court or other tribunal, or by the Board, to have been guilty of dishonesty in connection with the business of the insurance broker;
- (d) the Board is satisfied that the insurance broker no longer has sufficient material and financial resources to enable him to comply with the provisions of this Act;
- (e) the Board is satisfied that an offence has been committed under section 16 (11) in relation to the business of the insurance broker; or

Proceedings.

35. (1) Proceedings for an offence against this Act may be taken by the secretary or, in the case of an offence against section 33, by any person.

(2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(3) Without limiting the application of section 72 of the Justices Act 1902, in relation to a complaint for an offence against this Act, in any proceedings for an offence against this Act an allegation in the complaint that a person named therein was or was not licensed or registered under this Act at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

Regulations.

36. The Governor may make regulations prescribing 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.

PART VI.—TRANSITIONAL.

Broker
member of
Board.

37. (1) Notwithstanding section 6 (1) until a vacancy occurs in the office referred to in section 6 (1) (d) after the appointed day, that office shall be filled by a person who is an insurance broker and is nominated for appointment by the Minister.

(2) A person appointed pursuant to subsection (1) is not an elective member for the purposes of the Schedule to this Act.

Licensing or
registration
before
appointed
day.

38. For the purposes of sections 14 and 26 a licence or registration granted before the appointed day shall be deemed to have been granted on the appointed day.

SCHEDULE.

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PROVISIONS AS TO BOARD.

1. (1) Wherever a nomination is required for the purpose of filling the office referred to in section 6(1)(c) the Minister shall, in writing, request Insurance Council of Australia Ltd to nominate in writing a person qualified and willing to be appointed to that office. Nomination for appointment.

(2) Where a request is made pursuant to subclause (1) of this clause the Minister may, if no nomination is made in accordance with the request, appoint to the office of member such person, being a person qualified and willing to be appointed to that office, as he thinks fit.

2. (1) The Minister shall appoint a returning officer for the election of an elective member. Election for appointment.

(2) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.

(3) The expenses incurred in connection with the election of an elective member shall be paid out of the moneys appropriated by Parliament for the purposes of this Act.

3. (1) The Governor may appoint a person as the deputy of a member. Deputies.

(2) Provisions of section 6 and this Schedule as to qualifications, nomination or election that apply to and in relation to the appointment of a member apply, with any necessary modifications, to and in relation to the appointment of the deputy of that member.

(3) A person appointed pursuant to this clause is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, is deemed to be a member and has all the powers, functions, and duties of a member.

4. (1) Subject to this Act—

Term of office.

(a) each elective member shall hold office for a period ending at the expiration of 4 years from the date of the occurrence of the vacancy which he is appointed to fill, and is eligible for re-election and re-appointment;

(b) each member other than an elective member shall hold office for such period, not exceeding 4 years, as is specified in the instrument of his appointment, and is eligible for re-appointment.

(2) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

(3) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.

(4) The office of a member becomes vacant if—

- (a) his term of office expires;
- (b) his appointment is terminated pursuant to subclause (3) of this clause;
- (c) he becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (d) he becomes permanently incapable of performing his duties as a member;
- (e) he resigns his office by written notice addressed to the Minister;
- (f) he absents himself, except on leave duly granted by the Minister from 3 consecutive meetings of the Board; or
- (g) he ceases to hold any qualification required for his becoming or being a member.

(5) Notwithstanding subclause (1) (a) of this clause, where an elective member is appointed to fill a vacancy in the office referred to in section 6(1)(d) that has occurred otherwise than by effluxion of time the person appointed to fill the vacancy shall hold office for the unexpired portion of the term of his predecessor.

Meetings of
the Board.

5. (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the chairman to convene a meeting of the Board.

(2) The chairman shall preside at all meetings of the Board at which he is present and the deputy chairman shall preside at all meetings at which he, but not the chairman, is present, but where neither the chairman nor the deputy chairman is present at a meeting of the Board, the members present shall appoint one of their number present to preside at the meeting.

(3) At a meeting of the Board, 3 members constitute a quorum.

(4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(5) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.

(7) To the extent that it is not prescribed the Board shall determine its own procedure.

6. (1) Members of the Board shall be entitled to be paid such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Board. Remunera-
tion.

(2) Acceptance of or acting in the office of member or deputy of a member shall not of itself render the provisions of the Public Service Act 1978 or any other Act applying to persons as officers of the Public Service applicable to that member or deputy of a member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

7. No act, proceeding, or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board. Validity
of acts.
