



New South Wales

# State Insurance and Care Governance Bill 2015

## Explanatory note

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

This Bill is cognate with the *Workers Compensation Amendment Bill 2015*.

## Overview of Bill

The object of this Bill is to reform the governance and regulatory arrangements for various insurance and compensation schemes established under legislation. For that purpose, the proposed Act:

- (a) constitutes Insurance and Care NSW (*ICNSW*), which will act for the Workers Compensation Nominal Insurer under the *Workers Compensation Act 1987* and provide services in relation to various insurance and compensation schemes, and
- (b) constitutes the State Insurance Regulatory Authority (*SIRA*), which will generally take over the regulatory functions of the WorkCover Authority and the Motor Accidents Authority which will both be abolished by the proposed Act, and
- (c) provides that the work health and safety functions of the WorkCover Authority will be assumed by the Secretary of the Department of Finance, Services and Innovation (referred to as *SafeWork NSW* in the relevant legislation), and
- (d) abolishes the Safety, Return to Work and Support Board as a consequence of the constitution of ICNSW, and
- (e) makes miscellaneous amendments relating to the administration of various insurance and compensation schemes established under legislation.

## Outline of provisions

### Part 1 Preliminary

**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** defines words and phrases used in the proposed Act.

### Part 2 Insurance and Care NSW

#### Division 1 Constitution and management of ICNSW

**Clause 4** constitutes ICNSW as a body corporate and provides that it is a NSW Government agency (which has the effect of conferring the status, privileges and immunities of the Crown on ICNSW).

**Clause 5** establishes a board of directors of ICNSW (the *ICNSW Board*) which will consist of the chief executive of ICNSW and up to 8 other directors appointed by the Minister.

**Clause 6** provides that the ICNSW Board acts for ICNSW.

**Clause 7** enables the Minister to give directions in the public interest to the ICNSW Board in relation to ICNSW.

**Clause 8** provides for the employment by the ICNSW Board of a chief executive who will be responsible for the day to day management of the activities of ICNSW in accordance with the directions of the ICNSW Board.

**Clause 9** requires the ICNSW Board to establish an expert committee to advise it on matters arising under the *Workers' Compensation (Dust Diseases) Act 1942*. The ICNSW Board may establish other committees to give advice and assistance to the Board.

#### Division 2 Functions of ICNSW

**Clause 10** specifies the functions of ICNSW, which include the following:

- (a) acting for the Nominal Insurer in accordance with the *Workers Compensation Act 1987*,
- (b) providing services (including staff and facilities) to the following authorities in relation to the insurance or compensation schemes administered or provided by them:
  - (i) the Workers Compensation (Dust Diseases) Authority constituted under the *Workers' Compensation (Dust Diseases) Act 1942* (the Authority will be constituted by amendments made by the proposed Act and is a continuation of the existing Workers' Compensation (Dust Diseases) Board),
  - (ii) the Lifetime Care and Support Authority constituted under the *Motor Accidents (Lifetime Care and Support) Act 2006*,
  - (iii) the Sporting Injuries Compensation Authority constituted under the *Sporting Injuries Insurance Act 1978*,
  - (iv) the NSW Self Insurance Corporation constituted under the *NSW Self Insurance Corporation Act 2004*,
- (c) monitoring the performance of the schemes for which it provides services.

**Clause 11** requires ICNSW to prepare an annual statement of business intent and submit that statement to the Minister and the Treasurer.

**Clause 12** provides for ICNSW to determine investment strategies for the investment of various insurance and compensation scheme funds.

**Clause 13** enables ICNSW to delegate any of its functions to certain authorised persons or bodies (including the chief executive and members of staff of ICNSW) and enables those functions to be sub-delegated.

### **Division 3      Staff of ICNSW**

**Clause 14** authorises ICNSW to employ its own staff.

**Clause 15** enables ICNSW to fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other law (which includes an industrial instrument).

**Clause 16** provides for the employment of certain members of staff of ICNSW as senior executives.

## **Part 3      State Insurance Regulatory Authority**

### **Division 1      Constitution and management of SIRA**

**Clause 17** constitutes SIRA as a body corporate and provides that it is a NSW Government agency.

**Clause 18** establishes a Board of SIRA which will consist of the chief executive of SIRA, the Secretary of the Department of Finance, Services and Innovation or his or her nominee and up to 3 other members appointed by the Minister. The SIRA Board determines the general policies and strategic direction of SIRA.

**Clause 19** provides that the chief executive of SIRA acts for SIRA. The chief executive will be an employee of the Department of Finance, Services and Innovation.

**Clause 20** enables the Minister to give directions to SIRA with respect to its functions if the Minister is satisfied it is necessary to do so in the public interest.

**Clause 21** provides that persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable SIRA to exercise its functions.

**Clause 22** enables the SIRA Board to establish committees to give advice and assistance to the SIRA Board.

### **Division 2      Objectives and functions of SIRA**

**Clause 23** specifies the principal objectives of SIRA in exercising its functions.

**Clause 24** provides for the functions of SIRA (which include functions under the workers compensation and motor accidents legislation and the various other Acts amended by the proposed Act).

**Clause 25** provides for IPART, at the request of the Minister, to conduct an investigation and to report to the Minister on such matters relating to the operational costs and expenses of SIRA as are determined by the Minister.

**Clause 26** enables SIRA to delegate any of its functions to certain authorised persons or bodies (including members of staff of SIRA) and enables those functions to be sub-delegated.

## **Part 4      Miscellaneous**

**Clause 27** limits personal liability for matters or things done or omitted to be done in good faith for the purposes of executing the proposed Act or any other Act.

**Clause 28** deals with the keeping of the seal of ICNSW and of SIRA and for the recovery of money due to those bodies.

**Clause 29** provides for the making of regulations for the purposes of the proposed Act.

**Clause 30** repeals the *Safety, Return to Work and Support Board Act 2012*.

**Clause 31** provides for the review of the proposed Act 5 years after the date of assent to the proposed Act.

### **Schedule 1 Provisions relating to directors of ICNSW Board**

This Schedule contains provisions relating to the directors of the ICNSW Board, including the fixing of their terms of office and remuneration. A director who is appointed by the Minister may be removed from office by the Minister.

### **Schedule 2 Provisions relating to chief executive of ICNSW**

This Schedule contains provisions relating to the chief executive of ICNSW who is employed by the ICNSW Board and who may be removed from office by the Board.

### **Schedule 3 Provisions relating to members and procedure of SIRA Board**

This Schedule contains standard provisions for the membership and procedure of the SIRA Board.

### **Schedule 4 Savings, transitional and other provisions**

This Schedule provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act. The Schedule also includes specific provisions consequent on the enactment of the proposed Act, in particular provisions consequent on the abolition of the WorkCover Authority and the Motor Accidents Authority that provide for the transfer of the assets, rights and liabilities of the abolished authorities. The Schedule also provides for the transfer of certain employees of the Department of Finance, Services and Innovation to ICNSW.

### **Schedule 5 Amendment of Workers Compensation Act 1987 No 70**

The *Workers Compensation Act 1987* is amended as follows:

- (a) to provide that ICNSW will act for the Workers Compensation Nominal Insurer in place of the abolished WorkCover Authority,
- (b) to confer on SIRA similar regulatory functions under the Act (including the licensing of insurers) as are presently conferred on the WorkCover Authority,
- (c) to enable SIRA to issue Workers Compensation Market Practice and Premiums Guidelines that will effectively replace the scheme for setting insurance premiums by insurance premiums orders,
- (d) to require licensed insurers to prepare and deliver to SIRA business plans for their workers compensation insurance business,
- (e) to make a number of miscellaneous amendments in relation to the administration of the workers compensation scheme.

### **Schedule 6 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86**

The *Workplace Injury Management and Workers Compensation Act 1998* is amended as follows:

- (a) to repeal provisions relating to the constitution of the WorkCover Authority and to make a number of miscellaneous amendments consequential on the abolition of that Authority,
- (b) to confer on SIRA similar functions in relation to the administration of the workers compensation scheme as are presently conferred on the WorkCover Authority,

- (c) to establish the Workers Compensation Operational Fund as a continuation of the WorkCover Authority Fund and to enable the Fund to be applied to meet the costs of SIRA in administering the workers compensation legislation and the costs of SafeWork NSW,
- (d) to ensure that information concerning the business, commercial, professional or financial affairs of a licensed insurer cannot be disclosed except in limited circumstances.

## **Schedule 7      Amendment of Motor Accidents Compensation Act 1999 No 41**

The *Motor Accidents Compensation Act 1999* is amended as follows:

- (a) to repeal provisions relating to the constitution of the Motor Accidents Authority and to make a number of miscellaneous amendments consequential on the abolition of that Authority,
- (b) to confer on SIRA similar functions in relation to the administration of the motor accidents compensation scheme as are presently conferred on the Motor Accidents Authority,
- (c) to establish the Motor Accidents Operational Fund as a continuation of the Motor Accidents Authority Fund and to enable the Fund to be applied to meet the costs of SIRA in administering the motor accidents legislation.

## **Schedule 8      Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16**

The *Motor Accidents (Lifetime Care and Support) Act 2006* is amended as follows:

- (a) to provide for the appointment by the Minister of a chief executive of the Lifetime Care and Support Authority who will act for the Authority,
- (b) to enable the Lifetime Care and Support Authority Fund to be applied to meet the expenditure incurred by or on behalf of a NSW Government agency in providing services in connection with the scheme provided by the Act for the lifetime care and support of persons injured in motor accidents,
- (c) to enable the Fund to also be applied to meet the expenditure incurred by SIRA in exercising functions in connection with that scheme,
- (d) to provide that SIRA will have the function of determining the amount of the levy to be paid by third-party policy holders to the Fund.

## **Schedule 9      Amendment of Sporting Injuries Insurance Act 1978 No 141**

The *Sporting Injuries Insurance Act 1978* is amended as follows:

- (a) to constitute the Sporting Injuries Compensation Authority which will take over the functions of the WorkCover Authority in administering the Sporting Injuries Fund and the insurance scheme established in connection with that Fund,
- (b) to provide for the appointment by the Minister of a chief executive who will act for the new Authority,
- (c) to enable the Sporting Injuries Fund to be applied to meet the costs incurred by or on behalf of a NSW Government agency in providing services for or in connection with the insurance scheme,
- (d) to enable the Fund to also be applied to meet the costs incurred by SIRA in exercising functions in connection with the insurance scheme,

- (e) to provide that any premium determined by the new Authority in respect of the insurance scheme established in connection with the Sporting Injuries Fund has no effect unless it is approved by SIRA,
- (f) to provide for the Supplementary Sporting Injuries Fund to be administered by the NSW Self Insurance Corporation and to authorise the Corporation to invest money not immediately required for that Fund.

## **Schedule 10    Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14**

The *Workers' Compensation (Dust Diseases) Act 1942* is amended as follows:

- (a) to constitute the Workers Compensation (Dust Diseases) Authority as a statutory corporation to replace the existing Workers' Compensation (Dust Diseases) Board,
- (b) to provide for the appointment by the Minister of a chief executive who will act for the Authority,
- (c) to authorise the Authority to invest money in the Workers' Compensation (Dust Diseases) Fund that is not immediately required for the Fund,
- (d) to enable the Fund to be applied to meet the costs incurred by or on behalf of a NSW Government agency in providing services for or in connection with the compensation scheme established under the Act,
- (e) to enable the Fund to be applied to meet the costs incurred by SIRA in exercising functions in connection with that compensation scheme,
- (f) to make a number of other amendments in relation to the administration of the compensation scheme established under the Act, including requiring the Authority to provide information about the compensation scheme to ICNSW and SIRA,
- (g) to reconstitute the medical authority appointed under the Act as the Medical Assessment Panel,
- (h) to remove the Minister's power to appeal against decisions of the Authority and the Panel under the Act.

## **Schedule 11    Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83**

The *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended as follows:

- (a) to provide for the Self Insurance Corporation to administer the Bush Fire Fighters Compensation Fund and the Emergency and Rescue Workers Compensation Fund instead of the WorkCover Authority,
- (b) to authorise the Self Insurance Corporation to invest money in those Funds that is not immediately required to be paid out as compensation under the Act,
- (c) to enable money to be paid from those Funds to meet the expenses incurred by a NSW Government agency for the services it provides in connection with the compensation schemes established under the Act,
- (d) to enable money to be paid from the Bush Fire Fighters Compensation Fund to meet the expenses incurred by SIRA in exercising functions in connection with that compensation scheme,
- (e) to provide that the Self Insurance Corporation may not assess the amount of any contribution to be paid into the Bush Fire Fighters Compensation Fund unless the assessment has been approved by SIRA.

## **Schedule 12    Amendment of NSW Self Insurance Corporation Act 2004 No 106**

The *NSW Self Insurance Corporation Act 2004* Act is amended as follows:

- (a) to provide for the appointment by the Minister of a chief executive of the Self Insurance Corporation who will act for the Corporation,
- (b) to enable the Self Insurance Fund to be applied to meet the expenditure incurred by or on behalf of a NSW Government agency in providing services in connection with Government managed fund schemes (as referred to in the Act),
- (c) to enable the Home Building Compensation Fund to be applied to meet the expenditure incurred by or on behalf of a NSW Government agency in providing services in connection with the insurance scheme under that Fund and for the costs of SIRA in relation to that scheme to also be met from that Fund,
- (d) to provide that the Self Insurance Corporation may not charge any premium for the insurance that it provides under the Home Building Compensation Fund unless the premium is approved by SIRA,
- (e) to enable the Construction Risks Insurance Fund to be applied to pay the costs of a NSW Government agency in providing services for or in connection with the principal arranged construction insurance business of the Self Insurance Corporation.

## **Schedule 13    Amendment of Home Building Act 1989 No 147**

The *Home Building Act 1989* is amended as follows:

- (a) to authorise SIRA to issue guidelines with respect to appropriate market practices or claims handling procedures in connection with the provision of insurance under the Home Building Compensation Fund by or on behalf of the Self Insurance Corporation,
- (b) to abolish the Home Building Compensation Fund Board,
- (c) to update references that are required to be construed as references to the Secretary of the Department of Finance, Services and Innovation as a result of recent administrative changes relating to Public Service agencies.

## **Schedule 14    Amendment of Work Health and Safety Act 2011 No 10**

The *Work Health and Safety Act 2011* is amended generally to confer on SafeWork NSW the functions presently exercised by the WorkCover Authority as the regulator under the *Work Health and Safety Act 2011* and to make a number of consequential amendments.

## **Schedule 15    Amendment of other legislation**

**Schedule 15** amends various legislation generally as a consequence of the constitution of ICNSW and SIRA and the abolition of the WorkCover Authority and the Motor Accidents Authority and includes a number of amendments that are consequential on SafeWork NSW taking over the work health and safety functions of the WorkCover Authority.