

Queensland



SUNCORP INSURANCE AND FINANCE AMENDMENT ACT 1996

Act No. 11 of 1996



SUNCORP INSURANCE AND FINANCE AMENDMENT ACT 1996

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MINOR AND CONSEQUENTIAL AMENDMENTS

Queensland



Suncorp Insurance and Finance Amendment Act 1996

Act No. 11 of 1996

An Act to amend the Suncorp Insurance and Finance Act 1985

[Assented to 23 May 1996]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Suncorp Insurance and Finance Amendment Act 1996*.

Act amended

2. This Act amends the *Suncorp Insurance and Finance Act 1985*.

Commencement

3. Sections 8 to 10 and 16 commence on a day to be fixed by proclamation.

Amendment of s 8 (Powers and authorities of corporation)

4.(1) Section 8(3), ‘under the authority of the Act the corporation’—
omit, insert—

‘, the corporation or a successor subsidiary’.

(2) Section 8—

insert—

‘(4) This Act does not—

- (a) limit by implication the powers of a subsidiary of the corporation;
or
- (b) prevent the corporation permitting a subsidiary to exercise a power of the corporation, whether or not to the exclusion of the corporation.’.

Amendment of s 11 (Relationship to Crown)**5. Section 11(1)—**

omit.

Insertion of new pt 3A (Guarantee by State)**6. After section 37—**

insert—

‘PART 3A—GUARANTEE BY STATE**‘Guarantee for future liabilities**

‘**37A.(1)** This section applies if the corporation or a wholly-owned subsidiary becomes liable to pay an amount because of a policy or contract of insurance or indemnity issued or entered into by the corporation or subsidiary after the commencement of this section.

‘**(2)** Payment of the amount is guaranteed by the State.

‘Obligation for existing liabilities

‘**37B.(1)** This section applies if the corporation or a wholly-owned subsidiary becomes liable to pay an amount because of a policy or contract of insurance or indemnity issued or entered into by the corporation before the commencement of this section.

‘**(2)** The State has the same obligation for payment of the amount as it would have if the *Suncorp Insurance and Finance Amendment Act 1996* had not been enacted.

‘Appropriation of guaranteed amounts

‘**37C.(1)** This section applies if an amount becomes payable by the State because of section 37A or 37B.

‘**(2)** The Treasurer may pay the amount from the consolidated fund without further appropriation.

‘Guarantee fee

‘37D.(1) The Treasurer may require the corporation or a wholly-owned subsidiary to pay fees to the State—

- (a) for the guarantee under section 37A; or
- (b) in relation to the State’s obligation under section 37B.

‘(2) The amount of the fees, and how, when and by whom they are to be paid, are to be decided by the Treasurer.’.

Insertion of new ss 37E and 37F and headings

7. Part 4, before section 38—

insert—

‘Division 1—Taxation**‘Liability for State taxes**

‘37E.(1) In this section—

“subsidiary” means a subsidiary of the corporation.

‘(2) The corporation is not exempt from State tax merely because it—

- (a) represents the Crown; or
- (b) has immunities, rights or privileges of the Crown.

‘(3) A subsidiary is not exempt from State tax merely because the corporation—

- (a) represents the Crown; or
- (b) has immunities, rights or privileges of the Crown.

‘(4) Without limiting subsections (2) and (3), the *Stamp Act 1894* or another Act that imposes State tax applies to all business conducted by the corporation or a subsidiary.

‘(5) A regulation may exempt the corporation or a subsidiary from liability to pay a State tax (in whole or part).

‘Liability for Commonwealth tax equivalents

‘37F.(1) In this section—

“subsidiary” means a subsidiary of the corporation.

“tax equivalents manual” means the tax equivalents manual issued under the *Government Owned Corporations Act 1993*, section 155.¹

‘(2) The corporation or a subsidiary must pay amounts to the Treasurer for payment into the consolidated fund as required under the tax equivalents manual.

‘(3) For subsection (2), the tax equivalent manual applies—

(a) as if—

- (i) the corporation were a GOC; and
- (ii) a subsidiary were a subsidiary of a GOC; and
- (iii) the GOC Minister of the corporation, or of a subsidiary, were the Treasurer; and

(b) with all other necessary changes and any additional changes decided by the Treasurer.

‘(4) This section applies to the financial year that commenced on 1 July 1995 and all later financial years.

‘(5) Subsection (4) and this subsection expire on 1 January 1997.

‘Division 2—Other financial matters’.

Omission of s 38 (Funds and accounts)

8. Section 38—

omit.

¹ Section 155 (Liability for Commonwealth tax equivalents)

Omission of s 39 (Investment of funds)**9. Section 39—**

omit.

Omission of s 40 (Annual balance sheet and statements of account)**10. Section 40—**

omit.

Insertion of new pt 4A (Reference of power to Commonwealth Parliament)**11. After section 42—**

insert—

**‘PART 4A—REFERENCE OF POWER TO
COMMONWEALTH PARLIAMENT****‘Object of pt 4A**

‘42A. The object of this part is to remove the constitutional barrier preventing the Commonwealth Parliament from legislating with respect to State insurance carried on within the limits of the State by the corporation or a subsidiary of the corporation.

‘Parliament’s intention

‘42B.(1) It is the intention of the Parliament that, through the reference under this part, the corporation and its subsidiaries will be required to

comply with Commonwealth law about insurance and superannuation.²

‘(2) Subsection (1) does not limit the object of this part or the reference under this part.

‘Reference

‘**42C.(1)** The matter of State insurance mentioned in the Commonwealth Constitution, section 51(xiv) is referred to the Commonwealth Parliament.

‘(2) However, the matter is referred only—

- (a) so far as it applies to the corporation and its subsidiaries; and
- (b) to the extent it is not otherwise included in the legislative powers of the Commonwealth Parliament; and
- (c) for a period starting on the commencement of this section and ending on the day fixed under subsection (3).

‘(3) A regulation may fix the day when the reference is to end.’.

Omission of s 44 (Application of Life Assurance Companies Acts)

12. Section 44—

omit.

Omission of s 45 (Taxation)

13. Section 45—

omit.

² Commonwealth law applying to insurance and superannuation includes the following Commonwealth Acts—

- *Insurance Act 1973*
- *Life Insurance Act 1995*
- *Insurance (Agents and Brokers) Act 1984*
- *Insurance Contracts Act 1984*
- *Insurance Acquisitions and Takeovers Act 1991*
- *Superannuation Industry (Supervision) Act 1993.*

Insertion of new s 46A

14. After section 46—

insert—

‘Disposing of successor subsidiaries etc.

‘46A.(1) The corporation may do something that would result in a successor subsidiary ceasing to be its wholly-owned subsidiary only with the prior written approval of the Treasurer.

‘(2) The corporation or a successor subsidiary may dispose of any of its main undertakings only with the prior written approval of the Treasurer.

‘(3) The Treasurer must table a copy of an approval under this section in the Legislative Assembly as soon as possible after it is given.’

Insertion of new pts 5A and 5B

15. After section 47—

insert—

**‘PART 5A—TRANSFER OF CERTAIN BUSINESSES
OF CORPORATION****‘Object of pt 5A**

‘48A. The object of this part is to provide for arrangements (the “**scheme of transfer**”) under which all or part of the corporation’s life insurance, superannuation, and general insurance businesses are to be transferred to wholly-owned subsidiaries of the corporation that are to carry on proprietary life insurance, superannuation and general insurance businesses regulated under Commonwealth law.

‘Intention of Parliament for pt 5A

‘48B.(1) This section applies to a policy or contract of insurance or indemnity issued or entered into by the corporation and in force immediately before the commencement of this section.

‘(2) So far as the legislative power of the Parliament permits, it is the

intention of the Parliament that this part should not operate in relation to the policy or contract—

- (a) to make anyone liable to a Commonwealth or State tax to which the person would not be liable apart from this part or anything done under this part; or
- (b) to increase the liability of anyone to a Commonwealth or State tax.

‘Definitions for pt 5A

‘48C. In this part—

“asset”, of a fund, includes an investment of the fund.

“instrument” see *Government Owned Corporations Act 1993*, section 3.³

“liability”, of a fund, includes a liability of the fund under a policy or contract of insurance or indemnity.

‘Matters that must be included in scheme of transfer

‘48D.(1) The scheme of transfer must provide for—

- (a) how the corporation’s life assurance and superannuation funds under section 38 are to be dealt with, including the transfer of all or a part of the funds to a wholly-owned subsidiary of the corporation (a **“successor subsidiary”**); and
- (b) the reclassification of a portion of the funds to become the corporation’s shareholder’s capital in the subsidiary for the *Life Insurance Act 1995* (Cwlth); and

³ Section 3, definition “instrument” provides—

“instrument” means an instrument of any kind, and includes, for example—

- (a) a contract, deed, agreement, arrangement, understanding or undertaking; and
 - (b) a mandate, instruction, notice, authority or order; and
 - (c) a lease, licence, transfer, conveyance or other assurance; and
 - (d) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
 - (e) a mortgage, charge, lien or security;
- whether express or implied and whether made or given orally or in writing.

- (c) the reclassification of another portion of the funds to become the corporation's shareholder's retained profits in the subsidiary for the *Life Insurance Act 1995* (Cwlth); and
- (d) the application by the subsidiary of all or part of the portion mentioned in paragraph (b) in paying up, in full, shares in itself; and
- (e) the issue of the shares paid up by the subsidiary.

‘(2) The portions of the funds reclassified under subsection (1)(b) and (c) must not total more than \$70 million.

‘(3) The scheme of transfer must also provide for how the corporation's general insurance fund under section 38 is to be dealt with, including the transfer of all or part of the fund to another wholly-owned subsidiary of the corporation (also a “**successor subsidiary**”).

‘(4) The scheme of transfer must identify, or provide for the identification of, the assets and liabilities of each of the corporation's life assurance, superannuation and general insurance funds, and the assets and liabilities that are to be transferred to each successor subsidiary.

‘(5) The scheme of transfer must specify, or provide for the specification of—

- (a) the date when the scheme is to operate; or
- (b) the dates when the various parts of the scheme are to operate.

‘(6) This section does not limit the matters that may be included in the scheme of transfer.

‘(7) In this section—

“**fund**” includes assets and liabilities of the fund.

‘Draft scheme of transfer

‘48E.(1) The board must prepare a draft of the scheme of transfer and submit it to the Treasurer for agreement.

‘(2) The draft must be submitted to the Treasurer within the time the Treasurer requires.

‘(3) The board and the Treasurer must endeavour to reach agreement on

the draft of the scheme of transfer as soon as possible and, in any event, not later than the time required by the Treasurer.

‘Procedures in relation to draft scheme of transfer

‘48F.(1) The Treasurer may return the draft of the scheme of transfer to the board and ask it, in writing—

- (a) to consider or further consider any matter and deal with the matter in the draft; and
- (b) to revise the draft in the light of its consideration or further consideration.

‘(2) The board must comply with the request as a matter of urgency.

‘(3) If a draft of the scheme of transfer has not been agreed between the board and the Treasurer within the time the Treasurer considers reasonable, the Treasurer may, by written notice, direct the board—

- (a) to take stated steps in relation to the draft; or
- (b) to make stated changes to the draft.

‘(4) The board must immediately comply with the direction.

‘(5) The Treasurer must table a copy of a request or direction under this section in the Legislative Assembly as soon as possible after it is made or given.

‘Effect of agreement on draft

‘48G.(1) When the Treasurer agrees to the draft of the scheme of transfer, it becomes the scheme of transfer.

‘(2) The scheme of transfer is binding on all persons, and must be given effect to by the corporation and each successor subsidiary.

‘(3) The corporation and each successor subsidiary may do anything necessary or convenient to be done to give effect to the scheme of transfer.

‘(4) The other provisions of this part do not limit subsections (2) and (3).

‘Transfer of liabilities

‘48H. If the scheme of transfer provides for the transfer of liabilities of a fund to a successor subsidiary, the liabilities are transferred by force of this section.

‘Successor subsidiary as successor in law

‘48I.(1) A successor subsidiary is the successor in law of the corporation in relation to a fund, or the part of a fund, (including assets and liabilities of the fund) transferred to the subsidiary under the scheme of transfer.

‘(2) Without limiting subsection (1)—

- (a) a policy or contract of insurance or indemnity to which a successor subsidiary becomes a party under the scheme of transfer is taken to be a continuation of the policy or contract as issued or entered into by the corporation; and
- (b) no amount is taken to be paid or payable to, received or receivable by, or re-invested or otherwise dealt with on behalf of or as directed by, anyone in relation to the policy or contract merely because of the scheme of transfer, the operation of the scheme, or anything done under the scheme.

‘Instruments applying to successor subsidiary

‘48J.(1) This section applies to an instrument if, apart from this section, the instrument would apply to the corporation in relation to a fund, or the part of a fund, (including an asset or liability of the fund) transferred to a successor subsidiary under the scheme of transfer.

‘(2) The instrument applies to the subsidiary in place of the corporation.

‘Pending legal proceedings applying to successor subsidiary

‘48K.(1) This section applies to a legal proceeding by or against the corporation in relation to a fund, or the part of a fund, (including an asset or liability of the fund) transferred to a successor subsidiary under the scheme of transfer.

‘(2) The proceeding may be continued or finished by or against the

subsidiary.

‘Part does not affect existing legal relationships

‘48L.(1) Nothing done under the scheme of transfer or otherwise under this part—

- (a) places the corporation or anyone else in breach of contract or confidence or otherwise makes the corporation or anyone else guilty of a civil wrong; or
- (b) makes the corporation or anyone else in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or
- (c) is taken to fulfil a condition—
 - (i) that allows a person to terminate an instrument or obligation or change the operation or effect of an instrument or obligation; or
 - (ii) that requires an amount to be paid before its stated maturity; or
- (d) releases a surety or other obligee from an obligation in whole or part.

‘(2) If, apart from this subsection, the advice or consent of a person would be necessary under an instrument to give effect to this part, the advice is taken to have been obtained or the consent is taken to have been given.

‘Exemption from State tax

‘48M.(1) State tax is not payable in relation to anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, this part.

‘(2) The Treasurer may certify that a stated matter, instrument, transaction or thing is exempt under subsection (1) from State tax or a particular State tax, and the matter is exempt.

‘(3) So far as the legislative power of the Parliament permits, a reference in this section to State tax includes a reference to tax imposed under an Act of another State.

‘(4) This section does not limit the intention of the Parliament stated in section 48B.⁴

‘Evidentiary provisions

‘48N.(1) A certificate purporting to be signed by the Treasurer and stating that a stated document is a copy of the scheme of transfer, or a stated part of the scheme of transfer, is evidence of the matter stated in the certificate.

‘(2) A certificate purporting to be signed by the chief executive officer of the corporation and stating any of the following matters is evidence of the matter—

- (a) a stated asset or liability was transferred to a stated successor subsidiary under the scheme of transfer;
- (b) a stated instrument applies, under section 48J,⁵ to a stated successor subsidiary in place of the corporation;
- (c) a stated legal proceeding may, under section 48K,⁶ be continued or finished by or against a stated successor subsidiary.

‘PART 5B—TRANSITIONAL PROVISIONS

‘Transitional application of Commonwealth laws

‘48O.(1) The purpose of this section is to enable provisions of a Commonwealth law about insurance or superannuation to be applied to the corporation or a subsidiary of the corporation as State law until the

⁴ Section 48B (Intention of Parliament for pt 5A)

⁵ Section 48J (Instruments applying to successor subsidiary)

⁶ Section 48K (Pending legal proceedings applying to successor subsidiary)

Commonwealth law applies because of the reference of power to the Commonwealth Parliament under part 4A.

‘(2) A regulation may apply provisions of a Commonwealth law about insurance or superannuation to the corporation or a subsidiary of the corporation.

‘(3) The provisions apply, with all necessary changes and any changes stated in the regulation, as a State Act.

‘(4) In this section—

“**Commonwealth law about insurance or superannuation**” includes any of the following Commonwealth Acts—

- *Insurance Act 1973*
- *Life Insurance Act 1995*
- *Insurance (Agents and Brokers) Act 1984*
- *Insurance Contracts Act 1984*
- *Insurance Acquisitions and Takeovers Act 1991*
- *Superannuation Industry (Supervision) Act 1993.*

‘**Transitional regulations**

‘**48P.(1)** A regulation may make provision about any matter for which—

- (a) it is necessary or convenient to make provision to assist the transition from the operation of this Act before its amendment by the *Suncorp Insurance and Finance Amendment Act 1996* (the “**amending Act**”) to its operation after amendment by all or any of the provisions of the amending Act; and
- (b) this Act does not make provision or sufficient provision.

‘(2) A regulation under this section may have retrospective operation to a date not earlier than the commencement of the amending Act, section 1.

‘(3) A regulation under this section may have effect despite any provision of this Act other than this section.

‘Expiry of part

‘**48Q.** This part expires 2 years after it commences or, if an earlier date is prescribed under a regulation, the earlier date.’.

Omission of pt 6 (Regulation of corporation’s insurance business)

16. Part 6—

omit.

Repeal of Life Assurance Companies Act 1901

17. The *Life Assurance Companies Act 1901* (1 Edw 7 No. 20) is repealed.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

section 2

1. Long title—

omit, insert—

‘An Act to provide for the constitution and powers of Suncorp Insurance and Finance, to refer certain matters to the Commonwealth Parliament, and for other purposes’.

2. Section 5, heading—

omit, insert—

‘Definitions’.

3. Section 5, definitions “board” and “corporation”—

omit.

4. Section 5—

insert—

“appointed day” means 1 January 1986.

“board” means the Suncorp Insurance and Finance Board.

“Commonwealth tax” means tax imposed under a Commonwealth Act.

“corporation” means Suncorp Insurance and Finance.

“scheme of transfer” see section 48A.

“State” includes a Territory.

“State tax” means tax imposed under an Act.

SCHEDULE (continued)

“subsidiary” see the Corporations Law.

“successor subsidiary” see section 48D.

“tax” includes fee, duty and charge.

“wholly-owned subsidiary”, of the corporation, means a subsidiary of the corporation none of whose members is a person other than the corporation or a trustee of the corporation.’.

5. Section 6—

omit.

6. Section 8, ‘and authorities’ and ‘or authority’—

omit.

7. Section 8(1)(n), ‘Companies (Queensland) Code or that Code as amended’—

omit, insert—

‘Corporations Law’.

8. Section 11(2), ‘and authorities’—

omit.

9. Section 11(2), ‘the Governor in Council, by order in council,’—

omit, insert—

‘a regulation’.

10. Section 11(3)—

omit.

SCHEDULE (continued)

11. Section 15(1), ‘and authorities’ and ‘and duties’—*omit.***12. Section 15(2), ‘contract’—***omit, insert—**‘contract,’.***13. Section 15(3) to (3C)—***omit.***14. Sections 21 and 22—***omit.***15. Section 23(2)(a), ‘by notification published in the gazette’—***omit.***16. Section 27, ‘, authority, function or duty’—***omit, insert—**‘or function’.***17. Section 29(1) and (2)(d), ‘and authorities’ and ‘and duties’—***omit.***18. Section 32, ‘and authorities’, ‘and duties’ and ‘or imposed’—***omit.*

SCHEDULE (continued)

19. Section 33, ‘and authorities’ and ‘and duties’—

omit.

20. Section 34(2A), ‘or (b)’—

omit.

21. Section 34(2B), ‘and authorities’ and ‘and duties’—

omit.

22. Section 35(1), ‘or authority’ and ‘or duty’—

omit.

23. Section 41—

omit, insert—

‘Application of Financial Administration and Audit Act 1977

‘41. The corporation is a statutory body under the *Financial Administration and Audit Act 1977*.’.

24. Section 42(1), ‘and authorities’ and ‘and duties’—

omit.

25. Section 43—

omit, insert—

‘Powers of delegation

‘43.(1) The corporation may delegate its powers to a director, officer or employee of the corporation.

‘(2) The board may delegate its powers to a director of the board.’.

SCHEDULE (continued)

26. Section 47—*omit, insert—***‘Regulation-making power****‘47. The Governor in Council may make regulations under this Act.’.**