

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister Assisting the Treasurer)

Insurance Levy Bill 1998

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Insurance Levy Bill 1998

A BILL

FOR

**An Act to impose a levy on general insurers and on
certain other persons and for a related purpose**

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

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Insurance Levy Act 1998*.

2. Commencement

This Act commences on the day on which it is notified in the *Gazette*.

3. Incorporation of *Taxation (Administration) Act 1987*

10 The *Taxation (Administration) Act 1987* is incorporated and shall be read as one with this Act.

4. Interpretation

(1) In this Act—

5 “assessable portion”, in relation to a prescribed premium for an insurance policy, means the proportion of that premium determined in accordance with regulations made in pursuance of section 5;

“foreign insurer” means a general insurer not authorised under a law of the Territory, the Commonwealth, a State or another Territory to carry on business as a general insurer;

“general insurance” means insurance in respect of—

- 10 (a) property situated in the Territory when the insurance was effected; or
(b) an act or omission occurring in the Territory;

“general insurer” means a person who carries on the business of general insurance;

15 “premium”, in relation to an insurance policy, includes any brokerage or commission paid or due to be paid or allowed on a premium, or on any bonus or return premium allowed in respect of the policy, but does not include—

- 20 (a) stamp duty payable in respect of the policy under a law of the Territory, a State or another Territory; or
(b) any part of the premium that is paid or due to be paid by way of reinsurance by the insurer to any other insurer in the Territory;

25 “prescribed premium” means a premium payable for a policy of general insurance, being a policy of a class that is prescribed by regulations made in pursuance of section 5;

“total levy amount” means \$10,000,000 or such other sum as is determined by the Minister by instrument.

30 (2) A determination of the Minister for the purposes of the definition of “total levy amount” in subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

5. Assessable portions of prescribed premiums—regulations

(1) The regulations may determine assessable portions of prescribed premiums for the purposes of this Act.

35 (2) After the first regulations have been made in pursuance of subsection (1), regulations may only be made in pursuance of that subsection if the Executive is satisfied that at least two-thirds of the general insurers liable to pay levies under this Act desire that such regulations be made.

PART II—LEVIES

6. Advance payments

(1) A general insurer shall, in each financial year, pay an advance payment to the Commissioner.

5 (2) The advance payment is to be calculated in accordance with the formula—

$$\text{Advance Payment} = \frac{\text{AP}}{\text{TAP}} \times \text{TLA}$$

where:

10 **AP** is the total amount of the assessable portions of prescribed premiums due to the insurer (whether or not the premiums are actually received) for the taking out or renewal of insurance policies in the financial year ending on 30 June in the previous calendar year;

15 **TAP** is the total amount of assessable portions of prescribed premiums due to all insurers (whether or not the premiums are actually received) for the taking out or renewal of insurance policies in the financial year ending on 30 June in the previous calendar year;

TLA is the total levy amount.

20 (3) On or before 31 May each year, the Commissioner shall issue an assessment to each general insurer in respect of the insurer's liability for the advance payment in the financial year beginning on 1 July in that year.

25 (4) An advance payment is due and payable by the general insurer in 4 equal instalments in the financial year in which it is payable on or before 1 July, 1 October, 1 January and 1 April in that year, or on or before such other days in that year as the Commissioner approves on the written application of the insurer.

7. Annual levies

(1) The annual levy for each general insurer in respect of each financial year is to be calculated in accordance with the formula—

30
$$\text{Annual Levy} = \frac{\text{AP}}{\text{TAP}} \times \text{TLA}$$

where:

35 **AP** is the total amount of the assessable portions of prescribed premiums due to the insurer (whether or not the premiums are actually received) for the taking out or renewal of insurance policies in the previous financial year;

TAP is the total amount of assessable portions of prescribed premiums due to all insurers (whether or not the premiums are actually received) for the taking out or renewal of insurance policies in the previous financial year;

5 **TLA** is the total levy amount.

(2) On or before 30 November each year, the Commissioner shall issue an assessment to each general insurer in respect of the insurer's liability in respect of the annual levy, indicating any additional payment or adjustment required under section 9.

10 **8. Liability for annual levy—no advance payment payable**

If no advance payment is payable by a general insurer in a financial year, the amount of the annual levy in respect of that year is due and payable by the insurer to the Commissioner in equal instalments on or before 1 January and 1 April in that year, or on or before such other days in that
15 year as the Commissioner approves on the written application of the insurer.

9. Advance payment—additional payments and adjustments to take account of annual levy

(1) If the annual levy for a general insurer in a financial year is greater than the advance payment payable by the insurer in that year, the amount of the difference is due and payable by the insurer to the Commissioner in equal instalments on or before 1 January and 1 April in that year, or on or before such other days in that year as the Commissioner approves on the
20 written application of the insurer.

(2) If the annual levy for a general insurer in a financial year is less than the advance payment payable by the insurer in that year, the Commissioner shall credit the amount of the difference against—

(a) any instalments that remain to be paid in respect of the advance payment; and

30 (b) any instalments that are required to be paid in respect of the advance payment that is payable during the following financial year;

in such a manner as the Commissioner determines.

(3) If subsection (2) applies, and any balance is outstanding at the end of the financial year referred to in paragraph (2) (b), the Commissioner shall
35 pay the outstanding amount to the insurer not later than 30 June in that financial year.

(4) If—

(a) a general insurer is entitled to a credit referred to in subsection (2) in respect of an advance payment;

- (b) no prescribed premium was due to the insurer for the taking out or renewal of any insurance policy in the financial year in which the advance payment was made;
- (c) the insurer has notified the Commissioner accordingly under subsection 10 (2); and
- (d) the liabilities of the insurer in relation to payments under this Act have been discharged;

the Commissioner shall, as soon as practicable, pay to the insurer the amount of the credit or the balance outstanding, as the case may be.

10. Annual returns—general insurers

(1) A general insurer shall, before 30 September in each financial year, or at such other time during the financial year as the Commissioner may notify in the *Gazette*, give the Commissioner—

- (a) a return in the form prescribed by the regulations showing the total amounts of all prescribed premiums due to the insurer (whether or not the premiums were actually received) for the taking out or renewal of insurance policies in the previous financial year; and
- (b) an auditor's certificate in relation to the return—
 - (i) given by an auditor with qualifications prescribed by the regulations; and
 - (ii) in the form prescribed by the regulations.

(2) If a general insurer ceases to enter into, or to renew, insurance policies in respect of which prescribed premiums would be payable, the insurer shall give the Commissioner written notice accordingly within 30 days.

PART III—FOREIGN INSURERS

11. Application

This Part applies in respect of a policy of general insurance with a foreign insurer for which a prescribed premium is payable irrespective of where such a premium is received.

12. Liability of property owner—foreign insurance

(1) This section applies where the Commissioner gives a written notice to the owner of property in respect of which a general insurance policy has been taken out with a foreign insurer that the owner is responsible for any payments to be made under this Act in respect of prescribed premiums received, or due to be received, by the insurer in respect of that property.

(2) Where this section applies—

(a) the property owner shall pay the Commissioner any amounts that would otherwise be payable by the insurer under this Act in respect of the prescribed premiums;

5 (b) this Act (except section 10) applies with all necessary changes to the property owner as if the owner were the foreign insurer, subject to any modification of this Act prescribed by the regulations in relation to that application; and

(c) the application of section 10 to the foreign insurer is not affected.

10 **13. Recovery of levy by property owners from foreign insurers**

The amount of any payment made by a person to the Commissioner in pursuance of section 12 may be recovered by the person from the foreign insurer to whom the relevant prescribed premiums were paid—

15 (a) by means of deductions from any prescribed premium recoverable in the Territory by or on behalf of the insurer on the issue or renewal of any general insurance policy taken out with the insurer; or

(b) as a debt.

20 **14. Returns by property owners—foreign insurance**

(1) Where a property owner is given a notice under section 12 in respect of an insurance policy taken out with a foreign insurer, the owner shall, before 30 September in each financial year, or at such other time during the financial year as the Commissioner may direct and notify in the *Gazette*, give
25 the Commissioner a return showing the amount or amounts of any prescribed premium paid by the owner in respect of the insured property to the insurer during the previous financial year, or such other period as the Commissioner may direct.

(2) If a property owner to whom subsection (1) applies no longer
30 maintains any general insurance with a foreign insurer in respect of property to which that subsection applies, the owner shall give the Commissioner written notice accordingly within 30 days.

(3) In the application (by virtue of paragraph 12 (2) (b)) of
35 paragraph 9 (4) (c) to a property owner to whom this section applies, the reference in that paragraph to notification by the insurer under subsection 10 (2) is to be taken to be a reference to notification by the property owner under subsection (2) of this section.

PART IV—MISCELLANEOUS

15. Amendment of *Taxation (Administration) Act 1987*

Section 3 of the *Taxation (Administration) Act 1987* is amended by inserting before paragraph (i) the following paragraph:

5 “(ha) the *Insurance Levy Act 1998*”.

16. Transitional—financial year 1998-99

No advance payment is payable by a general insurer under section 6 in the financial year beginning on 1 July 1998.

17. Regulations

10 The Executive may make regulations for the purposes of this Act.