

## **Workers Compensation Amendment (Terrorism Insurance Arrangements)**

### **Bill 2002**

#### **Explanatory note**

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

#### Overview of Bill

The object of this Bill is to provide for a New South Wales workers compensation terrorism re-insurance scheme.

#### 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 giving effect to the amendments to the *Workers Compensation Act 1987* set out in Schedule 1.

#### **Schedule 1 Amendment of Workers Compensation**

##### **Act 1987**

**Schedule 1** inserts proposed Division 8 (proposed sections 239AA–239AL) in Part 7 (Insurance) of the *Workers Compensation Act 1987*.

**Proposed section 239AA** defines certain terms for the purposes of the proposed Division.

**Proposed section 239AB** defines *act of terrorism* for the purposes of the proposed Division.

**Proposed section 239AC** defines *threshold amount* as \$1 million for the purposes of the proposed Division. It also provides that the threshold amount applies in respect of the total amount of claims referred to in the proposed Division, and provides for that amount to be apportioned among the insurers who have a liability in respect of such a claim.

**Proposed section 239AD** enables the Minister to declare (by order published in the Government Gazette) that an act of terrorism has given rise to significant terrorism-related liabilities. However, such a declaration may be made only at the request of an insurer, and only if the Minister is satisfied that the act of terrorism occurred after 4pm on 30 June 2002 (or at any time on any day after that date) and that it has given rise to liabilities for payment by insurers of amounts that, in total, exceed the threshold amount.

**Proposed section 239AE** provides for the establishment of a Terrorism Re-insurance Fund (*TRF*) on the first occasion that a declaration is made under proposed section 239AD.

**Proposed section 239AF** obliges insurers to comply with any requirement of the WorkCover Authority (*the Authority*) to provide it with certain information relating to any liabilities the insurers have incurred (as insurers) in respect of an act of terrorism that is the subject of a request for a declaration under proposed section 239AD.

**Proposed section 239AG** requires the Authority to determine both the total amount to be paid to the TRF and the amount to be contributed by each insurer whenever a declaration is made under proposed section 239AD.

The total amount to be paid to the TRF is the amount that the Authority estimates will be necessary to satisfy all claims in respect of the act of terrorism specified in the declaration, less the greater of the total of the maximum amounts payable to insurers under contracts or arrangements for re-insurance in respect of liability for claims arising from the act of terrorism and the threshold amount.

The amount to be contributed by each insurer is to be calculated in accordance with the formula specified in the proposed section. The Authority must give each insurer written notice of the amount due from it and the date by which the amount must be paid. The notice may (but need not) offset any amount to be

reimbursed to the insurer under proposed section 239AH. Failure to pay in accordance with the notice constitutes an offence, and the Authority may recover the money (plus interest at the rate prescribed by the regulations made under the Act) as a debt.

**Proposed section 239AH** permits the Authority to make partial reimbursements, out of the TRF, of the amounts paid by insurers in respect of claims arising from the act of terrorism specified in a declaration under proposed section 239AD. A reimbursement may be made only if the insurer applies for it and the Authority is satisfied that the insurer has, in respect of those claims, made the payments specified in the application and that the amount to be reimbursed is no more than the total amount paid by the insurer less the *insurer's excess* (as defined in the proposed section).

**Proposed section 239AI** permits the Authority to apply all or part of the amount to be reimbursed to an insurer under proposed section 239AH so as to reduce the amount of any money due from and unpaid by the insurer under proposed section 239AG (including money by way of interest calculated on the amount originally demanded under that section). If it does this, the Authority must make any necessary adjustments and give the insurer written notice of the way in which the reimbursement (or part of the reimbursement) was applied, any adjustments that were made, and the amount (if any) that remains due from the insurer after the application of the reimbursement (or part of the reimbursement).

**Proposed section 239AJ** provides that, if a reimbursement is made to an insurer, the Authority is subrogated (to the extent of the reimbursement) to all the rights and remedies of the insurer against any other person in respect of recovery of the money paid by the insurer in relation to the relevant claim.

**Proposed section 239AK** enables regulations under the Act to make provision for or with respect to the TRF generally and specifies some particular matters that may be the subject of such regulations (such as the circumstances and manner in which money standing to the credit of the TRF may be distributed to insurers otherwise than by way of reimbursement under proposed section 239AH). The proposed section also permits the regulations to exempt any specified insurer or class of insurers from the operation of all or any of the provisions of the proposed Division in such circumstances (if any), and subject to such conditions (if any), as may be specified in the regulations.

**Proposed section 239AL** provides for a review of the proposed Division to be conducted (as soon as possible after 30 June 2004) to determine whether the policy objectives of the proposed Division remain valid and whether the provisions of the Division remain appropriate for securing those objectives. A report on the outcome of the review is to be tabled in both Houses of Parliament.