

2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

INSURANCE AUTHORITY BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of the
Treasurer
Mr Ted Quinlan MLA

INSURANCE AUTHORITY BILL 2005

Outline

The Insurance Authority Bill 2005 (the Bill) repeals and replaces the *Insurance Authority Act 2000*.

This Bill provides a necessary overhaul of the *Insurance Authority Act 2000* (old Act) arising from several factors. First, the insurance crisis has revealed a need to make adjustments to the Act to provide the ACT Insurance Authority (ACTIA) with a more robust, yet flexible administrative platform. Second, the Act contains a series of anomalies and inconsistencies that need to be removed. Third, the 2003 bushfire outcomes provided useful evidence of the need to strengthen ACTIA's access to Agency data and other information with respect to claims management.

The changes that have been included in this Bill provide for ACTIA's administrative structure to be more aligned within Treasury, similar to the Central Financing Unit and the Superannuation Unit. ACTIA is an important element in the Territory's fiscal tools and better alignment will enable more effective control from a broader Territory perspective.

Each change from the old Act included in the Bill is detailed below.

The Authority

This part establishes ACTIA as a Territory Authority. While ACTIA existed under its original legislation, the old Act, this legislation will repeal the old Act and therefore ACTIA must be reconstituted. Section 7 (1) achieves that.

The bill replaces the Board constituted under the old Act, with the Chief Executive of Treasury. Section 7 (4) provides that the Chief Executive is the authority. In the context of the Legislation Act, this means that the Chief Executive of the Department of Treasury is the chief executive of the authority.

The revised governance arrangements provide greater flexibility in the management of what is in effect an important fiscal tool. Accountability will, more appropriately, rest with the Department of Treasury and the Minister. The bill removes the potential for conflict between a governing board focussed on the financial well being of the authority and the Minister and Department accountable for the overall financial position of the Territory. By shifting responsibility to the Department and the Minister, the bill does not require the references to Ministerial Directions to ACTIA, which existed under the old Act.

As existed in the old Act, the powers of the authority allow it to enter into contracts of reinsurance and it has all of the powers usually pertaining to Territory authorities. In addition, ACTIA may provide indemnities to entities other than territory entities, upon Ministerial certification.

Provision of Information from Agencies

A new provision, Section 10, requires agencies to provide certain information to ACTIA. As the Territory's captive insurer, or internal government insurance provider, ACTIA insures territory risks in relation to claims against the territory as a result of agency activities. Effective insurance arrangements are totally dependant on sound claims information.

Agencies pay insurance premiums based on risk. ACTIA reinsures territory risks above certain thresholds and it does this by recourse to the commercial reinsurance market. ACTIA's reinsurance contracts provide for levels of disclosure (in closely managed, totally confidential circumstances) that have, in the past, not been reciprocated inside government, such that ACTIA's ability to manage these claims successfully, has been more difficult.

This section has been introduced to permit the authority to manage claims by Territory agencies insured by ACTIA, and against its reinsurance contracts, in a more effective way. It also underpins the continuous improvement philosophy contained in the Government's enterprise wide risk management and its associated policy statement.

New Provision Relating to an Advisory Board

The Bill establishes a new regime for ACTIA's governance, consistent with the change in Section 7 (4). Under the new regime (Section 12), an advisory board will be established. This board will function in a similar way to the investment advisory board. One essential difference is that the insurance advisory board's "charter" while very similar to that of the investment advisory board will be established via an insurance management guideline. The guideline, when promulgated, will empower the insurance advisory board to make direct representations to the Minister.

The previous governance arrangement for ACTIA, an independent Board, gave rise to a potential for conflict of objectives. There was a natural inclination for the Board to take a very conservative risk position from the sole view of protecting ACTIA's balance sheet. Treasury, however, required a whole-of-government view of acceptable insurance risk. This situation was managed through the Treasurer or Treasury providing the Board with guiding parameters in which it should operate. However, the Board was never clear as to its role and responsibilities and expressed its opinion that it operated more as an advisory board.

One additional feature of this new structure is to remove the internal inconsistency in the old Act that put both the general manager (and the staff) of ACTIA in a state of uncertainty as to their employment status as ACT government public servants. Repeal of the old Act's divisions 2.2, 2.3 and Part 3 removes that uncertainty.

Transitional, etc

The Bill makes necessary reference to the continuation of ACTIA as the territory authority established under the old Act, in connection with the Bill's repeal of the old Act. There are other, consequential matters dealt with, as well.

Clause Notes

Clause 1 – Name of Act – states the title of the Act, which is the Insurance Authority Act 2005.

Clause 2 – Commencement – states that the Act commences on the day after its notification day.

Clause 3 – Dictionary – provides that the dictionary at the end of the Act is part of the Act. The dictionary defines key words and expressions used in the Act, and includes references to other words and expressions defined in other parts of the Act or in other legislation.

Clause 4 – Notes – provides that notes included in this Act are only explanatory.

Clause 5 – territory risk – provides for a specific definition of territory risk. This definition establishes clarification as the platform for ACTIA's duties and responsibilities as a territory entity.

Clause 6 – territory entity – provides a definition of territory entity, establishing the context of ACTIA's status within territory entities.

Clause 7 – The authority – establishes ACTIA as a territory authority, providing context of its status within territory entities.

Clause 8 – Functions of authority – sets out ACTIA's functions

Clause 9 – Powers of authority generally – outlines ACTIA's powers and legal capacity.

Clause 10 – Information from agencies – requires agencies to provide certain information to ACTIA.

Clause 11 – Indemnities for third parties – permits ACTIA to provide third party indemnities in certain circumstances.

Clause 12 – Advisory board for authority – sets out the mechanism for establishment of the authority's advisory board.

Clause 13 – Ministerial directions to agencies about territory risks – this provision is similar to Section 11 in the old Act, save that it is more extensive in scope, reflective of the need for greater flexibility in light of the insurance crisis. This Section provides for the minister to give direction to agencies with respect to insurance of territory risks, and other risk related matters.

Clause 14 – Insurance management guidelines – this provision has been inserted as a consequence of the change in governance.

Clause 15 – Approved forms – this provision has been inserted as a consequence of the change in governance.

Clause 16 – Regulation making power – this provision gives the executive the power to make regulations.

Clause 17 – Legislation repealed – this provision specifies the legislation to be repealed by this Bill.

Clause 18 – Continuation of ACTIA – this provisions maintains the continued existence of ACTIA, previously established under the old Act, as a territory authority.

Clause 19 – References to repealed Act – this provision deems any reference to the old Act to be a reference to this Act

Clause 20 – Modification of pt 5's operation – this provision permits adjustments to be made to part 5 of the Bill, the consequential and transitional provisions.

Clause 21 – Expiry of pt 5 – this provision deals with the expiry of the transitional part of this Bill, once enacted.

Clause 22 – Dangerous Substances Act 2004, section 47C (b) and (c) – this provision deals with the appointment of the ACTIA general manager (old Act) to the asbestos task force.

Clause 23 – Taxation (Government Business Enterprises) Regulation 2003, section 4 – this provision replaces Section 34 of the old Act, which exempted ACTIA from the payment of insurance levy and stamp duties on its insurance contracts.

Dictionary – the dictionary provides necessary definitions.