



Australian Capital Territory

Insurance Authority Act 2005

A2005-24

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2003 229B

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Australian Capital Territory

Insurance Authority Act 2005

A2005-24

An Act to make provision about the Australian Capital Territory Insurance Authority, and for other purposes

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

2003 229B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Insurance Authority Act 2005*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

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

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

For example, the signpost definition '*territory risk*—see section 5.' means that the term '*territory risk*' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

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

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Meaning of *territory risk*

For this Act, a *territory risk* is any risk of the Territory, and includes—

- (a) a direct risk of the Territory or a territory entity; and

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

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

6 Meaning of *territory entity*

- (1) In this Act:

territory entity means—

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

Note *Territory authority* is defined in the Legislation Act, dict, pt 1.

- (2) In this section:

controlling interest—the Territory or a territory entity has a *controlling interest* in a company if its interest in the company is of a kind that—

- (a) it can—
 - (i) control the composition of the board of directors of the company; or
 - (ii) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or
 - (iii) control more than 50% of the issued share capital of the company (excluding any part of the issued share capital that carries no right to participate beyond a particular amount in a distribution of either profits or capital); or

- (b) if paragraph (a) does not apply—no-one else holds a greater interest in the company.

public sector company means—

- (a) a territory-owned corporation; or
(b) a subsidiary of a territory-owned corporation; or
(c) a company prescribed by regulation; or
(d) any other company in which the Territory or another territory entity has a controlling interest.

Note ***Territory-owned corporation*** is defined in the Legislation Act, dict, pt 1.

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

Part 2 The insurance authority

7 The authority

- (1) The Australian Capital Territory Insurance Authority is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

- (2) The authority—
- (a) is a corporation; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (3) The authority represents the Territory when exercising its functions, unless this Act or another territory law otherwise provides.
- (4) The chief executive is the authority.

8 Functions of authority

The authority has the following functions:

- (a) to carry on the business of insurer of territory risks;
- (b) to take out insurance of territory risks with other entities;
- (c) to satisfy or settle claims in relation to territory risks (including claims that may not necessarily be valid in law);
- (d) with the Treasurer's approval, to take action for the realising, enforcing, assigning or extinguishing rights against third parties arising out of or in relation to its business, including, for example—
 - (i) taking possession of, dealing with or disposing of, property; or
 - (ii) carrying on a third-party's business as a going concern;

- (e) to develop and promote good practices for the management of territory risks;
- (f) to give advice to the Minister about insurance and the management of territory risks;
- (g) to exercise any other function given to it under this Act or another territory law.

Note 1 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9 Powers of authority generally

- (1) The authority has the legal capacity and powers of an individual both in and outside the ACT (including outside Australia).

Examples

- 1 to enter into a contract
- 2 to own, deal with and dispose of property
- 3 to act as trustee

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Without limiting subsection (1), the authority—
 - (a) has the powers given to it under this Act or another territory law; and
 - (b) may do anything that it is authorised to do by a territory law or a law of another jurisdiction; and

- (c) may exercise its powers in and outside the ACT (including outside Australia).

Example for par (b)

The authority may arrange for the authority to be registered or recognised under a law of another jurisdiction.

- (3) The authority's legal capacity to do something is not affected by the fact that the authority's interests are not, or would not be, served by doing it.
- (4) To remove any doubt, this section does not—
- (a) authorise the authority to do anything that is prohibited by a territory law or a law of another jurisdiction; and
- (b) give the authority a right that a territory law or a law of another jurisdiction denies to the authority.
- (5) In this section:

another jurisdiction means the Commonwealth, a State, another Territory or a foreign country.

10 Information etc from agencies

- (1) The authority may ask an agency, or make arrangements with an agency for it, to give the authority information, or a copy of a document, in the agency's possession or control for the exercise of its functions.
- (2) The agency must comply with the request or arrangement.
- (3) In this section:
- agency* means—
- (a) an administrative unit; or
- (b) a territory entity.

11 Indemnities for third parties

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

(2) In this section:

third party means an entity other than the Territory or a territory entity.

12 Advisory board for authority

(1) The insurance management guidelines must provide for the establishment of an advisory board for the authority.

(2) The authority must establish the advisory board in accordance with the insurance management guidelines.

Part 3 Territory risks

13 Ministerial directions to agencies about territory risks

- (1) The Minister may give a written direction to an agency in relation to any of the following:
- (a) the management of territory risks;
 - (b) the insurance of territory risks, including, for example—
 - (i) what territory risks must or may be insured with the authority; and
 - (ii) what territory risks must or may be insured with other entities.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) An agency must comply with a direction given to it under this section.
- (4) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
- (a) the giving of a direction under this section; and
 - (b) the doing of, or the failure to do, anything by the Territory, an agency or the authority to comply with a direction under this section.
- (5) In this section:
- agency**—see section 10 (3).

Part 4 Miscellaneous

14 Insurance management guidelines

- (1) The Treasurer may make insurance management guidelines for this Act.
- (2) Without limiting subsection (1), an insurance management guideline may make provision for the membership and functions of the advisory board under section 12.
- (3) An insurance management guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

15 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

16 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 5 Consequential and transitional matters

17 Legislation repealed

The following legislation is repealed:

- *Insurance Authority Act 2000* A2000-57
- *Insurance Authority Appointment 2003 (No 1)* NI2003-347
- *Insurance Authority Appointment 2004 (No 1)* NI2004-170.

18 Continuation of ACTIA

- (1) To remove any doubt, the Australian Capital Territory Insurance Authority (*ACTIA*) established under the *Insurance Authority Act 2000* is, for all purposes, continued under this Act.
- (2) In particular, the assets and liabilities of, or a proceeding begun by or against, ACTIA is an asset or liability of, and a proceeding begun by or against, the authority under this Act.
- (3) The Legislation Act, section 88 (1) (Repeal does not end effect of transitional laws etc) applies to this section.

19 References to repealed Act

In any Act, statutory instrument or document, a reference to the *Insurance Authority Act 2000*, in relation to anything to which this Act applies, is a reference to this Act.

20 Modification of pt 5's operation

A regulation may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

21 Expiry of pt 5

This part expires 1 year after the day it commences.

22 Dangerous Substances Act 2004, section 47C (b) and (c)

substitute

(b) anyone else appointed by the Minister.

23 Taxation (Government Business Enterprises) Regulation 2003, section 4

omit

- ACT Insurance Authority

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative unit
- chief executive (see s 163)
- entity
- Minister (see s 162)
- the Territory
- Treasurer.

authority means the Australian Capital Territory Insurance Authority.

insurance includes reinsurance and coinsurance.

insurance management guideline means a guideline made under section 14.

territory entity—see section 6.

territory risk—see section 5.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 March 2005.

2 Notification

Notified under the Legislation Act on 11 May 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Insurance Authority Bill 2005,
which was passed by the Legislative Assembly on 6 May 2005.

Clerk of the Legislative Assembly

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