



New South Wales

NSW Self Insurance Corporation Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *NSW Self Insurance Corporation Act 2004*:

- (a) to confirm that the NSW Self Insurance Corporation may provide protection on an individual basis to eligible State officials (in addition, or as an alternative, to cover for authorities to which they belong) for claims made against them in connection with the exercise of their functions, and
- (b) to enable the NSW Self Insurance Corporation to provide principal arranged construction insurance that extends to non-Government contractors for certain major capital works projects undertaken by or on behalf of the State or an authority of the State.

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.

Schedule 1 Amendment of NSW Self Insurance Corporation Act 2004 No 106

Individual cover for eligible State officials

Schedule 1 [2], [3] and [5] confirm that the NSW Self Insurance Corporation may provide protection on an individual basis to eligible State officials (in addition, or as an alternative, to cover for authorities to which they belong) for claims made against them in connection with the exercise of their functions.

An *eligible State official* is a person who is:

- (a) an employee or officer of the State, or
- (b) an employee, or a member, director or other officer, of an authority of the State.

An example of an authority of the State is a State owned corporation. **Schedule 1 [6]** makes it clear that the NSW Self Insurance Corporation is able to provide protection on an individual basis to directors and other officers of such a corporation even if the corporation cannot do so because of the provisions of the *State Owned Corporations Act 1989*.

Schedule 1 [6] makes it clear that the NSW Self Insurance Corporation may enter into contracts of insurance to cover liabilities to which a Government managed fund scheme applies, but only in the capacity of the insured and not as the insurer.

To avoid doubt, **Schedule 1 [6]** also declares entering into insurance or other agreements or arrangements (including the provision of indemnities) to cover the liabilities to which a Government managed fund scheme applies to be an excluded matter for the purposes of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 7 (Financial services and markets) of that Act. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Principal arranged construction insurance for major capital works projects

Schedule 1 [8] enables the NSW Self Insurance Corporation to carry on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales.

Principal arranged construction insurance is defined by Schedule 1 [1] to mean insurance that is arranged by a principal in relation to a construction contract to cover principals and contractors with respect to the risks associated with the construction

work to which the construction contract relates. A *principal*, in relation to a construction contract, is defined to mean any of the following:

- (a) a party to the contract for which the construction work under the contract is being carried out,
- (b) a person (other than a party to the contract) who is a member of a partnership, joint venture or other arrangement for the benefit of which the construction work under the contract is being carried out.

A *contractor*, in relation to a construction contract, is defined to mean a party to the contract who undertakes to carry out the construction work under the contract, and to include any subcontractors engaged by such a party to carry out work on the party's behalf.

A project is a *major capital works project* if:

- (a) the construction contract for the project provides for the construction of a building, road, tramway, railway, bridge, tunnel or other capital works, and
- (b) one or more of the principals in relation to the construction contract is or are the State or an authority of the State, and
- (c) the project is:
 - (i) required to have mandatory Government arranged construction insurance (that is, principal arranged construction insurance that is required by the Treasurer or the Secretary of the Treasury to be arranged by the State or an authority of the State with the NSW Self Insurance Corporation), or
 - (ii) a project that the Minister, by order published in the Gazette, has declared to be a project involving major capital works.

Schedule 1 [13] provides for the establishment of a Construction Risks Insurance Fund in the Special Deposits Account of the Treasury and the investment of money in the Fund. Premiums for principal arranged construction insurance issued by the NSW Self Insurance Corporation will be paid into the Fund and payments of claims on such insurance will be paid out of the Fund. **Schedule 1 [9], [10] and [12]** make consequential amendments.

Schedule 1 [11] enables money to be transferred from the Self Insurance Fund to the Construction Risks Insurance Fund with the approval of the Minister.

Other amendments

Schedule 1 [4] confirms that the NSW Self Insurance Corporation may provide indemnities to cover liabilities to which a Government managed fund scheme applies.

Schedule 1 [1] inserts definitions for certain terms that are used in provisions to be inserted by the proposed Act.

Schedule 1 [7] replaces outdated references to the *Trade Practices Act 1974* of the Commonwealth with references to the *Competition and Consumer Act 2010* of the Commonwealth.

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Schedule 1 [14] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the *NSW Self Insurance Corporation Act 2004* (including the proposed Act).

Schedule 1 [15] makes provision for certain savings and transitional matters consequent on the enactment of the proposed Act.