



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.