**INSURANCE AMENDMENT ACT 1977**

**No. 31 of 1977**

An Act to amend the *Insurance Act* 1973.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

**Short title, &c.**

**1.** (1) This Act may be cited as the *Insurance Amendment Act* 1977.

(2) The *Insurance Act* 1973 is in this Act referred to as the Principal Act.

**Commencement.**

**2.** (1) Sections 1, 2, 5, 6, 7, 8, 9, 10 and 11, sub-section 13(1) and sections 15, 19, 21, 26, 31, 32, 33, 34, 36, 37, 39 and 40 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sub-section 27(1) and sections 29 and 30 shall be deemed to have come into operation on 1 August 1974.

(3) Sub-section 4(1) shall be deemed to have come into operation on 1 February 1975.

(4) Sub-section 4(2) shall be deemed to have come into operation on 13 December 1976.

(5) The remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.

**Interpretation.**

**3.** Section 3 of the Principal Act is amended by omitting from sub-section (1) the definitions of “Chairman”, “Court”, “member” and “Tribunal”.

**Application of Act.**

**4.** (1) Section 5 of the Principal Act is amended by omitting paragraph (c) of sub-section (2) and substituting the following paragraph:—

“(c) the Export Finance and Insurance Corporation established by the *Export Finance and Insurance Corporation Act* 1974;”.

(2) Section 5 of the Principal Act is amended by omitting paragraph (d) of sub-section (2) and substituting the following paragraph:—

“(d) the Defence Service Homes Corporation established by the *Defence Service Homes Corporation Act* 1976;”.

(3) Section 5 of the Principal Act is amended—

(a) by adding at the end of paragraph (g) of sub-section (2) the word “or”;

(b) by omitting from paragraph (h) of sub-section (2) the word “or” (last occurring);

(c) by omitting paragraph (i) of sub-section (2); and

(d) by adding at the end thereof the following sub-section:—

“(3) Where a prescribed body (not being a company) complies with such conditions as are prescribed in respect of the body, this Act does not apply—

(a) subject to paragraph (b)—to or with respect to the insurance business carried on by the body; or

(b) if the regulations declare that this Act is not to apply with respect to the carrying on by the body of a specified class of insurance business—to or with respect to any insurance business included in that class of insurance business that is carried on by the body.”.

**5.** Section 10 of the Principal Act is repealed and the following section substituted:—

**Remuneration and allowances.**

“10. (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(2) The Commissioner shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.”.

**Outside employment and interests.**

**6.** Section 12 of the Principal Act is amended by adding at the end of sub-section (1) the words “except with the approval of the Treasurer”.

**7.** Section 13 of the Principal Act is repealed and the following section substituted:—

**Officers’ Rights Declaration Act.**

“13. Where a person appointed as Commissioner was, immediately before his appointment, an officer of the Australian Public Service (other than an officer in relation to whose appointment as Commissioner section 14 applies) or a person to whom the *Officers*’ *Rights Declaration Act* 1928 applied—

(a) he retains his existing and accruing rights;

(b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and

(c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.”.

**Public servant appointed as Commissioner may continue in office as public servant.**

**8.** Section 14 of the Principal Act is amended—

(a) by omitting from sub-sections (1) and (2) the words “the Public Service of the Commonwealth” (wherever occurring) and substituting the words “the Australian Public Service and

(b) by omitting from paragraph (e) of sub-section (2) the words “sections 13, 15, 16 and 17” and substituting the words “sections 13 and 15”.

**9.** Sections 15, 16 and 17 of the Principal Act are repealed and the following section is substituted:—

**Termination of appointment.**

“15. (1) The Governor-General may terminate the appointment of the Commissioner for misbehaviour or physical or mental incapacity.

“(2) If the Commissioner—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) except with the approval of the Treasurer, engages in paid employment outside the duties of his office; or

(c) is absent from duty, except on leave of absence granted by the Treasurer, for 14 consecutive days or for 28 days in any 12 months,

the Governor-General shall, by notice published in the *Gazette,* declare that the office of the Commissioner is vacant, and thereupon the office shall be deemed to be vacant.”.

**Acting Commissioner.**

**10.** Section 19 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:—

“(1) The Treasurer may appoint a person to act as the Commissioner during any period, or during all periods—

(a) when the Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office; or

(b) when there is a vacancy in the office of Commissioner.

“(1a) An Acting Insurance Commissioner appointed by reason of the office of the Commissioner being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.”;

(b) by omitting from sub-section (2) the word “Governor-General” and substituting the word “Treasurer”;

(c) by omitting sub-section (3); and

(d) by omitting from sub-section (4) the words “Governor-General” and substituting the word “Treasurer”.

**Repeal of section 25.**

**11.** Section 25 of the Principal Act is repealed.

**Refusal to grant authority.**

**12.** Section 27 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

“(3) Part VI applies to a refusal of the Treasurer under this section to grant an authority.”.

**Assets.**

**13.** (1) Section 30 of the Principal Act is amended—

(a) by inserting after paragraph (f) of sub-section (1) the following paragraph:—

“(fa) the estimated value of a future benefit to the body corporate that may arise, under a law of the Commonwealth, a State or a Territory, relating to taxation by virtue of a loss or losses incurred by the body corporate;”;

(b) by inserting in paragraph (g) of sub-section (1), after the words “given to”, the words “or in relation to”;

(c) by inserting in sub-section (4), after the words “given to” (first occurring), the words “or in relation to”; and

(d) by inserting after sub-section (4) the following sub-section:—

“(4a) Without otherwise limiting the discretion of the Commissioner to refuse to approve as an asset for the purposes of this Part the whole or part of a guarantee given to or in relation to a body corporate, the Commissioner shall not give such an approval unless—

(a) the guarantor, or each of the guarantors, is a bank as defined by sub-section 5 (1) of the *Banking Act* 1959 or a bank constituted by a law of a State;

(b) the guarantee is in accordance with a prescribed form or a form approved by the Treasurer, being a form that includes provision to the effect that, in the event of the winding-up of the body corporate, amounts due under the guarantee are to be available to meet the liabilities of the body corporate; and

(c) the guarantee is not revocable without the approval of the Commissioner.”.

(2) Section 30 of the Principal Act is amended by omitting sub-sections (5) and (6) and substituting the following sub-sections:—

“(5) The whole or such part as the Commissioner determines of an amount owed to a body corporate by way of portions of premiums retained under a contract of reinsurance by a person outside Australia shall, for the purposes of this Part, be deemed to be an asset in Australia of the body corporate.

“(6) Part VI applies to—

(a) a determination made under sub-section (2) or (4);

(b) a determination made for the purposes of sub-section (5);

(c) a refusal or failure to give an approval under sub-section (2), (3) or (4); and

(d) a refusal or failure to make a determination under sub-section (5).”.

(3) A determination in force under paragraph 30(5)(b) of the Principal Act immediately before the commencement of sub-section (2) of this section has effect after the commencement of that sub-section as if it had been made under sub-section 30(5) of the Principal Act as amended by sub-section (2) of this section.

**Liabilities.**

**14.** Section 31 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

“(3) Part VI applies to a direction of the Commissioner under sub-section (2).”.

**Premium income and premium income in Australia.**

**15.** (1) Section 32 of the Principal Act is amended—

(a) by omitting from paragraph (b) of sub-section (1) the word “and”;

(b) by adding at the end of sub-section (1) the following paragraphs:—

“(d) the amount paid by the body corporate during the first-mentioned financial year under a law of a State or Territory relating to payments by insurers for or with respect to fire brigades;

“(e) the amount of stamp duty paid by the body corporate, during the first-mentioned financial year, under a law, or a provision of a law, of a State or Territory imposing stamp duty in respect of the carrying on of insurance business; and

“(f) the amount paid by the body corporate during the first-mentioned financial year under a prescribed law of the Commonwealth or of a State or Territory or under a prescribed provision of such a law.”;

(c) by omitting from paragraph (b) of sub-section (2) the word “and”; and

(d) by adding at the end of sub-section (2) the following paragraphs:—

“(d) the amount paid by the body corporate during the first-mentioned financial year under a law of a State or Territory relating to payments by insurers for or with respect to fire brigades;

“(e) the amount of stamp duty paid by the body corporate, during the first-mentioned financial year, under a law, or a provision of a law, of a State or Territory imposing stamp duty in respect of the carrying on of insurance business; and

“(f) the amount paid by the body corporate during the first-mentioned financial year under a prescribed law of the Commonwealth or of a State or Territory or under a prescribed provision of such a law.

(2) The amendments of section 32 of the Principal Act effected by sub-section (1) apply to and in relation to any financial year of a body corporate ending on or after the date of commencement of this section.

**Valuation of assets.**

**16.** Section 33 of the Principal Act is amended by omitting sub-section (8) and substituting the following sub-section:—

“(8) Part VI applies to a direction of the Commissioner under sub-section (3).”.

**Cancellation of authority.**

**17.** Section 36 of the Principal Act is amended by omitting sub-section (7) and substituting the following sub-section:—

“(7) Part VI applies to—

(a) a refusal under sub-section (1) to revoke an authority; or

(b) the revocation of an authority under sub-section (4).”.

**Apportionment of receipts and payments between insurance business and other business.**

**18.** Section 41 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

“(3) Part VI applies to a direction of the Commissioner under sub-section (2).”.

**Accounts, &c., to be signed.**

**19.** Section 45 of the Principal Act is amended—

(a) by omitting from sub-section (2) the words “or secretary” and substituting the words “, secretary or manager”; and

(b) by adding at the end thereof the following sub-section:—

“(3) In sub-section (2), ‘manager’, in relation to a body corporate, means the principal executive officer of the body corporate, by whatever name he is called.”.

**Appointment of auditor.**

**20.** Section 46 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-section:—

“(5) Part VI applies to —

(a) a refusal of the Commissioner to approve the appointment of a person under sub-section (1); and

(b) a revocation of an appointment of a person under that sub-section.”.

**Audit of accounts.**

**21.** Section 47 of the Principal Act is amended by inserting in sub-section (1), after the word “Commissioner”, the words “(other than such accounts and statements as are prescribed for the purposes of this sub-section)”.

**Enquiry by Commissioner and direction not to deal with certain assets.**

**22.** Section 51 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) Part VI applies to—

(a) a direction given under paragraph (1)(b); and

(b) where a direction given under that paragraph is varied—the direction as varied.”.

**Directions.**

**23.** Section 62 of the Principal Act is amended—

(a) by omitting sub-sections (3) and (4) and substituting the following sub-section:—

“(3) Part VI applies to—

(a) a direction given under this section; and

(b) where a direction given under this section is varied—the directions as varied.”; and

(b) by omitting from sub-section (11) the words “In sub-sections (4), (9) and (10)” and substituting the words “In sub-sections (9) and (10)”.

**24.** (1) Part VI of the Principal Act is repealed and the following Part substituted:—

“PART VI—REVIEW OF DECISIONS

**Review of certain decisions.**

“63. (1) In this section—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act* 1975;

‘person affected by a reviewable decision of the Treasurer or the Commissioner’, in relation to a reviewable decision of the Treasurer or the Commissioner, means—

(a) the body corporate in relation to which the decision was made;

(b) in the case of a refusal to approve the appointment of a person under sub-section 46(1) or a revocation of an appointment of a person under that sub-section—that person; or

(c) in the case of a determination under sub-section 93(3)—Lloyd’s or any Lloyd’s underwriter;

‘reviewable decision of the Treasurer or the Commissioner’ means a decision of the Treasurer or the Commissioner to which, under this Act, this Part applies.

“(2) A person affected by a reviewable decision of the Treasurer or Commissioner who is dissatisfied with the decision may, by notice in writing given to the Treasurer or the Commissioner, as the case may be, within the period of 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Treasurer or the Commissioner, as the case may be, allows, request the Treasurer or the Commissioner, as the case may be, to reconsider the decision.

“(3) There shall be set out in the request the reasons for making the request.

“(4) Upon receipt of the request, the Treasurer or the Commissioner, as the case may be, shall reconsider the decision and may, subject to sub-section (5), confirm or revoke the decision or vary the decision in such manner as he thinks fit.

“(5) Where the Treasurer or the Commissioner, as the case may be, does not confirm, revoke or vary a decision before the expiration of the period of 21 days after the day on which he received the request under sub-section (2) to reconsider the decision, he shall, upon the expiration of that period, be deemed to have confirmed the decision under sub-section (4).

“(6) Where the Treasurer or the Commissioner, as the case may be, confirms, revokes or varies a decision before the expiration of the period referred to in sub-section (5), he shall, by notice served on the person who made the request, inform the person of the result of his reconsideration of the decision and his reasons for confirming, revoking or varying the decision, as the case may be.

“(7) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Treasurer and decisions of the Commissioner that have been confirmed or varied under sub-section (4).

“(8) Where a decision is deemed, by reason of the operation of sub-section (5), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act* 1975 applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is deemed to be confirmed and ending on the twenty-eighth day after that day.

“(9) Where a person makes a request under sub-section (2) in respect of a reviewable decision of the Treasurer or the Commissioner, section 41 of the *Administrative Appeals Tribunal Act* 1975 applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

“(10) For the purposes of a review of a reviewable decision of the Treasurer or the Commissioner, the Tribunal shall, subject to sub-section 21(1a) and 23(1) of the *Administrative Appeals Tribunal Act* 1975, be constituted by a presidential member and 2 non-presidential members.

“(11) In giving a direction as to the persons who are to constitute the Tribunal for the purposes of a review of a reviewable decision of the Treasurer or the Commissioner, or for the purposes of a request under sub-section 41(2) of the *Administrative Appeals Tribunal Act* 1975 in respect of such a decision, the President shall ensure that each non-presidential member of the Tribunal as so constituted is a person who, in the opinion of the President, has special knowledge or skill in relation to insurance business.

“(12) A non-presidential member of the Tribunal shall not sit as a member of the Tribunal for the purposes of a review of a reviewable decision of the Treasurer or the Commissioner, or for the purposes of a request under sub-section 41(2) of the *Administrative Appeals Tribunal Act* 1975 in respect of such a decision, if he is a director or employee of a company, body corporate or body carrying on (whether in Australia or elsewhere) insurance business or life insurance business.

“(13) An order shall not be made under sub-section 41(2) of the *Administrative Appeals Tribunal Act* 1975 in respect of a reviewable decision of the Treasurer or the Commissioner except by the Tribunal.

“(14) The hearing of a proceeding relating to a reviewable decision of the Treasurer or the Commissioner shall take place in private and the Tribunal may, by order—

(a) give directions as to the persons who may be present; and

(b) give directions of a kind referred to in paragraph 35(2)(b) or (c) of the *Administrative Appeals Tribunal Act* 1975.”.

(2) Notwithstanding the repeal of Part VI of the Principal Act effected by sub-section (1) of this section, the provisions of section 74 of the Principal Act continue to apply to every person who has been a member of the Insurance Tribunal or a member of the staff assisting that Tribunal as if that last-mentioned section had not been repealed.

(3) Subject to sub-sections (4), (5) and (6), the Part inserted in the Principal Act by sub-section (1) applies to and in relation to a decision of the Treasurer or the Commissioner, as the case may be, made before the commencement of this section, being a decision in respect of which an appeal lay to the Insurance Tribunal, as if the decision were a reviewable decision of the Treasurer or the Commissioner within the meaning of section 63 of the Principal Act as amended by sub-section (1).

(4) Where the hearing of proceedings with respect to a decision of the Treasurer or the Commissioner had been commenced, but had not been completed, by the Insurance Tribunal before the commencement of this section, the Part inserted in the Principal Act by sub-section (1) does not apply to or in relation to those proceedings or that decision, but the Part repealed by sub-section (1) continues to apply to and in relation to those proceedings and that decision as if it had not been so repealed.

(5) Where the hearing of proceedings that were duly instituted under section 75 or 76 of the Principal Act had not been commenced by the Insurance Tribunal before the commencement of this section, the proceedings shall be heard and determined by the Administrative Appeals Tribunal as if those proceedings had been duly instituted under the Part inserted in the Principal Act by sub-section (1).

(6) Where, before the commencement of this section, a submission had been duly made under sub-section 75(4) of the Principal Act with respect to a decision of the Treasurer or Commissioner, as the case may be, but proceedings had not been duly instituted under section 75 or 76 of that Act with respect to the decision, the Part inserted in that Act by sub-section (1) applies to and in relation to the submission as if—

(a) it were a request to reconsider the decision that had been duly made under sub-section 63(2) of that Act as amended by sub-section (1);

(b) the Part so inserted had been in force when the submission was made; and

(c) any act or thing done, before the commencement of this section, in respect of the submission had been done for the purposes of the Part so inserted.

(7) For the purposes of sub-sections (5) and (6), proceedings shall be deemed to have been duly instituted under section 75 of the Principal Act when a submission received under sub-section 75(4) of that Act was lodged with the Insurance Tribunal in accordance with sub-section 75(5) of that Act.

**Lloyd’s underwriters.**

**25.** Section 93 of the Principal Act is amended—

(a) by omitting sub-paragraph (i) of paragraph (b) of sub-section (3) and substituting the following sub-paragraph:—

“(i) a request under sub-section 63(2) is made in relation to the determination of the Treasurer; or”;

(b) by omitting sub-section (5) and substituting the following sub-section:—

“(5) Part VI applies to a determination of the Treasurer under sub-section (3).”;

(c) by omitting paragraph (a) of sub-section (6) and substituting the following paragraph:—

“(a) a request under sub-section 63(2) is made in relation to a determination of the Treasurer under sub-section (3);”;

(d) by omitting paragraph (c) of sub-section (6) and substituting the following paragraph:—

“(c) the period of 3 months after—

(i) the request under sub-section 63(2) is made; or

(ii) if an application under sub-section 63(7) is made in relation to the determination—the application is finally determined under the *Administrative Appeals Tribunal Act* 1975 and, if no appeal in the matter is made under section 44 of that Act, the time within which such an appeal may be made has expired;”;

(e) by omitting sub-section (8) and substituting the following sub-section:—

“(8) In sub-sections (6) and (7), ‘appeal’ includes application for leave to appeal.”; and

(f) by omitting from sub-section (10) the words “This Part” and substituting the words “Subject to any decision given or order made by virtue of Part VI or any order made by a court, this Part”.

**Repeal of section 101.**

**26.** Section 101 of the Principal Act is repealed.

**Bodies corporate ceasing to carry on insurance business.**

**27.** (1) Section 105 of the Principal Act is amended by omitting paragraph (c) of sub-section (1) and substituting the following paragraph:—

“(c) has, after having made such an application, withdrawn the application or been refused an authority under section 27,”.

(2) Section 105 of the Principal Act is amended by omitting sub-section (10) and substituting the following sub-section:—

“(10) Part VI applies to—

(a) a direction given under sub-section (8); and

(b) where a direction given under that sub-section is varied—the direction as varied.”.

**28.** After section 105 of the Principal Act the following section is inserted:—

**Notification of refusal of authority to carry on insurance business.**

“105a. (1) This section applies to a body corporate that, immediately before the commencement of section 21, carried on insurance business in Australia and had a deposit lodged with the Treasurer as required by the *Insurance (Deposits) Act* 1932.

“(2) If an application made under Part III by a body corporate to which this section applies for an authority to carry on insurance business, being an application made within the period of 3 months after the date of commencement of section 21, has been, or is, refused by the Treasurer under section 27, the Commissioner shall, as soon as he considers it proper to do so, having regard to the best interests of the public, cause notice of the refusal to be published in the *Gazette,* but he shall not cause such a notice to be so published until—

(a) after the expiration of a period of 21 days after the date of the refusal; or

(b) if, before he causes the notice to be so published, a request under sub-section 63(2) or an application under sub-section 63(7) is made, or proceedings are commenced in a court otherwise than under the *Administrative Appeals Tribunal Act* 1975, in relation to the refusal—after the matter has been finally determined under Part VI of this Act or under the *Administrative Appeals Tribunal Act* 1975, or otherwise by a court, or the proceedings relating to the matter have lapsed.

“(3) For the purposes of sub-section (2), the Commissioner may treat proceedings relating to a matter with respect to a refusal referred to in sub-section (1) as having lapsed if there is not in force an order under sub-section 41(2) of the *Administrative Appeals Tribunal Act* 1975, or an order by a court, that the publication in the *Gazette* of notice of the refusal is to be stayed.”.

**Person not to be deemed to be carrying on insurance business by reason only that he discharges liabilities.**

**29.** Section 107 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) A body corporate is not guilty of an offence against sub-section 21(2) by reason only that it is carrying on business for the purpose of discharging liabilities assumed by it before—

(a) in the case of a body corporate that—

(i) carried on insurance business in Australia immediately before the date of commencement of section 21;

(ii) made an application under Part III for an authority to carry on insurance business within the period of 3 months after the date referred to in sub-paragraph (i); and

(iii) has withdrawn the application or been refused an authority under section 27,

the date of that withdrawal or refusal; or

(b) in the case of any other body corporate—the date of commencement of section 21.”.

**Transitional provisions relating to bodies that carried on insurance business before commencement of section 21.**

**30.** Section 108 of the Principal Act is amended—

(a) by inserting in paragraph (c) of sub-section (2), after the word “not”, the words “withdrawn the application or”; and

(b) by adding at the end thereof the following sub-sections:—

“(3) A body (not being a body corporate) that—

(a) carried on insurance business in Australia before the date of commencement of section 21; and

(b) has, within the period of three months after that date, made an application to the Treasurer or the Commissioner to be prescribed under paragraph 5(2)(i) of this Act as in force on that date,

is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carried on such business during the period that commenced on that date and ended on the date on which the application was made.

“(4) Where—

(a) a body carried on insurance business in Australia before the date of commencement of section 21;

(b) the body has, within the period of three months after that date, made an application to the Treasurer or the Commissioner to be prescribed under paragraph 5 (2) (i) of this Act as in force on that date or to be granted an exemption under sub-section 37(1); and

(c) the application has not been refused,

the body corporate is not guilty of an offence against section 21 by reason only that, not being authorized under this Act to carry on insurance business, it carries on such business.”.

**31.** Sections 109, 110, 111 and 112 of the Principal Act are repealed and the following section is substituted:—

**Transitional provisions relating to bodies corporate refused authorities under section 27.**

“109. (1) Where the Treasurer refuses, under section 27, to grant an authority to carry on insurance business to a body corporate that carried on insurance business in Australia before the date of commencement of section 21, the Treasurer may, by notice in writing to the body corporate, from time to time—

(a) give directions to the body corporate with respect to the carrying on of insurance business by the body corporate; and

(b) vary or revoke directions so given to the body corporate.

“(2) If a body corporate to which directions have been given under sub-section (1) is granted an authority to carry on insurance business, any directions so given that have not previously been revoked shall be deemed to be revoked upon the granting of that authority.

“(3) A body corporate shall not contravene or fail to comply with a direction given to it under sub-section (1).

Penalty: $10,000 for each day during which the contravention continues.

“(4) Without limiting the directions that may be given to a body corporate under sub-section (1), the following directions may be given under that sub-section:—

(a) a direction that the body corporate shall not issue policies or undertake liability under contracts of insurance;

(b) a direction that the body corporate shall not renew policies;

(c) a direction that the body corporate shall not issue policies in respect of a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;

(d) a direction that the body corporate shall not renew policies in respect of a class of insurance business specified in the direction;

(e) a direction that the body corporate shall limit the amount of its premium income (within the meaning of Part III) during a specified financial year, or the amount of its premium income in Australia (within the meaning of Part III) during a specified financial year, to a specified amount.

“(5) Nothing in this section authorizes a body corporate, whether in accordance with directions given under sub-section (1) or otherwise, to carry on any business that it would not have been authorized to carry on if this section had not been enacted.”.

**Person acting for unauthorized person.**

**32.** Section 113 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-sections:—

“(2a) The Treasurer may, by order published in the *Gazette,* exempt a person, or persons included in a specified class of persons, from compliance with sub-section (1) and, so long as the order continues in force, that person or those persons, as the case may be, shall be exempt from compliance with that sub-section.

“(2b) An exemption granted under sub-section (2a) is subject to such conditions (if any) as the Treasurer specifies in the order.

“(2c) Where an exemption granted under sub-section (2a) is subject to a condition, the Treasurer may, by order published in the *Gazette,* vary or revoke that condition or impose an additional condition.

“(2d) Part VI applies to the imposition of a condition, or the variation of a condition imposed, under this section.

(b) by inserting in sub-section (3), after the words “contravenes sub-section (1)”, the words “, or contravenes or fails to comply with a condition applicable to it under this section,

(c) by inserting in sub-section (3), after the words “that sub-section”, the words “, or contravenes or fails to comply with a condition applicable to him under this section,”; and

(d) by adding at the end thereof the following sub-section:—

“(4) A person who grants insurance cover to another person on behalf of a person outside Australia who is not authorized under this Act to carry on insurance business, or receives a premium, proposal or request in respect of insurance business from another person on behalf of, or for transmission to, a person outside Australia who is not so authorized, shall—

(a) furnish to a prescribed person, within such period as is prescribed, a statement, in accordance with the prescribed form, containing such information as is required by the form with respect to the cover, premium, proposal or request, as the case may be; and

(b) furnish to that other person, within such period as is prescribed, a notice, in accordance with the prescribed form, informing him that the person outside Australia is not authorized under this Act to carry on insurance business.

Penalty: One thousand dollars.”.

**33.** Section 115 of the Principal Act is repealed and the following sections are substituted:—

**Power to require production of books.**

“115. (1) For the purpose of ascertaining whether a body corporate authorized under this Act to carry on insurance business is complying with the provisions of this Act, the Commissioner or a person authorized by him, in writing, for the purposes of this section may require an officer of the body corporate to produce to him any books required by or under this Act to be kept by the body corporate and may inspect, take extracts from and make copies of any such books.

“(2) For the purpose of facilitating consideration of an application made, whether before or after the commencement of this sub-section, by a body corporate for an authority to carry on insurance business or for an exemption under sub-section 37(1), the Commissioner or a person authorized by him, in writing, for the purposes of this section may require an officer of the body corporate to produce to him any books of the body corporate and may inspect, take extracts from and make copies of any such books.

“(3) An officer of a body corporate shall comply with a requirement made under sub-section (1) or (2).

“(4) In this section, ‘officer’ includes a director or secretary, or an employee concerned in the management, of the body corporate.

“(5) A person shall not obstruct or hinder the Commissioner or person authorized by him for the purposes of this section while the Commissioner or that person is exercising a power under this section.

Penalty: $1,000 or imprisonment for 3 months.

**Access to premises.**

“115a. (1) For the purpose of ascertaining whether a body corporate authorized under this Act to carry on insurance business has contravened or failed to comply with the provisions of this Act, an authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the body corporate.

“(2) Where an authorized person has reason to believe that—

(a) a body corporate authorized under this Act to carry on insurance business has contravened or failed to comply with the provisions of this Act; and

(b) there are, on any premises, books of the body corporate,

the authorized person may make an application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the body corporate.

“(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation—

(a) that there is reasonable ground for believing that—

(i) the body corporate has contravened or failed to comply with the provisions of this Act; and

(ii) there are, on the premises, books of the body corporate; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, and if necessary by force, for the purpose of searching for, inspecting, taking extracts from and making copies of any such books.

“(4) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may search for, inspect, take extracts from and make copies of any books of the body corporate.

“(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under sub-section (3) or in pursuance of sub-section (4).

Penalty: $1,000 or imprisonment for 3 months.

“(6) A reference in this section to an authorized person shall be read as a reference to the Commissioner or a person authorized by him, in writing, for the purposes of this section.”.

**Agent in Australia.**

**34.** Section 118 of the Principal Act is amended—

(a) by omitting from sub-section (2) the word “Where” and substituting the words “Subject to sub-section (3b), where”; and

(b) by inserting after sub-section (3) the following sub-sections:—

“(3a) A body corporate may appoint a person (not being a body corporate) to act as the agent of the body corporate for the purposes of this Act during all periods when the agent of the body corporate appointed under sub-section (1) is absent from Australia or, for any reason, unable to perform his duties as such an agent.

“(3b) Sub-section (2) does not apply in relation to an absence from Australia of the agent of a body corporate appointed under sub-section (1), or to an inability, for any other reason, of such an agent to perform the duties of his appointment, if a person in Australia is, during the absence or inability, performing, or available to perform, the duties of the agent in pursuance of an appointment under sub-section (3a).”.

**Evidence and judicial notice.**

**35.** Section 124 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

“(1a) In proceedings in any court, a certificate under the hand of the Commissioner that a requirement of this Act specified in the certificate—

(a) had or had not been complied with at a date or within a period specified in the certificate; or

(b) has been complied with upon a date specified in the certificate, but not before that date,

is *prima facie* evidence of the matters specified in the certificate.

**36.** Section 126 of the Principal Act is repealed and the following section substituted:—

**Secrecy.**

“126. (1) Sub-section (2) applies to every person who is or has been the Commissioner or a member of the staff assisting the Commissioner.

“(2) Subject to sub-section (3), a person to whom this sub-section applies shall not, either directly or indirectly, except in the performance of a duty under or in connexion with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty: $1,000 or imprisonment for 3 months.

“(3) Sub-section (2) does not prevent the communication of information or the production of a document by the Commissioner or by a member of the staff assisting the Commissioner authorized by him in that behalf—

(a) to the Treasurer, to the Secretary to the Department of the Treasury or to an officer of that Department approved by the Secretary to that Department for the purposes of this section; or

(b) to a person to whom, in the opinion of the Treasurer, it is in the public interest that the information be communicated or the document produced.

“(4) Neither the Secretary to the Department of the Treasury nor an officer of that Department approved by the Secretary to that Department for the purposes of sub-section (3) shall, either directly or indirectly, except for the purpose of advising the Treasurer in connexion with the administration of this Act, make a record of, or divulge or communicate to any person, any information communicated to him by the Commissioner or by a member of the staff assisting the Commissioner, being information concerning the affairs of another person acquired by the Commissioner or by a member of that staff by reason of his office or employment under or for the purposes of this Act.

Penalty: $1,000 or imprisonment for 3 months.”.

**Statistics.**

**37.** Section 127 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:—

“(1) Notwithstanding section 126, the Commissioner or a member of the staff assisting the Commissioner approved by him, in writing, for the purposes of this section may furnish to the Australian Statistician information obtained from a body corporate authorized under this Act to carry on insurance business.”; and

(b) by omitting from sub-section (2) the words “under paragraph (1)(a)” and substituting the words “under sub-section (1) of this section”.

**Regulations.**

**38.** Section 132 of the Principal Act is amended by omitting paragraph (d).

**Paragraph 6 of Schedule.**

**39.** Paragraph 6 of the Schedule to the Principal Act is amended—

(a) by omitting from sub-paragraph (2) the word “Where” and substituting the words “Subject to sub-paragraph (3b), where”; and

(b) by inserting after sub-paragraph (3) the following sub-paragraphs:—

“(3a) Lloyd’s may appoint a person (not being a body corporate) to act as the agent of Lloyd’s for the purposes of this Act during all periods when the agent of Lloyd’s appointed under sub-paragraph (1) is absent from Australia or, for any reason, unable to perform his duties as such an agent.

“(3b) Sub-paragraph (2) does not apply in relation to an absence from Australia of the agent of Lloyd’s appointed under sub-paragraph (1), or to an inability, for any other reason, of the agent to perform the duties of his appointment, if a person in Australia is, during the absence or inability, performing, or available to perform, the duties of the agent in pursuance of an appointment under sub-paragraph (3a).”.

**Paragraph 10 of Schedule.**

**40.** Paragraph 10 of the Schedule to the Principal Act is amended by omitting clause (e) and substituting the following clauses:—

“(e) the amount of stamp duty paid or payable by Lloyd’s underwriters, during the first-mentioned financial year, under a law, or a provision of a law, of a State or Territory imposing stamp duty in respect of the carrying on of insurance business, not including an amount payable during a preceding year;

“(ea) the amount paid or payable by Lloyd’s underwriters during the first-mentioned financial year under a prescribed law of the Commonwealth or of a State or Territory or under a prescribed provision of such a law, not including an amount payable during a preceding year; and”.