



New South Wales

State Insurance and Care Legislation Amendment Bill 2022

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This public bill which originated in the Legislative Assembly, has passed and is now ready for presentation to the Legislative Council for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

State Insurance and Care Legislation Amendment Bill 2022

Act No , 2022

An Act to amend the *State Insurance and Care Governance Act 2015* and workers compensation legislation in relation to governance and regulatory arrangements for insurance and compensation schemes; to make further provision with respect to workers compensation death benefits and the commutation of workers compensation liabilities; and for other purposes.

EXAMINED

Speaker

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *State Insurance and Care Legislation Amendment Act 2022*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1	Amendment of State Insurance and Care Governance Act 2015 No 19	1
		2
[1] Section 2A		3
	Insert after section 2—	4
2A Objects of Act		5
(1)	The objects of this Act are—	6
(a)	to establish appropriate governance and regulatory arrangements for insurance and compensation schemes, and	7
(b)	to promote the efficient and effective delivery of insurance and compensation schemes.	8
(2)	For those purposes, this Act—	9
(a)	constitutes Insurance and Care NSW to act for the Nominal Insurer and provide services for insurance and compensation schemes administered by other authorities, and	10
(b)	constitutes the State Insurance Regulatory Authority as the regulator of State insurance and care schemes and the authority responsible for effective oversight of the schemes.	11
	Note— For provisions relating to the work health and safety regulator, SafeWork NSW, see the <i>Work Health and Safety Act 2011</i> , Schedule 2.	12
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		19
[2] Section 3 Definitions		20
	Insert in alphabetical order in section 3(1)—	21
	<i>State insurance and care scheme</i> means an insurance or compensation scheme established by the scheme legislation.	22
	<i>scheme legislation</i> means—	23
(a)	the workers compensation and motor accidents legislation, and	24
(b)	the <i>Home Building Act 1989</i> , and	25
(c)	other prescribed legislation.	26
		27
[3] Section 5 Board of directors of ICNSW		28
	Omit “8 other” from section 5(2)(b). Insert instead “10 other”.	29
[4] Section 5(2A) and (2B)		30
	Insert after section 5(2)—	31
(2A)	At least 1 of the appointed directors is to be a representative of an employer representative body.	32
(2B)	At least 1 of the appointed directors is to be a representative of Unions NSW or another representative body for persons injured in the workplace.	33
		34
		35
[5] Section 7 Power of Minister to give directions in public interest		36
	Omit “not be in the best interests of ICNSW” from section 7(3)(b).	37
	Insert instead “be in the public interest”.	38
[6] Part 2, Division 2, heading		39
	Omit the heading. Insert instead—	40

Division 2	Objectives and functions of ICNSW	1
[7] Section 9A		2
	Insert before section 10—	3
9A Principal objectives of ICNSW		4
	The principal objectives of ICNSW in exercising its functions are as follows—	5
	(a) to ensure that access to compensation for claimants is balanced with the need to maintain the affordability of insurance and the efficiency and viability of State insurance and care schemes,	6 7 8
	(b) to promote efficiency, transparency and accountability in the conduct of its operations.	9 10
[8] Section 11A		11
	Insert after section 11—	12
11A Report of procurement of goods and services		13
	(1) ICNSW must, before 31 October in each year, prepare and present to the Minister a report of the following matters for the year ending on the preceding 30 June—	14 15 16
	(a) the activities of ICNSW, in acting for the Nominal Insurer, involving an exempt procurement,	17 18
	(b) an explanation of the reasons for each exempt procurement.	19
	(2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.	20 21
	(3) In this section—	22
	<i>exempt procurement</i> means a procurement of goods and services that—	23
	(a) is conducted otherwise than in accordance with the <i>Public Works and Procurement Act 1912</i> , section 176, and	24 25
	(b) would, if the Nominal Insurer were a government agency within the meaning of the <i>Public Works and Procurement Act 1912</i> , Part 11, be required to be conducted in accordance with that section.	26 27 28
[9] Section 20 Ministerial directions		29
	Insert after section 20(2)—	30
	(2A) Before giving a direction under this section, the Minister must—	31
	(a) consult with the SIRA Board, and	32
	(b) ask the Board to advise the Minister whether, in its opinion, complying with the direction would be in the public interest.	33 34
	(2B) The Minister must publish a notice in the Gazette setting out the reasons a direction was given under this section and why it is in the public interest that the direction was given.	35 36 37
	(2C) The notice is to be published within 1 month after the direction is given.	38
[10] Sections 23 and 24		39
	Omit the sections. Insert instead—	40

23	Principal objectives of SIRA	1
	The principal objectives of SIRA in exercising its functions are as follows—	2
	(a) to ensure that access to compensation for claimants is balanced with the need to maintain the affordability of insurance and the efficiency and viability of State insurance and care schemes,	3 4 5
	(b) to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with the injuries,	6 7 8
	(c) to ensure that persons covered by State insurance and care schemes have access to treatment that will assist with their recovery.	9 10
24	Functions of SIRA	11
	(1) SIRA has the functions conferred or imposed on it by or under this Act or any other Act, including the scheme legislation.	12 13
	(2) The functions of SIRA also include the following—	14
	(a) to lead the strategic development and effective oversight of State insurance and care schemes,	15 16
	(b) to promote the effective management of claims under the scheme legislation,	17 18
	(c) to promote the efficient and effective management and resolution of disputes and complaints under the scheme legislation,	19 20
	(d) to promote workplace injury prevention, effective injury management and return to work measures and programs,	21 22
	(e) to be responsible for overseeing and monitoring compliance with the scheme legislation,	23 24
	(f) to collect, analyse and publish data relating to the performance of State insurance and care schemes,	25 26
	(g) to advise the Minister administering the scheme legislation on appropriate strategies, policies and practices in relation to State insurance and care schemes.	27 28 29
[11]	Schedule 1 Provisions relating to directors of ICNSW Board	30
	Omit “3 years” from Schedule 1, clause 3. Insert instead “4 years”.	31

Schedule 2	Amendment of Workers Compensation Act 1987	1
	No 70	2
[1] Part 3, Division 1A		3
	Insert after Division 1—	4
Division 1A	Compensation payable on death—death benefit disputes	5
		6
32AA	Definitions	7
(1)	In this Division—	8
	<i>death benefit dispute</i> means a dispute about liability for death benefit compensation that has been referred for determination by the Commission.	9 10
(2)	For the purposes of determining whether a person is a dependant of a deceased person under this Division—	11 12
(a)	the deceased person is taken to be a worker, and	13
(b)	the death of the person is taken to have resulted from an injury.	14
	Note— See the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , section 4, definition of <i>dependants</i> .	15 16
32AB	Application	17
(1)	This Division applies to a claim for death benefit compensation that is the subject of a death benefit dispute.	18 19
(2)	This Division has effect despite the 1998 Act, section 234.	20
32AC	Settlement of claim where liability disputed	21
(1)	A party to a death benefit dispute may lodge with the Commission a proposed agreement for an amount to be paid in settlement of the part of the claim that relates to the lump sum death benefit under Division 1.	22 23 24
(2)	The amount proposed to be paid in settlement must not be more than the amount of the lump sum death benefit otherwise payable under Division 1.	25 26
(3)	The parties to the agreement must include the insurer and—	27
(a)	each dependant of the deceased person, or	28
(b)	if there are no dependants—the legal personal representative of the deceased person.	29 30
(4)	The Commission must not entertain proceedings to give effect to the agreement unless satisfied that—	31 32
(a)	there is a reasonable basis for the insurer to dispute liability for the death benefit compensation, and	33 34
(b)	the amount of compensation proposed to be paid in settlement of the claim is reasonable in the circumstances, and	35 36
(c)	each dependant of the deceased person is a party to the agreement or, if the Commission is satisfied there are no dependants, the legal personal representative of the deceased person is a party to the agreement.	37 38 39
(5)	There is a reasonable basis for an insurer to dispute liability only if the dispute is based on facts provable on the material available to the Commission and a reasonably arguable view of the law.	40 41 42

(6)	In proceedings for the death benefit dispute, each party to the agreement must be represented by an Australian legal practitioner unless otherwise directed by the Commission.	1 2 3
(7)	If the Commission makes a determination to give effect to an agreement under this Division—	4 5
(a)	the insurer is taken to have accepted liability for death benefit compensation for the death, and	6 7
(b)	subject to paragraph (c), death benefit compensation is payable in accordance with Division 1 as if the death had resulted from an injury, and	8 9 10
(c)	the amount of lump sum death benefit payable under section 25 is the amount provided by the agreement as executed.	11 12
(8)	The Workers Compensation Guidelines may make provision in relation to the management of a claim to which an agreement under this Division relates.	13 14
(9)	The Commission rules may make provision for or in relation to applications under this section and the procedure for making a determination to give effect to an agreement under this Division.	15 16 17
[2]	Section 154B Functions of Nominal Insurer	18
	Omit section 154B(1). Insert instead—	19
(1)	The Nominal Insurer is taken to be a licensed insurer for the purposes of this Act.	20 21
(1A)	The Authority may impose conditions on the authority conferred by this section on the Nominal Insurer as a licensed insurer.	22 23
(1B)	The conditions that may be imposed on an authority conferred by this section are conditions of a kind that the authority could impose on a licence under Division 3, except section 182(2)(a) and (c).	24 25 26
(1C)	A condition relating to a matter arising under the following provisions may be imposed on the authority only with the approval of the Minister administering the <i>State Insurance and Care Governance Act 2015</i> , Part 2—	27 28 29
(a)	the 1987 Act, section 145 or 145A or Part 7, Division 1A, Subdivision 2,	30
(b)	the <i>State Insurance and Care Governance Act 2015</i> , section 12 or Part 2, Division 4.	31 32
(1D)	Section 183 does not apply to the authority conferred by this section.	33
[3]	Section 168 Workers Compensation Market Practice and Premiums Guidelines	34
	Insert “licensed” after “require” in section 168(2)(a).	35
[4]	Section 189 Information and records as to business etc to be supplied to Authority by insurers	36 37
	Omit section 189(1), definition of insurer. Insert instead—	38
	<i>insurer</i> means—	39
(a)	a licensed insurer or former licensed insurer, or	40
(b)	a self-insurer or former self-insurer, or	41
(c)	a scheme agent, or	42
(d)	a claims administration agent, or	43
(e)	ICNSW, or	44

(f) the Self Insurance Corporation.	1
[5] Section 192A Claims administration manual	2
Omit section 192A(6). Insert instead—	3
(6) In this section—	4
<i>insurer</i> includes a self-insurer.	5
[6] Section 195	6
Insert after section 194—	7
195 Directions to insurers regarding contraventions	8
(1) If the Authority is satisfied an insurer has contravened its licence, the Workers Compensation Acts or a requirement made by the Authority under the Workers Compensation Acts, the Authority may issue a written direction requiring the insurer to—	9 10 11 12
(a) refrain from conduct contravening the licence or the Workers Compensation Acts or other requirement, or	13 14
(b) take action to comply with, or to prevent or remedy a contravention of, the licence or the Workers Compensation Acts or other requirement, or	15 16
(c) take other action prescribed by the regulations.	17
(2) An insurer must comply with a direction issued to the insurer under this section.	18 19
Maximum penalty—1,000 penalty units.	20
(3) It is a condition of an insurer’s licence under this Act that the insurer must comply with a direction issued to the insurer under this section.	21 22
(4) The Authority must, as soon as practicable after issuing a direction under this section, publish on its website a statement of the effect of the direction and the reasons for issuing the direction.	23 24 25
(5) In this section—	26
<i>Workers Compensation Acts</i> includes instruments made under the Workers Compensation Acts.	27 28
[7] Section 202 Audit of accounting records of insurers	29
Omit section 202(1AA).	30
[8] Part 7, Division 4A	31
Insert after Division 4—	32
Division 4A Enforceable undertakings	33
209A Definitions	34
In this Division—	35
<i>insurer</i> means—	36
(a) a licensed insurer, or	37
(b) a self-insurer.	38
<i>Workers Compensation Acts</i> includes instruments made under the Workers Compensation Acts.	39 40

209B	Authority may accept undertaking	1
(1)	The Authority may accept a written undertaking given by an insurer in relation to a contravention or alleged contravention by the insurer of the Workers Compensation Acts.	2 3 4
(2)	The giving of an undertaking does not constitute an admission of guilt by the insurer in relation to the contravention or alleged contravention to which the undertaking relates.	5 6 7
209C	Notice of decision	8
(1)	The Authority must give the insurer seeking to give an undertaking under this Division written notice of—	9 10
(a)	the Authority’s decision to accept or reject the undertaking, and	11
(b)	the reasons for the decision.	12
(2)	The Authority must, as soon as practicable after making a decision to accept or reject the undertaking, publish notice of the decision on the Authority’s website.	13 14 15
209D	When an undertaking is enforceable	16
	An undertaking under this Division takes effect and becomes enforceable—	17
(a)	when the insurer receives notice of the Authority’s decision to accept the undertaking, or	18 19
(b)	at any later date specified by the Authority.	20
209E	Compliance with undertaking	21
	An insurer must not contravene an undertaking given by the insurer under this Division that is in effect.	22 23
	Maximum penalty—1,000 penalty units.	24
209F	Contravention of undertaking	25
(1)	The Authority may apply to the District Court for an order if an insurer contravenes an undertaking given under this Division.	26 27
(2)	If the Court is satisfied the insurer that made the undertaking has contravened the undertaking, the Court, in addition to imposing a penalty, may make one or both of the following orders—	28 29 30
(a)	an order directing the insurer to comply with the undertaking,	31
(b)	an order discharging the undertaking.	32
(3)	In addition to the orders referred to in subsection (2), the Court may make other orders the Court considers appropriate in the circumstances, including orders directing the insurer to pay to the State—	33 34 35
(a)	the costs of the proceedings, and	36
(b)	the reasonable costs of the Authority in monitoring compliance with the undertaking in the future.	37 38
(4)	This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.	39 40
209G	Withdrawal or variation of undertaking	41
(1)	An insurer who has given an undertaking under this Division may at any time, with the written agreement of the Authority—	42 43

(a)	withdraw the undertaking, or	1
(b)	vary the undertaking.	2
(2)	However, the provisions of the undertaking may not be varied to provide for a different alleged contravention of the Act.	3 4
(3)	The Authority may at any time, with the written agreement of the insurer, withdraw its decision to accept an undertaking.	5 6
(4)	The Authority must, as soon as practicable after an undertaking is withdrawn or varied, publish on the Authority's website notice of—	7 8
(a)	the withdrawal or variation, and	9
(b)	the reasons for the withdrawal or variation.	10
209H	Proceedings and civil penalties for alleged contravention	11
(1)	No proceedings may be brought against an insurer, and a civil penalty may not be issued to an insurer, for a contravention or alleged contravention of the Workers Compensation Acts if—	12 13 14
(a)	an undertaking under this Division is in effect in relation to the contravention, or	15 16
(b)	an undertaking under this Division has been given and completely discharged by the insurer.	17 18
(2)	The Authority may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to the contravention have been finalised.	19 20 21
(3)	If the Authority accepts an undertaking before the proceedings are finalised, the Authority must take all reasonable steps to have the proceedings discontinued as soon as possible.	22 23 24
[9]	Section 211B Government employers covered by Government managed fund scheme to be self-insurers	25 26
	Omit "However, the Authority may, with the approval of the Treasurer, impose conditions on the authority conferred by this section on such self-insurers (being conditions of a kind that the authority could impose on the licence of a self-insurer under this Division)." from section 211B(4).	27 28 29 30
[10]	Section 211B(4A)–(4C)	31
	Insert after section 211B(4)—	32
(4A)	However, the Authority may, subject to this section and with the approval of the Minister, impose conditions on the authority conferred by this section.	33 34
(4B)	The conditions that may be imposed on an authority conferred by this section are conditions of a kind that the authority could impose on the licence of a self-insurer under this Division.	35 36 37
(4C)	The approval of the Minister is not required for conditions relating to claims administration functions.	38 39
[11]	Schedule 6 Savings, transitional and other provisions	40
	Insert before Part 20, with appropriate Part numbering—	41

Part	Provisions consequent on State Insurance and Care Legislation Amendment Act 2022	1
		2
1	Definition	3
	In this clause—	4
	<i>2022 amending Act</i> means the <i>State Insurance and Care Legislation Amendment Act 2022</i> .	5
		6
2	Application of amendments to Workers' Compensation (Dust Diseases) Act 1942	7
		8
	An amendment made by the 2022 amending Act does not apply for the purposes of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> .	9
		10
3	Death benefit disputes	11
	The amendment made by the 2022 amending Act to insert Part 3, Division 1A of the 1987 Act does not apply—	12
		13
	(a) to a death occurring before the amendment commences, or	14
	(b) for the purposes of the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> .	15
		16

Schedule 3	Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>claims administration agent</i> means a person who, under a contract or other arrangement, acts as agent for an insurer in connection with the exercise of the claims administration functions of the insurer.	5
		6
		7
	<i>claims administration functions</i> means the following functions of an insurer under this Act—	8
		9
	(a) the making of decisions about liability for compensation,	10
	(b) the making of work capacity decisions,	11
	(c) the making of decisions about the resolution of disputes,	12
	(d) the making of decisions about the treatment, rehabilitation or return to work of injured workers,	13
		14
	(e) the making of other decisions of a kind prescribed by the regulations,	15
	(f) the giving of notices under this Act,	16
	(g) the payment of compensation under this Act.	17
[2] Section 22 Objectives and general functions of Authority under workers compensation legislation		18
		19
	Insert after section 22(1)(d)—	20
	Note— The dispute resolution functions of the Authority do not include dealing with disputes about compensation or disputes between insurers and injured workers. For provisions relating to those matters, see this Act, section 105 and the <i>Personal Injury Commission Act 2020</i> , Schedule 5, Part 4.	21
		22
		23
		24
[3] Section 22(2)(b)		25
	Omit section 22(2)(b) and (c). Insert instead—	26
	(b) to establish procedures for dealing with complaints made by employers in relation to matters arising under the workers compensation scheme,	27
		28
[4] Section 22(2)(f1)		29
	Insert after section 22(2)(f)—	30
	(f1) to publish and disseminate information in relation to the workers compensation scheme,	31
		32
[5] Section 23 Specific functions		33
	Omit section 23(1)(d), (j) and (j1).	34
[6] Section 23(1)(h)		35
	Omit section 23(1)(h) and (i). Insert instead—	36
	(h) to develop and facilitate the operation of programs to promote worker rehabilitation and return to work,	37
		38
[7] Section 40A Definitions		39
	Omit the definition of <i>insurer</i> . Insert instead—	40
	<i>insurer</i> means—	41
	(a) a licensed insurer or former licensed insurer, or	42

(b)	a self-insurer or former self-insurer, or	1
(c)	a scheme agent, or	2
(d)	a claims administration agent, or	3
(e)	ICNSW, or	4
(f)	the Self Insurance Corporation.	5
[8]	Section 238 Powers of entry by inspectors	6
	Omit the definition of <i>insurer</i> from section 238(1). Insert instead—	7
	<i>insurer</i> means—	8
(a)	a licensed insurer or former licensed insurer, or	9
(b)	a self-insurer, or	10
(c)	an insurance broker or commission agent engaged in workers compensation insurance business, or	11 12
(d)	without limiting the 1987 Act, section 154M(2)—a scheme agent or	13
(e)	a claims administration agent, or	14
(f)	ICNSW, or	15
(g)	the Self Insurance Corporation.	16
[9]	Section 247 Time for instituting proceedings	17
	Insert after section 247(3)—	18
(4)	Despite subsection (1), proceedings for an offence in relation to which an undertaking has been given under the 1987 Act, Part 7, Division 4A may be instituted by the Authority within whichever of the following periods provides the longer time for proceedings to be instituted—	19 20 21 22
(a)	2 years after the act or omission alleged to constitute the offence,	23
(b)	6 months after the undertaking is contravened,	24
(c)	6 months after the Authority becomes aware the undertaking has been contravened,	25 26
(d)	6 months after the Authority agrees in writing to the withdrawal of the undertaking.	27 28