



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.

First print



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# NSW Self Insurance Corporation Amendment Bill 2013

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New South Wales

# NSW Self Insurance Corporation Amendment Bill 2013

No. , 2013

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## A Bill for

An Act to amend the *NSW Self Insurance Corporation Act 2004* to enable the Corporation to provide certain principal arranged construction insurance and manage the liabilities of certain State officials.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>NSW Self Insurance Corporation Amendment Act 2013</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

***construction contract*** means a contract or other agreement for the carrying out of construction work.

***Construction Risks Insurance Fund*** means the Fund established under section 12C.

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

***eligible State official*** means 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.

***mandatory Government arranged construction insurance*** means principal arranged construction insurance that the State or an authority of the State is required (whether as a matter of law or Government policy) to arrange with the Self Insurance Corporation because of a direction of the Treasurer or the Secretary of the Treasury.

**Note.** For example, the State or an authority of the State may, by means of a Treasury Circular issued by the Secretary of the Treasury, be required to arrange for specified insurance.

***principal***, in relation to a construction contract, means 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.

***principal arranged construction insurance*** means 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.

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<b>[2] Section 3 (1), definition of “Government managed fund scheme”</b>	1
Omit “or an authority of the State” wherever occurring.	2
Insert instead “, an authority of the State or an eligible State official”.	3
<b>[3] Section 3 (1), definition of “Government managed fund scheme”</b>	4
Omit “but does not include any arrangement under which home warranty insurance is provided (or the Home Warranty Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.”.	5
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Insert instead:	8
but does not include any arrangement under which:	9
(c) home warranty insurance is provided (or the Home Warranty Insurance Fund is managed) by or on behalf of the Self Insurance Corporation, or	10
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(d) principal arranged construction insurance is provided (or the Construction Risks Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.	13
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<b>[4] Section 8 Specific functions in relation to Government managed fund schemes</b>	16
	17
Insert “(including by providing indemnities)” after “arrangements” in section 8 (c).	18
	19
<b>[5] Section 8 (d)</b>	20
Omit “or an authority of the State” wherever occurring.	21
Insert instead “, an authority of the State or an eligible State official”.	22
<b>[6] Section 8 (2)–(4)</b>	23
Insert at the end of section 8:	24
(2) In exercising its functions under subsection (1) (c), the Self Insurance Corporation may enter into contracts of insurance as the insured but not as the insurer.	25
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<b>Note.</b> The Self Insurance Corporation may, for example, obtain insurance from another insurer to cover its own liabilities in providing cover under a Government managed fund scheme. However, it may not provide insurance to the State or any authority of the State or eligible State official whose liabilities are covered by such a scheme. Their liabilities may be managed by means of other agreements and arrangements, including by the provision of indemnities.	28
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(3) Nothing in the <i>State Owned Corporations Act 1989</i> (including clauses 5 and 6 of Schedule 10 to that Act) prevents the Self Insurance Corporation from providing indemnities to, or entering	35
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agreements or arrangements with, a director or other officer (or any other person concerned, or taking part, in the management) of a State owned corporation to cover the liabilities of such a director, officer or person.	1 2 3 4
(4) 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 is declared to be an excluded matter for the purposes of the <i>Corporations Act 2001</i> of the Commonwealth in relation to Chapter 7 (Financial services and markets) of that Act.	5 6 7 8 9 10
<b>Note.</b> Section 5F of the <i>Corporations Act 2001</i> 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.	11 12 13 14 15 16
<b>[7] Section 8B Competition authorisations</b>	17
Omit “ <i>Trade Practices Act 1974</i> ” wherever occurring in section 8B (1) and (3).	18 19
Insert instead “ <i>Competition and Consumer Act 2010</i> ”.	20
<b>[8] Section 8C</b>	21
Insert after section 8B:	22
<b>8C Specific functions relating to principal arranged construction insurance</b>	23 24
(1) The Self Insurance Corporation has the following functions with respect to principal arranged construction insurance:	25 26
(a) to carry on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales,	27 28 29
(b) to manage the Construction Risks Insurance Fund,	30
(c) to enter into contracts, agreements or other arrangements with other persons (including re-insurers) for services relating to the exercise of the Corporation’s functions in connection with the provision of such principal arranged construction insurance and the management of the Construction Risks Insurance Fund.	31 32 33 34 35 36

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(2)	A project is a <i>major capital works project</i> for the purposes of subsection (1) (a) if:	1 2
(a)	the construction contract for the project provides for the construction of a building, road, tramway, railway, bridge, tunnel or other capital works, and	3 4 5
(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	6 7
(c)	the project is:	8
(i)	required to have mandatory Government arranged construction insurance, or	9 10
(ii)	a project that the Minister, by order published in the Gazette, has declared to be a project involving major capital works for the purposes of this section.	11 12 13
<b>[9]</b>	<b>Section 11 Self Insurance Fund</b>	14
	Insert “or Construction Risks Insurance Fund” after “Home Warranty Insurance Fund” in section 11 (1) (f).	15 16
<b>[10]</b>	<b>Section 11 (2)</b>	17
	Omit “home warranty insurance and the management of the Home Warranty Insurance Fund”.	18 19
	Insert instead “home warranty insurance or principal arranged construction insurance or the management of the Home Warranty Insurance Fund or Construction Risks Insurance Fund”.	20 21 22
<b>[11]</b>	<b>Section 11 (2) (f)</b>	23
	Insert after section 11 (2) (e):	24
	(f) payment into the Construction Risks Insurance Fund of such amounts as may be approved by the Minister for transfer into that Fund.	25 26 27
<b>[12]</b>	<b>Section 11 (3)</b>	28
	Omit “home warranty insurance or the operation of the Home Warranty Insurance Fund”.	29 30
	Insert instead “home warranty insurance or principal arranged construction insurance or the operation of the Home Warranty Insurance Fund or Construction Risks Insurance Fund”.	31 32 33

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<b>[13] Part 4, Division 3</b>	1
Insert after Division 2:	2
<b>Division 3 Construction Risks Insurance Fund</b>	3
<b>12C Construction Risks Insurance Fund</b>	4
(1) There is to be established in the Special Deposits Account a Construction Risks Insurance Fund ( <i>the Fund</i> ).	5 6
(2) The following are to be paid into the Fund:	7
(a) all money received by the Self Insurance Corporation as insurance premiums for principal arranged construction insurance that it provides,	8 9 10
(b) all money received by the Self Insurance Corporation from re-insurers in connection with principal arranged construction insurance that it provides,	11 12 13
(c) all money recovered by the Self Insurance Corporation by the exercise of any right of subrogation or other right of recovery in connection with principal arranged construction insurance that it provides,	14 15 16 17
(d) all money received under any security, guarantee or recourse held by the Self Insurance Corporation in respect of any policies for principal arranged construction insurance that it has issued,	18 19 20 21
(e) all money transferred to the Fund from the Self Insurance Fund,	22 23
(f) all money advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,	24 25
(g) the proceeds of the investment of money in the Fund,	26
(h) all money directed or authorised to be paid into the Fund by or under this or any other Act.	27 28
(3) Money may be paid from the Fund for any of the following purposes:	29 30
(a) the payment of claims made under any principal arranged construction insurance provided by the Self Insurance Corporation,	31 32 33
(b) the payment of the costs (including disbursements and commissions) of risk management, actuarial, agency, brokerage, legal and other services provided in connection with the administration of the principal arranged	34 35 36 37



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- (2) A *statement of cover* for the purposes of subclause (1) is a statement of Government policy issued by the Self Insurance Corporation concerning the manner in which the Self Insurance Fund is to be applied to meet the liabilities of authorities of the State (or their employees, members, directors or other officers). 1  
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- 6 Transfer of money from Self Insurance Fund to Construction Risks Insurance Fund** 6  
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- (1) This clause applies to any money deposited in the Self Insurance Fund (*existing principal arranged insurance funds*) that: 8  
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- (a) was deposited in the Self Insurance Fund before the commencement of Division 3 of Part 4 of this Act, and 10  
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- (b) would have been required to be paid into the Construction Risks Insurance Fund had Division 3 of Part 4 of this Act been in force when the money was originally received or recovered by the Self Insurance Corporation. 12  
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- (2) All existing principal arranged insurance funds are to be paid from the Self Insurance Fund into the Construction Risks Insurance Fund as soon as is reasonably practicable after the establishment of the Construction Risks Insurance Fund. 16  
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