

Workers Compensation Amendment (Insurance Reform) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* (***the 1987 Act***) to provide a new framework for workers compensation insurance arrangements, with the following features:

- (a) The Workers Compensation Nominal Insurer (***the Nominal Insurer***) is established as a statutory legal entity that will operate as a licensed insurer in place of the existing managed fund licensed insurers to issue workers compensation policies of insurance and deal with claims under those policies as insurer. The Nominal Insurer will be able to appoint agents (***scheme agents***) to exercise any of its functions.
- (b) The WorkCover Authority (***the Authority***) will act for the Nominal Insurer.
- (c) The Workers Compensation Insurance Fund (***the Insurance Fund***) will take the place of the existing managed funds of licensed insurers and be the fund into which workers compensation insurance premiums will be paid and from which claims for workers compensation (and associated common law claims) will be paid by the Nominal Insurer.
- (d) The Insurance Fund (like the existing managed funds of licensed insurers) will be subject to a statutory trust that ensures it is held for the benefit of workers and employers. The State will have no responsibility for the liabilities of the Insurance Fund and no entitlement to its assets or any surplus.
- (e) The Uninsured Liability and Indemnity Scheme currently administered by the Authority will be replaced with a scheme under which the Nominal Insurer becomes the insurer for claims made against uninsured employers and which provides for the subsequent reimbursement of the Insurance Fund.
- (f) The Insurance Fund will be audited by the Auditor-General under a special audit power but will not form part of the Total State Sector Accounts.
- (g) Under transitional arrangements the existing managed fund licensed insurers will continue to act as agents for the Nominal Insurer in respect of policies of insurance that they have issued, until other agency arrangements are made.

The Bill also makes other miscellaneous (including amendments of a consequential nature) to the *Workers Compensation Act 1987* as well as to the Acts listed below:

Freedom of Information Act 1989

Public Finance and Audit Act 1983

State Records Act 1998

Workplace Injury Management and Workers Compensation Act 1998 (***the 1998 Act***)

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Workers Compensation Act 1987* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the Acts specified in Schedule 3.

Schedule 1 Principal amendments to Workers Compensation Act 1987 relating to insurance

Schedule 1 [2] inserts proposed Division 1A into Part 7 of the Act (proposed sections 154A–154N) to give effect to the new workers compensation insurance arrangements referred to in the overview above.

Subdivision 1 of the proposed Division (proposed sections 154A–154C) contains provisions relating to the Workers Compensation Nominal Insurer.

Proposed section 154A provides for the establishment of the Nominal Insurer and its status. Proposed section 154B provides that the Nominal Insurer is taken to be a licensed insurer under the Act and specifies the other functions of the Nominal Insurer. Proposed section 154C refers to the Authority's role in acting for the Nominal Insurer.

Subdivision 2 of the proposed Division (proposed sections 154D–154F) contains provisions relating to the Workers Compensation Insurance Fund.

Proposed section 154D provides for the establishment and operation of the Insurance Fund. Proposed section 154E specifies the amounts to be paid into the Insurance Fund and the manner in which the assets of the Insurance Fund are to be applied. Proposed section 154F provides for the inspection and auditing of the Insurance Fund by the Auditor-General and for the Auditor-General to subsequently report to the Minister.

Subdivision 3 of the proposed Division (proposed sections 154G–154N) contains provisions relating to scheme agents. Proposed section 154G provides for the Nominal Insurer to enter into agency arrangements for the appointment of persons to act as scheme agents for the Nominal Insurer. Proposed section 154H makes it clear that an agency arrangement does not limit or affect the Authority's functions with respect to a licensed insurer or scheme agent.

Proposed section 154I provides that the Authority's functions in relation to insurers may be exercised in relation to scheme agents. Proposed section 154J makes it an offence for a scheme agent who is authorised to issue policies of insurance on behalf of the Nominal Insurer from refusing to issue policies of insurance to any employer or to renew a policy of insurance issued to an employer. Proposed section 154K provides that the records and documents made or kept by a scheme agent in exercising functions on behalf of the Nominal Insurer are the property of the Nominal Insurer and also makes it an offence for a scheme agent not to comply with any directions given by the Nominal Insurer in relation to any records and documents. Proposed section 154L makes provision for the remuneration of scheme agents out of the Insurance Fund. Proposed section 154M provides for application of certain provisions of the 1987 Act and the 1998 Act to scheme agents in the same way as those provisions apply to insurers. Proposed section 154N enables regulations to be made with respect to scheme agents.

Schedule 1 [1] inserts definitions into the 1987 Act for the purposes of the proposed workers compensation insurance arrangements.

Schedule 2 Miscellaneous and consequential amendments to Workers Compensation Act 1987

Schedule 2 [1] removes definitions that will no longer be necessary as a consequence of the amendments made by the proposed Act.

Schedule 2 [2] updates the references to the particular Divisions of Part 7 of the 1987 Act that do not apply in respect of the coal industry.

Schedule 2 [9]–[27] replace provisions relating to the Uninsured Liability and

Indemnity Scheme (**ULIS**) set up under Division 6 of Part 4 of the Act with new arrangements under which the Nominal Insurer becomes the insurer for claims made against uninsured employers. Under the new scheme, if a claim is made against the Nominal Insurer by an injured worker whose employer is uninsured or cannot be identified, the Nominal Insurer will make the payment from the Insurance Fund to the worker and then require the relevant employer to reimburse the Insurance Fund. **Schedule 2 [3]–[6], [7] and [8]** are consequential on the replacement of ULIS.

Part 7 of the 1987 Act currently imposes a number of regulatory requirements in relation to licensed insurers (such as the supply of business information and records to the Authority). **Schedule 2 [29] and [39]–[41]** extend these regulatory requirements to scheme agents and in some cases to self-insurers.

Schedule 2 [30] provides that the register of insurance policies of a person who ceases to be a licensed insurer must be delivered to the Nominal Insurer instead of the Authority.

Section 163 currently imposes requirements on insurers as to the keeping records in relation to insurance policies and claims. **Schedule 2 [31]** increases the penalty for not complying with these requirements from 20 to 1,000 penalty units (ie from \$2,200 to \$110,000).

Schedule 2 [32] increases the penalty for the offence under section 169 of breaching an insurance premiums order from 100 penalty units to 1,000 penalty units (ie from \$11,000 to \$110,000).

Schedule 2 [33] deletes a transitional provision relating to the cancellation of the licences of insurers under previous legislation. **Schedule 2 [35] and [36]** are consequential amendments.

Schedule 2 [42] corrects a reference in relation to specialised insurers.

Schedule 2 [43] increases the penalty (from 50 to 200 penalty units) for certain offences by licensed insurers and scheme agents in relation to the payment of commission to insurance brokers and intermediaries.

Schedule 2 [46] enables the Authority to give directions to insurers (including specialised insurers and self-insurers) with respect to claims procedures.

Schedule 2 [47] deletes provisions relating to the statutory funds of licensed insurers (along with provisions that relate to the Premiums Adjustment Fund) as a consequence of the new insurance arrangements. **Schedule 2 [28], [34], [37], [38], [44], [45], [48]–[50], [68] and [69]** are consequential on the deletion of these provisions.

Schedule 2 [51] excludes specialised insurers and self-insurers from the operation of section 202 which currently provides for the audit or inspection of the accounting and other records of insurers. **Schedule 2 [54]** specifies a penalty (1,000 penalty units) for the offence of obstructing a person from carrying out such an audit or inspection.

Schedule 2 [55] enables the Authority to conduct performance audits of the worker compensation activities of insurers. **Schedule 2 [52] and [53]** remove provisions that currently relate to the auditing of the statutory funds of licensed insurers.

Schedule 2 [56] and [57] amend section 208 of the Act (which presently requires all licensed insurers, including specialised insurers, to pay contributions (ie “catch-up premiums”) into the Premiums Adjustment Fund) to provide that the requirement to pay catch-up premiums into the new Insurance Fund will apply only to specialised insurers.

Schedule 2 [58]–[65] make consequential amendments to section 208AA of the Act so as to provide for contributions to be paid into the Insurance Fund to cover the insured liabilities of exiting employers.

Schedule 2 [66] deletes provisions relating to the Insurers’ Contribution Fund.

Schedule 2 [70] and [71] are consequential amendments.

Schedule 2 [67] will enable the Nominal Insurer to apply the Insurance Fund to meet claims under the policies of insurance of defaulting insurers.

Schedule 2 [72] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act. In particular, the existing managed fund licensed insurers will continue to act as agents for the Nominal Insurer in respect of policies of insurance that they have issued until other agency arrangements are made. Provision is also made in relation to the transfer of the assets and liabilities of the Premiums Adjustment Fund and the Insurers' Contribution Fund to the Insurance Fund and in relation to pending claims under ULIS.

Schedule 2 [73] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of other Acts

Schedule 3.1 amends the *Freedom of Information Act 1989* to exempt the Nominal Insurer from the operation of that Act but only in relation to certain of its functions.

Schedule 3.2 amends the *Public Finance and Audit Act 1983* to make special provision with respect to the status of the Insurance Fund.

Schedule 3.3 amends the *State Records Act 1998* to provide that the Nominal Insurer is not a public office for the purposes of that Act.

Schedule 3.4 makes a number of miscellaneous amendments to the *Workplace Injury Management and Workers Compensation Act 1998* that are generally related to, or consequential on, the new workers compensation insurance arrangements to be included in the 1987 Act. **Schedule 3.4 [1], [4] and [5]** are consequential on the replacement of the Uninsured Liability and Indemnity Scheme under the 1987 Act. **Schedule 3.4 [2]** confers on the Authority the function of acting for the Nominal Insurer. **Schedule 3.4 [3]** makes it an offence for a scheme agent not to comply with the requirements of the 1998 Act in relation to workplace injury management. **Schedule 3.4 [6]–[10]** extend certain provisions of the 1998 Act to the Nominal Insurer and scheme agents. **Schedule 3.4 [11]** authorises the Authority and the Nominal Insurer to collect, analyse, use and disclose information in relation to certain matters. **Schedule 3.4 [12]–[15]** are consequential on the deletion of the provisions under the 1987 Act relating to the statutory funds of licensed insurers.