

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Insurance Corporation Bill 2000

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2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Insurance Corporation Bill 2000

A BILL

FOR

**An Act to establish the Australian Capital Territory
Insurance Corporation (ACTIC) and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Insurance Corporation Act 2000*.

2 Commencement

This Act commences on 1 July 2000.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*risk* of the Territory—see the section 5.' means that the expression '*risk*' is defined in the dictionary to that Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

5 Meaning of *risk* of the Territory

For this Act, a *risk* of the Territory includes—

- (a) a direct risk of the Territory or a Territory entity; and
- (b) a risk accepted by the Territory or a Territory entity; and
- (c) a risk arising under a guarantee or indemnity given by the Territory or a Territory entity;

whether or not the risk relates to an officer, employee or agent of the Territory or a Territory entity or to property owned by or held on behalf of the Territory or a Territory entity.

6 Meaning of *Territory entity*

(1) For this Act, a *Territory entity* means—

- (a) a Territory authority; or
- (b) a public sector company.

Note *Territory authority* is defined in the dictionary to the *Interpretation Act 1967*.

(2) For subsection (1):

public sector company means—

- (a) a Territory owned corporation; or
- (b) a subsidiary of a Territory owned corporation; or

- (c) a company prescribed under the regulations; or
- (d) any other company in which the Territory or another Territory entity has a controlling interest.

5 *subsidiary*, of a Territory owned corporation, means a subsidiary under the *Territory Owned Corporations Act 1990* of the Territory owned corporation.

Territory owned corporation means a Territory owned corporation under the *Territory Owned Corporations Act 1990*.

7 **Controlling interests in companies**

10 For this Act, the Territory or a Territory entity has a *controlling interest* in a company if its interest in the company is of a kind that—

- (a) it is able to—
 - (i) control the composition of the board of directors of the company; or
 - 15 (ii) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or
 - 20 (iii) control more than 50% of the issued share capital of the company (excluding any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if paragraph (a) does not apply—no-one else holds a greater interest in the company.

PART 2—THE INSURANCE CORPORATION

Division 2.1—Establishment and powers

8 Establishment

5 (1) The Australian Capital Territory Insurance Corporation (*ACTIC*) is established.

(2) ACTIC—

- (a) is a corporation; and
- (b) may have a seal; and
- (c) may sue and be sued in its corporate name.

10 9 Functions

The functions of ACTIC are—

- (a) to carry on the business of insurer of Territory risks; and
- (b) to take out insurance of Territory risks with other entities; and
- 15 (c) to satisfy or settle claims in relation to Territory risks (including claims that may not necessarily be valid in law); and
- (d) with the Treasurer's approval, to take action for the realisation, enforcement, assignment or extinguishment of rights against third-parties arising out of or in relation to its business, including, for example—
 - 20 (i) taking possession of, dealing with or disposing of, property; or
 - (ii) carrying on a third-party's business as a going concern; and
- (e) to promote good risk management practices; and
- (f) to give advice to the Minister about insurance and the
- 25 management of Territory risks; and
- (g) to exercise any other functions given to it under this Act or any other Territory law.

10 Powers

- (1) ACTIC has all the powers of an individual and may, for example—
- 30 (a) enter into contracts; and
 - (b) acquire, hold, deal with and dispose of property; and

(c) issue policies of insurance.

(2) Without limiting subsection (1), ACTIC has the powers given to it under this Act or any other Territory law.

(3) ACTIC represents the Territory.

5 (4) Without limiting subsection (3), ACTIC has all the Territory's privileges and immunities.

(5) ACTIC may exercise its powers inside and outside the ACT.

(6) Without limiting subsection (5), ACTIC may exercise its powers outside Australia.

10 **11 Ministerial directions to Territory entities about insurance of Territory risks**

(1) The Minister may give a direction to a Territory entity about what Territory risks must or may be insured with ACTIC.

(2) A direction under this section is a disallowable instrument.

15 (3) A Territory entity must comply with a direction given to it under this section.

(4) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—

(a) the giving of a direction under this section; and

20 (b) the doing of, or the failure to do, anything by the Territory, a Territory entity or ACTIC to comply with a direction under this section.

(5) In this section:

Territory entity includes an administrative unit, but does not include ACTIC.

25 **12 Ministerial directions to ACTIC**

(1) The Minister may give written directions to ACTIC about the exercise of its functions.

(2) Before giving a direction, the Minister must—

(a) tell ACTIC of the intent of the proposed direction; and

30 (b) give ACTIC a reasonable opportunity to comment on the proposed direction; and

(c) consider any comments made by ACTIC.

(3) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after it is given.

(4) ACTIC must comply with a direction given to it under this section.

5 (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—

(a) the giving of a direction under this section; and

(b) the doing of, or the failure to do, anything by ACTIC to comply with a direction under this section.

13 Reporting requirements

10 (1) In addition to any other reports that ACTIC is required to make under this Act or any other law, ACTIC must give the Minister the reports the Minister from time to time requires.

(2) A report under this section must be prepared in the form, and be based on the accounting or other policies or practices, (if any) that the
15 Minister requires.

14 Provision of information

ACTIC must give the Minister any information about its operations that the Minister requires.

15 Indemnities for third-parties

20 (1) ACTIC may give an indemnity to a third-party for a Territory risk arising under a contract to which the Territory or a Territory entity is a party only if the Minister has certified that the giving of the indemnity by ACTIC is in the Territory's interest.

(2) In this section:

25 *third-party* means an entity other than the Territory or a Territory entity.

Division 2.2—Board of management

16 Establishment of board

A board of management of ACTIC is established.

17 **Functions of board**

(1) The board is responsible for the policies and management of ACTIC.

(2) Without limiting subsection (1), the board's functions are—

- 5 (a) to decide the strategies and policies to be followed by ACTIC; and
(b) to ensure that ACTIC exercises its functions in a proper, effective and efficient way.

18 **Constitution of board**

The directors of ACTIC are—

- 10 (a) 5 appointed directors; and
(b) the general manager.

19 **Appointment of appointed directors**

(1) The appointed directors are to be appointed by the Minister.

15 *Note 1* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Interpretation Act 1967*, par 28 (3) (c) and dict, def of *appoint*).

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see *Interpretation Act 1967*, par 28 (4)-(6)).

(2) The Minister must appoint as appointed directors—

- 20 (a) the chief executive or the chief executive's nominee (the *government member*); and
(b) 2 people who, in the Minister's opinion, represent the interests of entities whose risks are insured by ACTIC (the *client members*); and
25 (c) 2 people who, in the Minister's opinion, have qualifications and experience relevant to risk management or insurance (the *specialist members*).

20 **Term of appointment appointed directors**

(1) An appointed director is to be appointed for a term of not longer than 3 years.

30 (2) The instrument appointing, or evidencing the appointment of, an appointed director must state—

- (a) the term for which the member is appointed; and

- (b) that the appointed director is the government member, a client member or a specialist member.

21 Leave of absence of appointed directors

The Minister may give an appointed director leave of absence.

5 22 Terms of appointment of appointed directors generally

An appointed director holds the position on the terms, not provided by this Act or another Territory law, that are decided by the Minister.

23 Chairperson and deputy chairperson

- (1) The directors of the board must, whenever necessary, elect—

- 10 (a) an appointed director to be chairperson; and
- (b) another appointed director to be deputy chairperson.

- (2) The board must tell the Minister of the election of an appointed director as chairperson or deputy chairperson.

24 Honesty, care and diligence of directors

- 15 In exercising the functions of director, a director must exercise the degree of honesty, care and diligence required to be exercised by a director of a company in relation to the affairs of the company.

25 Ending of appointment of appointed directors

- (1) The Minister must end the appointment of—

- 20 (a) a client member, if the Minister is satisfied that the member can no longer appropriately represent the interests of entities whose risks are insured by ACTIC; or
- (b) any appointed director, if the director ceases to be eligible for appointment.

- 25 (2) The Minister may end the appointment of an appointed director—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the director—
 - 30 (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

- (ii) is absent for 3 consecutive meetings without leave of absence and without reasonable excuse; or
 - (iii) contravenes section 24 or 28 (Disclosure of interest by directors) without reasonable excuse; or
 - 5 (c) if the board tells the Minister in writing that it has resolved, by a majority of at least 2/3 of the directors, to recommend to the Minister that the appointment of the director be ended.
- (3) The board may only tell the Minister about a resolution mentioned in paragraph (2) (c) if—
- 10 (a) at least 21 days written notice of the intention to consider the proposed resolution has been given to the director concerned; and
 - (b) the director has been given an opportunity to make submissions about the proposed resolution and present documents to a meeting of the board; and
 - 15 (c) if the director has made submissions or presented documents to a meeting of the board—a summary of the director's arguments is recorded in the minutes of the board and a copy of any documents presented is incorporated in the minutes.

20 *Note* An appointed director's appointment also ends if the appointed director resigns (see *Interpretation Act 1967*, ss 28 (8) and (9)).

Division 2.3—Proceedings of board

26 Time and place of meetings

- (1) Meetings of the board are to be held at the times and places it decides.
- 25 (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
 - (a) may at any time call a meeting of the board; and
 - (b) must call a meeting if asked by the Minister or at least 2 directors.
- (4) The chairperson must give the other directors reasonable notice of
30 the time and place of a meeting called by the chairperson.

27 Procedure governing conduct of meetings

- (1) The chairperson presides at all meetings at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson presides.

(3) If the chairperson and the deputy chairperson are both absent, the director chosen by the directors present presides.

(4) At a meeting of the board—

- 5 (a) 4 directors form a quorum; and
(b) each director has a vote on each question to be decided; and
(c) a question is to be decided by a majority of the votes of the directors present and voting but, if the votes are equal, the director presiding has a casting vote.

10 (5) The board may conduct its proceedings (including its meetings) as it considers appropriate.

(6) The board may hold meetings, or allow directors to take part in meetings, by telephone, closed-circuit communication or another form of communication.

15 (7) A director who takes part in a meeting conducted under subsection (6) is taken to be present at the meeting.

(8) If—

- (a) all directors agree, in writing, to a proposed resolution; and
(b) notice of the resolution is given under procedures decided by the board;
- 20

the resolution is a valid resolution of the board, even though it was not passed at a meeting of the board.

(9) The board must keep minutes of its meetings.

28 Disclosure of interest by directors

25 (1) This section applies to a director if—

- (a) the director has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and
(b) the interest could conflict with the proper exercise of the director's functions in relation to the board's consideration of the issue.
- 30

(2) As soon as practicable after the relevant facts come to the director's knowledge, the director must disclose the nature of the interest to a meeting of the board.

(3) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the director must not—

- (a) be present when the board considers the issue; or
- (b) take part in a decision of the board on the issue.

5 (4) Any other director who also has a direct or indirect financial interest in the issue must not—

- (a) be present when the board is considering its decision under subsection (3); or
- (b) take part in making the decision.

10 (5) The chairperson must give to the Minister a statement of any disclosure of interest made under subsection (2) if the Minister asks the chairperson for the statement.

(6) The Minister must give a copy of each statement under subsection (5) to the relevant committee of the Legislative Assembly within 14 days after receiving the statement.

15 (7) In subsection (6):

relevant committee, of the Legislative Assembly, means—

- (a) the standing committee of the Legislative Assembly nominated by the Speaker for the purposes of subsection (6); or
- 20 (b) if there is no nomination under paragraph (a)—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

PART 3—GENERAL MANAGER, STAFF AND CONSULTANTS

Division 3.1—The general manager

29 Appointment

- (1) The board must appoint a general manager.

5 *Note* A power to appoint a person to a position includes power to appoint a person to act in the position (see *Interpretation Act 1967*, ss 28 (4)–(6)).

- (2) The terms of appointment of the general manager are as agreed to between the board and the general manager.

- 10 (3) ACTIC may only enter into an agreement mentioned in subsection (2) after consultation between the Minister and the board.

30 Functions

- (1) The functions of the general manager are—

- 15 (a) to manage ACTIC's affairs on a day-to-day basis on behalf of the board; and
(b) to exercise any other function given to the general manager by the board.

- (2) The general manager must act in accordance with any policies decided, and any directions given, by the board.

Division 3.2—Staff and consultants

20 31 Staff

The staff of ACTIC are to be employed under the *Public Sector Management Act 1994*.

32 Consultants

ACTIC may engage consultants.

PART 4—MISCELLANEOUS

33 Dividends

(1) This section applies if ACTIC has available profits for a financial year.

5 (2) After consultation with the board, the Minister may direct ACTIC to declare a dividend for the financial year of the amount directed by the Minister.

(3) If the Minister gives a direction under subsection (2), ACTIC must declare a dividend of the directed amount, and pay the amount to the
10 Territory, within 1 month after the Minister gives the direction.

(4) In this section:

available profits, for a financial year, means—

- (a) the profits for the financial year; and
- 15 (b) any profits for a previous financial year that have not previously been taken into account by the Minister in deciding whether a dividend should be declared.

profit includes the net proceeds of the sale of assets.

34 Taxation

(1) Part 5 of the *Territory Owned Corporations Act 1990* applies to
20 ACTIC as if ACTIC were a Territory owned corporation within the meaning of that Act.

(2) ACTIC is exempt from the payment of any insurance levy or stamp duty on an insurance policy issued by ACTIC.

35 Regulation-making power

25 The Executive may make regulations for this Act.

PART 5—VESTING OF ASSETS AND LIABILITIES

36 Vesting of assets and liabilities in ACTIC

(1) The Minister may declare that stated assets or liabilities of the Territory vest in ACTIC.

5 (2) An asset or liability stated in a declaration made under subsection (1) vests, by force of this section, in ACTIC.

----- (3) If an asset or liability that vests in ACTIC under this section is mentioned in a contract, agreement or arrangement, a reference in the contract, agreement or arrangement to the Territory is, in relation to
10 anything happening or to happen in relation to the asset or liability after the vesting of the asset in ACTIC, a reference to ACTIC.

(4) A declaration under subsection (1)—

(a) is a disallowable instrument; and

15 (b) unless disallowed under section 6 of the *Subordinate Laws Act 1989*, takes effect—

(i) on the day immediately after the last day the declaration could have been disallowed under that section; or

(ii) if the declaration provides for a later time of effect—the later time.

20 37 Evidentiary certificate for vested assets and liabilities

(1) The chief executive may certify that a stated asset or liability has vested in ACTIC under section 36.

(2) A certificate under subsection (1) is evidence of the matters it states.

25 (3) A document that purports to be a certificate signed by the chief executive under subsection (1) is taken to be such a certificate, and to have been so signed, unless the contrary is proved.

38 Registration of changes in title to certain assets

(1) In this section:

30 *registering authority*, for a registrable asset, means the person who, under Territory law, is required or permitted to enter particulars about the ownership of the asset in a register.

registrable asset means an asset, including an interest in land, particulars of the ownership of which are required or permitted under Territory law to be entered in a register.

(2) This section applies if—

- 5 (a) a registrable asset vests in ACTIC under section 36; and
(b) ACTIC gives the registering authority for the asset a certificate under section 37 (Evidentiary certificates for vested assets and liabilities) for the asset.

10 (3) The registering authority must make the entries in the appropriate register kept by the authority, and do anything else necessary or desirable to be done, to reflect the vesting of the asset in ACTIC.

(4) The evidentiary value of a register mentioned in this section is not affected by—

- 15 (a) the making of an entry under this section; or
(b) the failure to make an entry under this section; or
(c) the failure by ACTIC to give a certificate to the registering authority for a registrable asset.

39 Proceedings and evidence in relation to vested assets and liabilities

20 (1) This section applies in relation to an asset or liability that vests in ACTIC under section 36 (Vesting of assets and liabilities in ACTIC).

(2) If a proceeding had been begun in relation to the asset or liability before it vested in ACTIC and the Territory is a party to the proceeding, ACTIC is substituted for the Territory as a party to the proceeding.

25 (3) If a proceeding could have been begun by or against the Territory in relation to the asset or liability before it vested in ACTIC, the proceeding may be begun by or against ACTIC.

30 (4) The *Limitation Act 1985* applies to a cause of action that accrued to or against the Territory in relation to the asset or liability as if the cause of action had accrued to or against ACTIC when it accrued to or against the Territory.

(5) The court or other entity in which a proceeding is begun or continued by or against ACTIC in relation to the asset or liability may give directions about the conduct of the proceeding.

(6) Any evidence that would have been admissible for or against the Territory in the proceeding is admissible for or against ACTIC.

(7) The Territory and ACTIC must endeavour to assist each other in the provision of evidence in the proceeding.

5 (8) In this section:

proceeding includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding.

40 **Expiry of pt 5**

10 This Part expires 1 year after it commences.

DICTIONARY

(See s 3)

ACTIC means the Australian Capital Territory Insurance Corporation.

appointed director means an appointed director of the board.

board means the board of management of ACTIC.

5 **chairperson** means the chairperson of the board.

controlling interest, in a company—see section 7.

deputy chairperson means the deputy chairperson of the board.

director means—

- 10 (a) an appointed director; and
(b) the general manager.

general manager means the general manager of ACTIC.

insurance includes reinsurance and coinsurance.

risk, of the Territory—see section 5.

Territory entity—see section 6.