



New South Wales

# State Insurance and Care Legislation Amendment Bill 2022

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend the *State Insurance and Care Governance Act 2015*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* as follows—

- (a) to make further provision for governance arrangements for insurance and compensation schemes,
- (b) to extend the enforcement powers of the State Insurance Regulatory Authority in relation to the Workers Compensation Nominal Insurer, Insurance and Care NSW, the NSW Self Insurance Corporation and persons exercising claims administration functions on behalf of insurers,
- (c) to make further provision in relation to claims for workers compensation death benefits and the commutation of workers compensation liabilities.

The Bill also repeals the *Workers Compensation Legislation Amendment Act 2012* consequent on the amendments referred to in paragraph (c).

## 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.

**Clause 3** repeals the *Workers Compensation Legislation Amendment Act 2012* (**the 2012 amending Act**) consequent on the amendments made to the *Workers Compensation Act 1987* (**the 1987 Act**) referred to in paragraph (c) of the Overview. The 2012 amending Act contains

uncommenced provisions enabling regulations under the 1987 Act to permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria for commutation. The uncommenced provisions are inserted into the 1987 Act by Schedule 2, with minor modifications consequent on the establishment of the Personal Injury Commission (the *PIC*).

## **Schedule 1      Amendment of State Insurance and Care Governance Act 2015 No 19**

**Schedule 1[1]** makes a clarifying amendment to set out the objects of the *State Insurance and Care Governance Act 2015* and the role of the authorities established by the Act. **Schedule 1[2]** makes a consequential amendment to insert certain definitions.

**Schedule 1[3]** requires the Minister, before giving a direction in the public interest to the board of directors of Insurance and Care NSW (*ICNSW*), to request the Board to advise whether the direction would be in the public interest. Currently the Board's advice must specify whether the direction would not be in the best interests of ICNSW. **Schedule 1[6]** amends a corresponding provision concerning the power of the Minister to give directions in the public interest to the State Insurance Regulatory Authority (*SIRA*). The amendment will require the Minister, before giving a direction in the public interest to SIRA, to consult with the SIRA Board and request the Board to advise the Minister whether, in its opinion, complying with the direction would be in the public interest. Within 1 month after the direction is given, the Minister is to publish in the Gazette a notice of reasons for giving the direction.

**Schedule 1[5]** inserts proposed section 9A, which sets out the principal objectives of ICNSW in exercising its functions. **Schedule 1[4]** makes a consequential amendment.

**Schedule 1[7]** clarifies the principal objectives and functions of SIRA.

**Schedule 1[8]** increases, from 3 years to 4 years, the maximum period for which an appointed director of the ICNSW Board may hold office.

## **Schedule 2      Amendment of Workers Compensation Act 1987 No 70**

**Schedule 2[1]** inserts proposed Part 3, Division 1A into the 1987 Act, which enables parties to a dispute about liability for death benefit compensation to settle the dispute if it has been referred to the PIC. **Schedule 2[27]** makes a consequential amendment. The proposed Division contains the following provisions—

- (a) proposed section 32AA defines words and expressions used in the proposed Division,
- (b) proposed section 32AB limits the application of the Division to disputes referred to the PIC. The proposed section also provides that the Division applies despite a provision of the *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act)* preventing parties from contracting out of liabilities imposed by the workers compensation legislation,
- (c) proposed section 32AC enables a party to the dispute to lodge with the PIC a proposed agreement for an amount to be paid in settlement of the lump sum death benefit payable under the 1987 Act. The parties to the agreement must include each dependant of the deceased person or, if there are no dependants, the legal personal representative of the deceased person. If the PIC makes a determination to give effect to the agreement, the insurer is taken to have accepted liability for death benefit compensation and the lump sum death benefit payable is the amount provided by the agreement as executed. The proposed section also enables the Workers Compensation Guidelines and the rules of the PIC to provide for certain matters relating to agreements.

**Schedule 2[4]** enables regulations under the 1987 Act to permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria for commutation. **Schedule 2[27]** makes a consequential amendment.

**Schedule 2[2], [3], [6] and [17]** confer on the President of the PIC functions relating to the commutation of workers compensation liabilities that are currently conferred on SIRA. **Schedule 2[5]** makes a consequential amendment.

**Schedule 2[7]** enables the rules of the PIC to provide for certain procedural matters relating to the commutation of workers compensation liabilities.

**Schedule 2[8]** provides that the regulations may exclude certain classes of claims from the requirement to obtain legal advice before entering into an agreement to commute a workers compensation liability to a lump sum. The regulations may also require the provision of independent financial advice to the worker at the insurer's expense. **Schedule 2[15]** makes a related amendment to remove the requirement the President of the PIC must be satisfied that legal advice has been obtained in relation to the commutation agreement.

**Schedule 2[9]** provides that a worker may withdraw from a commutation agreement at any time before it is approved by the President of the PIC, instead of within 14 days after entering into the agreement.

**Schedule 2[10]–[13] and [16]** make changes to terminology to provide for approval, rather than registration, of a commutation agreement.

**Schedule 2[15]** requires the President of the PIC to be satisfied that certain requirements have been complied with before approving a commutation agreement.

**Schedule 2[14]** enables the rules of the PIC to provide for the procedure for making an application for a commutation agreement.

**Schedule 2[18]** provides for the imposition of certain conditions by SIRA on the authority conferred on the Workers Compensation Nominal Insurer as a licensed insurer and provides the authority may not be cancelled or suspended. Certain conditions relating to prudential matters may be imposed only with the approval of the Minister for Finance.

**Schedule 2[19]** corrects a reference to insurers to make it clear that only licensed insurers are subject to guidelines made by SIRA relating to the filing of premiums under the 1987 Act.

**Schedule 2[20]** extends SIRA's power to require insurers to provide business and financial records so the power applies to ICNSW, the NSW Self Insurance Corporation and claims administration agents in the same way as it applies to insurers. **Schedule 3[1]** defines *claims administration agent*.

**Schedule 2[21]** makes it clear that provisions relating to the preparation by SIRA of claims manuals for use by insurers apply to self-insurers in the same way as they apply to other insurers.

**Schedule 2[22]** authorises SIRA to issue directions to licensed insurers and self-insurers with respect to a contravention of the insurer's licence, the 1987 Act, the 1998 Act or a requirement made under either Act. The direction may require the person to refrain from the contravening conduct or take certain other action. It is a condition of a licensed insurer's or self-insurer's licence to comply with a direction. Failure to comply with a direction is an offence.

**Schedule 2[23]** extends a provision relating to the auditing of accounting records of insurers to specialised insurers and self-insurers.

**Schedule 2[24]** inserts proposed Part 7, Division 4A, which includes provisions enabling a licensed insurer or a self-insurer to give an undertaking to SIRA in relation to a contravention or alleged contravention of the 1987 Act, the 1998 Act or an instrument made under either Act. Failure to comply with an undertaking is an offence. SIRA may apply to the District Court for an order to enforce the undertaking.

**Schedule 2[26]** provides that the approval of the relevant Minister is not required for the imposition of conditions by SIRA on the authority conferred on a Government employer as a self-insurer if the conditions relate to claims administration functions. **Schedule 2[25]** makes a consequential amendment. **Schedule 3[1]** defines *claims administration functions*.

### **Schedule 3      Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86**

**Schedule 3[1]** defines *claims administration agent* as a person who acts as agent for an insurer in connection with the exercise of certain functions of the insurer (*claims administration functions*). The amendment also defines *claims administration functions* to include the making of certain decisions in relation to claims for workers compensation, the resolution of disputes and the treatment of injured workers.

**Schedule 3[2]–[6]** clarify the functions of SIRA under the workers compensation legislation, including functions relating to the resolution of disputes and complaints, the publication of information and worker rehabilitation and return-to-work programs.

**Schedule 3[7]** extends the definition of *insurer* for the purposes of provisions of the Act relating to information collection and sharing. The definition is extended to include a claims administration agent, ICNSW and the Self Insurance Corporation.

**Schedule 3[8]** extends the definition of *insurer* for the purposes of a provision containing powers of entry of inspectors. The definition is extended to include a claims administration agent, ICNSW and the Self Insurance Corporation.

**Schedule 3[9]** provides that proceedings for an offence in relation to which an insurer has given an undertaking may be instituted by SIRA within whichever of the following periods provides the longer time to institute proceedings—

- (a) 2 years after the offence,
- (b) 6 months after the undertaking is contravened,
- (c) 6 months after SIRA becomes aware of the contravention,
- (d) 6 months after SIRA agrees in writing to the withdrawal of the undertaking.