

ASSURANCE COMPANIES
MANAGEMENT ACT.

Act No. 2, 1938.

An Act to make further provision with respect to the management of certain Assurance Companies incorporated with limited liability in New South Wales since the first day of January, one thousand nine hundred and fifteen, and engaged in the business of granting policies upon lives or entering into contracts for future endowments by way of annuity or otherwise; to amend the Companies Act, 1936, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 12th August, 1938.]

George VI.
No. 2, 1938.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Assurance Companies Management Act, 1938." Short title.

(2) This Act is Divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—SUPERVISION OF CERTAIN ASSURANCE COMPANIES.

PART III.—AMALGAMATIONS.

PART IV.—VOTING.

PART V.—GENERAL.

(3)

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Construction.

(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

Definitions.

2. In this Act unless the context or subject matter otherwise indicates or requires—

“Assurance company” means the company incorporated under the name of “The Producers & Citizens’ Co-operative Assurance Company Limited” or the company incorporated under the name of “Commonwealth General Assurance Corporation Limited” each of which companies has been incorporated since the first day of January, one thousand nine hundred and fifteen, as a company limited by shares which carries on the business of granting policies upon lives or entering into contracts for future endowments by way of annuity or otherwise.

“Company limited by shares” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount unpaid on their shares.

“Court” means the Supreme Court in its equitable jurisdiction.

“Manager” includes acting manager, managing director, secretary, or principal executive officer, by whatever designation he is styled.

“Secretary” includes acting secretary.

PART II.—SUPERVISION OF CERTAIN ASSURANCE COMPANIES.

**Appoint-
ment of
Public
Trustee as
trustee of
certain
assurance
companies.**

3. (1) The Governor may from time to time appoint the Public Trustee as trustee of an assurance company and may at any time revoke any such appointment.

(2) A notification of every such appointment or revocation of appointment shall be published in the Gazette

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Gazette and the appointment or revocation of appointment shall take effect from the date of such publication or from a later date to be specified in the notification.

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(3) A copy of every such notification shall be registered in the register kept pursuant to section eighteen of the Registration of Deeds Act, 1897, and in the register kept pursuant to section one hundred and eighty-seven of the Companies Act, 1936.

4. (1) The Public Trustee may appoint any person to exercise or perform all or any of the powers, authorities, duties or rights conferred or imposed on the Public Trustee by or under this Act.

Appointment of persons to act for the Public Trustee.

Every such appointment shall be under the hand and seal of the Public Trustee and shall be made with respect to a specified assurance company of which the Public Trustee has been appointed trustee.

Any such appointment may be general or may be limited to the exercise or performance of any specified power, authority, duty or right or of all powers, authorities, duties, or rights other than those specified.

(2) A reference in any provision of this Act (other than this section) to the Public Trustee shall be deemed to include any Deputy Public Trustee and also any person appointed by the Public Trustee under subsection one of this section to the extent of the powers, authorities, duties or rights conferred on such person by such appointment.

(3) No person dealing with a person appointed by the Public Trustee under this section shall be concerned to inquire whether the appointment extends to the exercise or performance of the power, authority, duty or right of the Public Trustee involved in such dealing.

5. (1) Where the Public Trustee is appointed trustee of an assurance company the following provisions shall have effect:—

Powers, etc., of Public Trustee as trustee of an assurance company.

- (a) The Public Trustee may appoint an auditor or actuary to make an investigation into and to furnish to the Public Trustee a report on the affairs of the assurance company. Any auditor or actuary so appointed shall, for the purpose of

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- of such investigation, have the like powers as the Public Trustee would have under this Act if an investigation were made by him.
- (b) The board of directors of the assurance company shall cause to be sent to the Public Trustee reasonable notice of all meetings of the directors and of all general meetings of the assurance company and the Public Trustee shall have the right to attend at and take part in the business of such meetings but not to vote thereat.
 - (c) No investment, sale, mortgage or other dealing with any of the assets of the assurance company shall have any force or effect unless the same is sanctioned in writing by the Public Trustee.
 - (d) The Public Trustee may prohibit the payment by way of remuneration, salary, expenses or otherwise howsoever to any director, general manager, officer, agent or employee of the assurance company, of any sum in excess of the amount which he considers to be reasonable. Any sum paid in contravention of any such prohibition may be recovered from the person to whom it was paid as moneys had and received to the use of the assurance company and may be so recovered in an action by the Public Trustee in his name on behalf of the assurance company.
 - (e) The Public Trustee shall at all times have a right of immediate access to all books, documents and records of the assurance company and may require any director, general manager, officer, agent or employee of the assurance company to supply the Public Trustee without delay with any information required by the Public Trustee relating to the business or affairs of the assurance company.
 - (f) The Public Trustee may give such directions as he considers reasonable for the placing of the assets of the assurance company under the joint control of the board of directors and the Public Trustee and may by such direction provide for the counter-signing by the Public Trustee of such instruments or documents of or relating to the assets or affairs of the assurance company as he may think necessary (g)

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- (g) The Public Trustee may suspend any officer, agent or employee of the assurance company and may appoint any person in his stead. No. 2, 1938.

Any such suspension or appointment shall have effect until the next meeting of the board of directors.

- (h) The Public Trustee may engage or employ any person (including solicitor or counsel) whose services he may deem necessary in connection with the exercise or performance of any power, authority, duty or right conferred or imposed upon him by or under this Act.

(2) Any director, general manager, officer, agent or employee of the assurance company who refuses or neglects or fails to comply with any of the requirements of this section or who is a party to anything prohibited by or under this section or who prevents or hinders the Public Trustee in the exercise or performance of any power, authority, duty or right conferred or imposed on the Public Trustee by this section shall be guilty of an offence against this Act.

(3) Where the Public Trustee is of opinion that an attempt is being made or has been made by any director, general manager, officer, agent or employee of the assurance company to prevent or interfere with the Public Trustee in the exercise or performance of any power, authority, duty or right conferred or imposed upon the Public Trustee by or under this Act, he may apply by motion to the court for such orders or injunctions as may be necessary to enable him to exercise or perform the said power, authority, duty or right.

6. (1) Where the Public Trustee is of opinion that it is advisable in the interests of the policy holders that the control and management of an assurance company of which he has been appointed trustee should be taken out of the hands of the board of directors of the assurance company he may apply to the court for an order that the board of directors of the assurance company be superseded and that the control and management of the assurance company be placed in the hands of a board of trustees to be appointed by the court on the recommendation of the Public Trustee and that the board of trustees

Board of trustees.

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trustees be given all the powers vested in the board of directors of the assurance company by the memorandum and articles of association of the assurance company, and the court shall make the order unless it is satisfied that the interests of the policy holders will not be prejudiced by its refusal so to do. In the event of the court making such an order all the directors of the assurance company shall, as from the date thereof, ipso facto, vacate their office and the board of trustees shall have and may exercise and perform all the powers vested in the board of directors by the memorandum and articles of association of the assurance company.

(2) The board of trustees shall consist of not more than three members of whom one shall be the Public Trustee.

(3) The board of trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. Two members of the board of trustees one of whom shall be the Public Trustee shall constitute a quorum. The Public Trustee shall be chairman of the board of trustees. In the event of an equality of votes the chairman shall have a second or casting vote.

(4) The board of trustees shall cause proper minutes to be kept of all their meetings. The minutes of any meeting signed by the chairman shall be evidence of the proceedings of the meeting and until the contrary is proved the meeting shall be deemed to have been duly held and convened and all proceedings thereat to have been duly had.

(5) The office of a member of the board of trustees shall become vacant if the member—

- (a) dies; or
- (b) resigns his office by notice in writing to the Public Trustee; or
- (c) becomes bankrupt, compounds with his creditors or makes an assignment of his remuneration or estate for their benefit; or
- (d) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

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(e) is absent without leave of the Public Trustee from three consecutive meetings of the board of trustees; or

(f) is removed by the court on the application of the Public Trustee.

(6) In the event of a vacancy on the board of trustees the court shall appoint a person recommended by the Public Trustee as a fit and proper person, to fill the vacancy.

(7) The remuneration of the members of the board of trustees shall be fixed from time to time by the Public Trustee and shall be paid out of the funds of the assurance company.

(8) No general meeting of the shareholders of the assurance company shall be held while the board of trustees is in office.

The board of trustees shall forward to the shareholders and policy holders an annual profit and loss account and report and balance sheet made out in accordance with the Companies Act, 1936, together with any documents required by law to be annexed or attached to the balance sheet.

(9) Where the Public Trustee is satisfied that it is possible for the shareholders of the assurance company in general meeting to elect a board of directors who are fit and proper persons to control and manage the assurance company having due regard to the interests of the policy holders he may take the necessary steps to summon a general meeting of the shareholders of the assurance company for the purpose of electing a board of directors. The meeting shall be summoned by the secretary of the assurance company by the order of the Public Trustee and the shareholders shall be given notice of the meeting in accordance with the articles of association of the assurance company.

No business, other than the election of a board of directors, shall be transacted at such meeting.

The number of directors to be elected by the meeting shall be determined by the Public Trustee such number to conform to the number of directors allowed by the articles of association of the assurance company.

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The Public Trustee may determine what notice of their candidature must be given by candidates for election prior to the date of the meeting and what notice of the names of the candidates shall be given to the shareholders.

The Public Trustee shall be the chairman of the meeting and as such chairman shall have all the powers and authorities conferred upon the chairman of directors at general meetings of the assurance company by the articles of association of the assurance company or otherwise.

The declaration by the Public Trustee of the result of the election whether on a show of hands or on a poll shall be conclusive evidence thereof.

If the Public Trustee is satisfied that the board of directors so elected consists of fit and proper persons to control and manage the assurance company he may apply to the court for an order that the board of trustees be relieved from the duties of their office and that the board of directors take over the control and management of the assurance company as from a date to be fixed by the order of the court and from the date so fixed the control and management of the assurance company shall again be vested in the board of directors but the Public Trustee shall continue to exercise the powers, authorities, duties and rights conferred or imposed upon him by or under this Act as trustee of the assurance company.

If the Public Trustee does not make any such application to the court, the board of directors so elected may apply to the court for such order and the court shall on such application make the order if it is satisfied that the interests of the policy holders will not be prejudiced thereby.

(10) The members of the board of directors elected pursuant to subsection nine of this section shall hold office until the annual general meeting of the assurance company in the year following their election and shall thereafter retire and be eligible for re-election in accordance with the articles of association of the assurance company.

company. Where the articles of association provide for retirement by rotation, the directors to retire shall be determined by agreement or in the absence of agreement by lot.

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(11) The Public Trustee shall cause certified copies of any orders made by the court under this section to be registered in the register kept pursuant to section eighteen of the Registration of Deeds Act, 1897, and in the register kept pursuant to section one hundred and eighty-seven of the Companies Act, 1936.

(12) While the board of trustees is in office the provisions of the Companies Act, 1936, relating to a company going into voluntary liquidation shall be suspended but creditors and shareholders shall be entitled to apply to the court for the compulsory winding-up of the assurance company in accordance with the provisions of that Act.

7. Applications to the court under this Act shall be by motion and may be made on affidavit evidence and the court may make any interlocutory or final order or injunction on ex parte application and may if necessary direct the parties on whom the motion shall be served and fix a return day for the further hearing of the motion and give all such directions as may be necessary to finally dispose thereof.

Applications to the court.

PART III.

AMALGAMATIONS.

8. (1) Where it is intended to amalgamate two or more assurance companies, or to transfer the assurance business of any class from one assurance company to another assurance company, the directors of any one or more of such companies may apply to the court to sanction the proposed arrangement.

Conditions as to amalgamation and transfer of business. cf. 9 Edw. VII, c. 49, s. 13.

(2) The court, after hearing the directors and other persons whom it considers entitled to be heard upon the application, may sanction the arrangement if it is satisfied that the arrangement is in the interests of the

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the policy holders of the assurance companies as well as of the shareholders and that no sufficient objection to the arrangement has been established.

(3) Before any such application is made to the court—

(a) notice of the intention to make the application shall be published in the Gazette and in two daily newspapers published and circulating in the City of Sydney at least thirty days before the application is made to the court; and

(b) a copy of such notice together with a statement of the nature of the proposed amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the court otherwise directs, be transmitted by post to each shareholder and policy holder of each assurance company at the address last known to the assurance company; and

(c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the offices of the assurance companies for a period of fifteen days after the publication of the notice in the Gazette.

(4) No assurance company shall amalgamate with another, or transfer its business or any part thereof to another, unless the amalgamation or transfer is sanctioned by the court in accordance with this section.

Statements
in case of
amalgama-
tion or
transfer.
cf. 9 Edw.
VII, c. 49,
s. 14.

9. Where an amalgamation takes place between any assurance companies, or where any assurance business of one assurance company is transferred to another assurance company, the combined assurance company or the purchasing assurance company, as the case may be, shall,

shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Registrar-General—

- (a) certified copies of statements of the assets and liabilities of the assurance companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and
- (b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected; and
- (c) certified copies of the actuarial or other reports upon which that agreement or deed is founded; and
- (d) a declaration under the hand of the principal managing officer of such assurance company, that to the best of his belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the amalgamation or transfer.

PART IV.

VOTING.

10. (1) Every proxy and power of attorney to attend at meetings or vote in respect of any shares in an assurance company given by any shareholder before the commencement of this Act shall as from such commencement cease to have operation with respect to attendance at any such meeting or voting.

**Proxies
and voting.**

(2)

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(2) A shareholder in an assurance company shall not be entitled to vote or to appoint a proxy or attorney to attend at meetings or to vote in respect of any shares in an assurance company where at the date of the voting, appointment or meeting—

- (a) he has sold or agreed or offered to sell such shares; or
- (b) he has given or agreed to give an option to purchase such shares; or
- (c) he has given an authority to any person to sell, exchange or otherwise deal with such shares, or to appoint any other person to sell, exchange or otherwise deal with such shares; or
- (d) he has agreed to vote in respect of those shares as he may be directed by another person

(3) Any shareholder who, in contravention of subsection two of this section votes, or attempts to vote, or appoints a proxy or attorney to attend at meetings or to vote and any person who, under any appointment made in contravention of that subsection, attends or attempts to attend any meeting or votes or attempts to vote, shall be guilty of an offence against this Act.

It shall be a sufficient defence if the person charged with an offence against this section proves that he had reasonable grounds for believing and did in fact believe that the appointment had not been made in contravention of this section.

Proxies, etc.,
to be accom-
panied by
statutory
declaration.

(4) Every proxy, power of attorney or ballot paper executed by a shareholder in an assurance company shall have annexed to it a statutory declaration in the form set out in the Schedule to this Act made by the shareholder on or after the date he executed the same.

Chairman
may call
on share-
holder to
sign statu-
tory declara-
tion.

(5) If the chairman at any meeting of an assurance company shall be of the opinion that any shareholder present at the meeting is disqualified by this Part from voting, he shall be entitled to call upon such shareholder to sign a statutory declaration in the form set out in the Schedule to this Act before allowing his vote.

PART V.

GENERAL.

11. (1) The general practice for the time being of the Supreme Court in its equitable jurisdiction shall so far as the same is applicable and not inconsistent with this Act apply to all proceedings under this Act. Practice.

(2) The costs incurred by the Public Trustee in any proceedings under this Act shall be paid out of the funds of the assurance company concerned.

12. Any person who is guilty of an offence against this Act or who contravenes any of the provisions of this Act shall be liable to a penalty not exceeding Two hundred pounds in addition to any other punishment imposed by law for perjury. General penalty.

13. (1) Any person appointed by the Public Trustee to exercise or perform all or any of the powers, authorities, duties or rights conferred or imposed on the Public Trustee by or under this Act shall be paid such remuneration as the Public Trustee may direct. Remuneration of persons appointed under sec. 4.

(2) The officers of the Public Trust Office shall perform such duties as shall from time to time be allotted to them by the Public Trustee in connection with the exercise or performance of any power, authority, duty or right conferred or imposed upon him by or under this Act. Remuneration of Public Trustee and his officers.

(3) The Public Trustee may from time to time and at such times as he may think fit determine what amount is payable up to the date of such determination

(a) as a reasonable charge for the services rendered by the Public Trustee and his staff in the exercise or performance of any power, authority, duty, or right conferred or imposed upon him by or under this Act. Such charge shall include the value as assessed by the Public Trustee, of the whole or part time services, as the case may be, of all officers so engaged, and also all other cost or expenditure and such proportion of the administrative expenses of the Public Trust Office as in his opinion is properly chargeable;

(b)

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- (b) in respect of the remuneration of any person appointed under section four of this Act;
- (c) in respect of any other costs or expenses incurred by the Public Trustee under this Act.

The Public Trustee shall, when he has made any such determination, inform the assurance company concerned of the amount payable in accordance with such determination and the assurance company shall thereupon pay such amount to the Public Trustee, which shall be credited by the Public Trustee to the Colonial Treasurer Public Trustee Account.

(4) The Public Trustee and any Deputy Public Trustee or other officer of the Public Trust Office engaged from time to time upon duties in connection with the administration of this Act shall receive such remuneration or additional remuneration, as the case may be, as shall be approved by the Governor, on the recommendation of the Public Trustee. The remuneration or additional remuneration so approved and all other costs and expenditure as aforesaid shall be paid from the amount received from the said company and the balance shall revert to the consolidated revenue fund.

Registered
office to
be in
Sydney.

14. (1) Every assurance company shall establish and maintain its registered office at some place in the City of Sydney.

(2) Every meeting of the board of directors of an assurance company shall be held at the registered office of the assurance company.

(3) Every general meeting of shareholders in an assurance company shall be held at some convenient place in the City of Sydney.

Amendment
of Act No.
33, 1936.

15. The Companies Act, 1936, as amended by subsequent Acts, is amended—

- (a) by inserting next after subsection one of section one hundred and eighty-seven the following new subsection:—

(1A) The Registrar-General shall enter in the register kept under this section in respect of any assurance company particulars of—

- (a) any notification of the appointment or of the revocation of the appointment of the Public Trustee as trustee of that assurance company;
- (b)

- (b) any order placing the control and management of that assurance company in the hands of a board of trustees;
- (c) any order that the board of trustees of that assurance company be relieved from the duties of their office.

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- (b) by inserting in subsection four of the same section after the word "charges" the words "notifications or orders".

16. The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying this Act into effect.

Regulations.

The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof such regulation or part shall thereupon cease to have effect.

17. The appointment of the Public Trustee as trustee of an assurance company or the appointment of a board of trustees to control and manage an assurance company shall not operate to prevent the person entitled to the benefit of any mortgage, charge or lien over any asset of the assurance company given before the date of the appointment of the Public Trustee as trustee of the assurance company or given after that date with the sanction in writing of the Public Trustee, from exercising any of the rights, powers or remedies expressly or impliedly given to him by the mortgage charge or lien against

Saving as to certain securities.

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Sec. 10.

SCHEDULE.

I (name) of (address as in share register), (occupation), do hereby solemnly and sincerely declare as follows:—

1. I am the registered holder of _____ shares in the (name of company) and my name as above stated appears in the register of shareholders of the said company as the holder of the said shares.

2. I have not—

- (a) sold, or agreed, or offered to sell such shares; or
- (b) given or agreed to give an option to purchase such shares; or
- (c) given any authority to any person to sell, exchange or otherwise deal with such shares or to appoint any other person to sell, exchange or otherwise deal with such shares; or
- (d) agreed to vote in respect of such shares as may be directed by any other person.

3. I hereby undertake that should I do any of the acts mentioned in sub-paragraphs (a), (b), (c) and (d) of clause 2 hereof I will immediately revoke the attached proxy or power of attorney, and forthwith notify the secretary of the said company of such revocation.

And I make this solemn Declaration conscientiously believing the same to be true under and by virtue of the provisions of the Oaths Act, 1900.

Declared by the Deponent
at _____ on this
_____ day of
193 . before me:—

Justice of the Peace.