

2000

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

INSURANCE CORPORATION BILL 2000

EXPLANATORY MEMORANDUM

Circulated by authority of

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OUTLINE

The object of this Bill is to facilitate the establishment of an ACT Government captive insurer the Australian Capital Territory Insurance Corporation (ACTIC). A captive insurer is one set up by an organisation to insure its own risks. ACTIC will be empowered to manage the insurance of risks of the Territory and Territory entities.

A captive insurer can also be defined as a limited purpose insurance company, established with the specific aim of financing the risks of its parent organisation. ACTIC will be a new statutory authority to continue and formalise the risk management and insurance focus of the current self-insurance arrangements for ACT Government agencies.

All budget funded agencies will be insured through ACTIC, as well as most statutory authorities. Territory owned corporations will be able to elect to be insured through ACTIC, subject to the agreement of the Treasurer.

Clause 1 cites the Name of Act as *Insurance Corporation Act 2000*.

Clause 2 provides for the Act to commence on 1 July 2000.

Clause 3 refers to the dictionary at the end of the Act which defines certain words and expressions used in the Act.

Clause 4 states that a note included in the Act is only explanatory and is not part of the Act.

Clause 5 defines a risk of the Territory or a Territory entity to include direct risks, accepted risks and risks arising under a guarantee or indemnity. A risk can relate to officers, employees and agents of or to property owned by the Territory or a Territory entity.

Clause 6 provides that a Territory entity can be a Territory authority or a public sector company where a public sector company can be a Territory owned corporation or subsidiary, a prescribed company, or any company in which the Territory has a controlling interest.

Subsidiary and Territory owned corporation are defined in the *Territory Owned Corporations Act 1990*.

Clause 7 states that controlling interest in a company referred to in clause 6 involves control over the composition of the board of directors, voting or issued share capital. Where none of these apply, there is a controlling interest if no one else holds a greater interest in the company.

Clause 8 establishes the Australian Capital Territory Insurance Corporation (ACTIC) as a corporation that may have its own seal and may sue and be sued.

Clause 9 details the functions of ACTIC which include: carrying on the business of insurer of Territory risks, taking out insurance of Territory risks with other insurers/re-insurers where appropriate, settling claims, exercising its rights of subrogation against third parties, promoting good risk management practices and providing advice to the Minister.

Clause 10 provides that ACTIC has all the powers of an individual to enter into contracts, acquire and deal with property and issue insurance policies. ACTIC's powers may be exercised inside and outside the ACT and if required outside Australia.

Clause 11 provides for the Minister to determine that certain risks of the Territory must or may be insured with ACTIC. Under the self-insurance arrangements in place prior to the commencement of this Act, all budget-funded agencies are included whereas Territory owned corporations have separate insurances placed with commercial insurers. Clause 11 provides a mechanism for the Minister to determine that specific entities must be insured through ACTIC. Clause 11 also includes a specific reference to the *Trade Practices Act 1974* (Cth) to ensure the effective application of the exemption provisions of that Act.

Clause 12 provides that the Minister may give written directions to ACTIC which must be complied with. Before giving a direction the Minister must tell ACTIC of its intent, give an opportunity for comment and consider those comments. A copy of the direction must be presented to the Legislative Assembly within 6 sitting days.

Clause 13 provides that ACTIC must give the reports the Minister from time to time requires in the form and based on the accounting or other policies or practices that the Minister requires.

Clause 14 ACTIC must give any information about its operations that the Minister requires.

Clause 15 Provides that the Minister's written agreement is required if ACTIC wishes to give an indemnity to a third party under a contract. It is intended such indemnities be within the scope of ACTIC's insurance operations.

Clause 16 establishes a board of management of ACTIC.

Clause 17 provides that the key functions of the board are responsibility for the policies and management of ACTIC.

Clause 18 provides that the ACTIC board will constitute 5 appointed directors and the general manager of ACTIC.

Clause 19 provides for the Minister to appoint directors who must include the chief executive or nominee as government member, 2 client members from insured entities and 2 specialist members with qualifications and experience relevant to risk management or insurance.

Clause 20 provides for the term of a director's appointment not to exceed 3 years and for the relevant appointment instrument to state this and whether the director is a government, client or specialist member.

Clause 21 provides that the Minister may give an appointed director leave of absence.

Clause 22 states that the appointed director's terms of appointment are a matter for the Minister to decide unless provided for by this Act or another Territory law.

Clause 23 provides ,whenever necessary, for election by the directors of a chairperson and deputy chairperson and for those elections to be advised to the Minister.

Clause 24 states that an ACTIC director must exercise the same degree of honesty, care and diligence as a company director.

Clause 25 provides for the ending of directors appointments by the Minister. The appointment **must** be ended for a client member director who can no longer appropriately represent the interests of insured entities or any director who ceases to be eligible for appointment. The appointment **may** be ended in the case of misbehaviour, physical or mental incapacity, bankruptcy, absence from 3 consecutive meetings or failure to observe provisions regarding disclosure of interests. The appointment **may** also be ended where the board resolves by a 2/3 majority to recommend to the Minister that the appointment be ended. The board may only refer such a recommendation to the Minister after giving notice to the director of its intention and providing an opportunity to respond.

Clause 26 provides for board meetings to be held at times and places decided by the board but at least once every three months. The chairperson may call a board meeting at any time and must do so if asked by the Minister or at least 2 directors, giving other directors reasonable notice as to time and place.

Clause 27 provides that the director appointed by the Minister to chair the board will preside at meetings of the board when present, or if absent the deputy chair will preside. At any meeting a quorum will consist of four members of the board. The board may hold meetings, or allow directors to take part in meetings by telephone, closed circuit communication or another form of communication.

Clause 28 requires that directors must disclose as soon as practicable to a meeting of the board any financial interests that they have in issues being considered that might cause a conflict of interest. The disclosure must be recorded in the board's minutes and the director must not be involved in discussion concerning the issue. The Minister may request a copy of a statement of disclosure of interest and must give a copy of that statement to the relevant committee of the Legislative Assembly within 14 days.

Clause 29 states that the board must appoint a general manager whose terms of appointment are to be agreed with the board only after the board has consulted with the Minister.

Clause 30 states that the general manager's functions are the day to day management of ACTIC's affairs on behalf of the board and any other function given by the board. The general manager must act in accordance with policies and directions given by the board.

Clause 31 states that staff of ACTIC are to be employed under the *Public Sector Management Act 1994* (ie; as for most ACT public servants).

Clause 32 allows ACTIC to engage consultants.

Clause 33 provides that the Minister may direct that a dividend be payable to the Territory from the profits of the corporation after consultation with the board. The dividend is to be paid within one month of the Minister's direction. Dividend can only be paid from profits for the financial year together with any undistributed profits of previous financial years.

Clause 34 provides that ACTIC will be exempt from the insurance levy and from stamp duty on insurance policies and will be treated as if it were a Territory owned corporation for taxation purposes. A tax equivalent regime can be applied to ACTIC.

Clause 35 contains the regulation making power allowing the Executive to make regulations for the purposes of the Act.

Clause 36 provides for the Minister to declare that stated assets or liabilities of the Territory will vest in ACTIC and for the declaration to be a disallowable instrument. This clause provides for the transfer to ACTIC of Territory assets and liabilities associated with the self-insurance arrangements existing prior to the commencement of this Act.

Clause 37 provides that the chief executive may certify that a stated asset or liability has vested in ACTIC.

Clause 38 provides for the registration of changes in title to certain assets in accordance with registration provisions under Territory law.

Clause 39 provides for the continuation of proceedings and evidence in relation to assets and liabilities vested in ACTIC under clause 36.

Clause 40 provides that sections 35 – 40 of the Act will expire one year after they commence. These sections are only of a transitional nature to deal with the initial vesting of assets and liabilities in ACTIC.

Dictionary

The dictionary defines ACTIC, appointed director, board, chairperson, controlling interest, deputy chairperson, director, general manager, insurance, risk and Territory entity.