



New South Wales

Civil Liability (Third Party Claims Against Insurers) Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to give effect to the recommendations of the NSW Law Reform Commission in *Report 143: Third party claims on insurance money*. The recommendations result from a review of section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946*, which provides a mechanism enabling a third party to enforce a statutory charge over insurance money payable under a contract of insurance to a person indemnified under the contract of insurance in respect of a liability of the insured person to pay damages or compensation to the third party.

The Bill replaces section 6 of that Act with an Act that enables the third party to bring proceedings directly against the insurer in respect of his or her claim for damages, compensation or costs against the insured person (rather than proceeding to enforce a specially created statutory charge).

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 the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, clause 3 defines an *insured person* to be a person who is, in respect of a liability to a third party, entitled to indemnity pursuant to the terms of a contract of insurance and an *insured liability* to be a liability (to pay damages, compensation or costs) in respect of which an insured person is entitled to be indemnified by the insurer.

Clause 4 enables a claimant to bring court proceedings to recover from the insurer the amount of indemnity payable pursuant to the terms of the contract of insurance in respect of the insured

person's liability to the claimant. In such proceedings, the insurer stands in the place of the insured person as if the proceedings were proceedings to recover damages, compensation or costs from the insured person.

Clause 5 requires the leave of the court to commence proceedings. Leave may be refused in the court's discretion but must be refused if the insurer can establish that it is entitled to disclaim liability under the contract of insurance or under any Act or law.

Clause 6 requires proceedings brought under clause 4 to be commenced within the same limitation period that applies under the *Limitation Act 1969* or other Act to the claimant's cause of action against the insured person in respect of the insured liability. However, if the claimant commenced proceedings directly against the insured person within the applicable limitation period, the claimant is not required to commence proceedings against the insurer under clause 4 within that limitation period.

Clause 7 sets out the matters on which an insurer may rely in proceedings brought under clause 4 in answer to the claim or in reduction of its liability to the claimant.

Clause 8 provides that a judgment or order in favour of the claimant against an insured person in respect of an insured liability does not prevent the claimant from recovering an amount under clause 4, except to the extent that the judgment or order has been satisfied.

Clause 9 provides that any payment made by the insurer to the claimant in respect of an insured liability discharges, to the extent of the payment, the insurer's liability to the insured person under the contract of insurance.

Clause 10 provides that an insurer's liability to a claimant under the proposed Act is not affected by any compromise or settlement between the insurer and the insured person, or payments made by the insurer to the insured person, in respect of the insured liability, except to the extent that the insured person has passed on any such payments to the claimant.

Clause 11 makes it clear that the rights conferred on a claimant under the proposed Act do not affect any rights the claimant may have under the *Workers Compensation Act 1987* or any other law to make a claim, as a third party, against an insurer in respect of an insured liability.

Clause 12 provides that section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* continues to apply to actions brought under that section before its repeal by the proposed Act.

Schedule 1 Amendment of Law Reform (Miscellaneous Provisions) Act 1946 No 33

Schedule 1 repeals Part 4 (which contains section 6) of the *Law Reform (Miscellaneous Provisions) Act 1946* and makes a consequential amendment to the long title of that Act.



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Civil Liability (Third Party Claims Against Insurers) Bill 2017

No. , 2017

A Bill for

An Act to make provision with respect to claims against insurers by third parties.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Civil Liability (Third Party Claims Against Insurers) Act 2017</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Definitions	6
(1) In this Act:	7
<i>claimant</i> —see section 4.	8
<i>court</i> means a court or tribunal of New South Wales.	9
<i>insured liability</i> means a liability in respect of which an insured person is entitled to be indemnified by the insurer.	10 11
<i>insured person</i> means a person who is, in respect of a liability to a third party, entitled to indemnity pursuant to the terms of a contract of insurance, and includes a person who is not a party to the contract of insurance but is specified or referred to in the contract, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the contract extends.	12 13 14 15 16
<i>liability</i> means a liability to pay damages, compensation or costs.	17
Note: The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	18 19
(2) Notes included in this Act do not form part of this Act.	20
4 Claimant may recover from insurer in certain circumstances	21
(1) If an insured person has an insured liability to a person (the <i>claimant</i>), the claimant may, subject to this Act, recover the amount of the insured liability from the insurer in proceedings before a court.	22 23 24
(2) The amount of the insured liability is the amount of indemnity (if any) payable pursuant to the terms of the contract of insurance in respect of the insured person's liability to the claimant.	25 26 27
(3) In proceedings brought by a claimant against an insurer under this section, the insurer stands in the place of the insured person as if the proceedings were proceedings to recover damages, compensation or costs from the insured person. Accordingly (but subject to this Act), the parties have the same rights and liabilities, and the court has the same powers, as if the proceedings were proceedings brought against the insured person.	28 29 30 31 32 33
(4) This section does not entitle a claimant to recover any amount from a re-insurer under a contract or arrangement for re-insurance.	34 35
5 Leave to proceed	36
(1) Proceedings may not be brought, or continued, against an insurer under section 4 except by leave of the court in which the proceedings are to be, or have been, commenced.	37 38 39
(2) An application for leave may be made before or after proceedings under section 4 have been commenced.	40 41
(3) Subject to subsection (4), the court may grant or refuse the claimant's application for leave.	42 43

(4)	Leave must be refused if the insurer can establish that it is entitled to disclaim liability under the contract of insurance or under any Act or law.	1 2
6	Time for commencing proceedings	3
(1)	Proceedings to recover an amount from the insurer under section 4 must be commenced within the same limitation period that applies under the <i>Limitation Act 1969</i> or other Act to the claimant's cause of action against the insured person in respect of the insured liability.	4 5 6 7
(2)	Subsection (1) does not apply if the claimant has brought proceedings against the insured person in respect of the insured liability before the expiry of the limitation period applying to those proceedings, including any extension of the limitation period granted under the <i>Limitation Act 1969</i> or other Act by a court.	8 9 10 11
7	Matters on which insurer may rely	12
	In proceedings brought under section 4, the insurer is entitled to rely on any defence or any other matter in answer to the claim or in reduction of its liability to the claimant:	13 14 15
(a)	that the insurer would have been entitled to rely on in a claim made by the insured person under the contract of insurance, or	16 17
(b)	that the insured person would have been entitled to rely on in proceedings brought by the claimant against the insured person in respect of the insured liability.	18 19 20
8	Judgment against insured person no bar to claim against insurer	21
	A judgment or order for damages, compensation or costs in favour of the claimant against the insured person in respect of an insured liability does not prevent the claimant from recovering an amount for the damages, compensation or costs under section 4, except to the extent that the judgment or order has been satisfied.	22 23 24 25
9	Discharge of insurer's liability	26
	Any payment made by the insurer to the claimant under this Act in respect of an insured liability discharges, to the extent of the payment, the liability of the insurer to make a payment to the insured person under the contract of insurance in respect of the insured liability.	27 28 29 30
10	Effect of payments made by insurer to insured person	31
	An insurer's liability to a claimant under this Act is not reduced, discharged or otherwise affected by:	32 33
(a)	any compromise or settlement between the insurer and the insured person in respect of the insured liability, or	34 35
(b)	any payment by the insurer to the insured person in respect of the insured liability unless and to the extent that the amount of the payment is or has been paid by the insured person to the claimant in respect of the insured liability.	36 37 38
11	Application of Act	39
	The rights conferred on claimants under this Act do not affect, and are in addition to, the rights conferred under the <i>Workers Compensation Act 1987</i> or any other law on a person who is not a party to a contract of insurance to make a claim against an insurer in respect of an insured liability.	40 41 42 43

12 Preservation of existing proceedings

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Section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (as in force immediately before its repeal by this Act) continues to apply to actions brought against insurers under that section before the commencement of this Act as if that section had not been repealed.

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Schedule 1	Amendment of Law Reform (Miscellaneous Provisions) Act 1946 No 33	1
		2
[1] Long title		3
	Omit “to make certain provisions in relation to charges upon insurance moneys payable as indemnity for liability to pay damages or compensation;”.	4
		5
[2] Part 4 Attachment of insurance moneys		6
	Omit the Part.	7