

FIRST PRINT

INSURANCE (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Insurance Act 1902 to enable an insurer to challenge evidence in proceedings involving an allegedly false claim brought against a person indemnified under a contract of insurance entered into with the insurer. This right to challenge evidence applies where the insurer is joined (by leave of the court) as a party to the proceedings and will enable the insurer to cross-examine any witness that it calls.

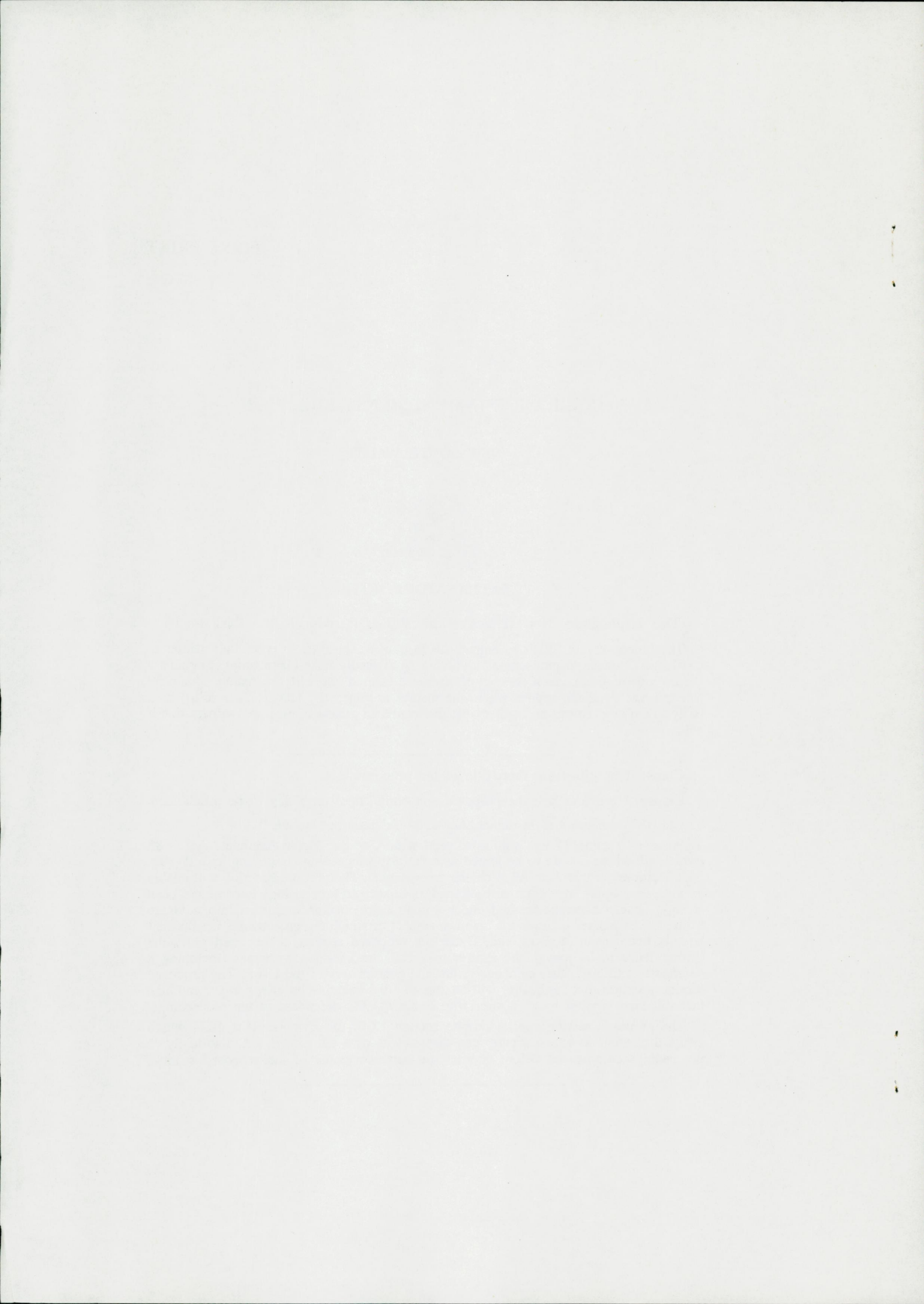
Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day to be proclaimed.

Clause 3 amends the Insurance Act 1902 as described above.

Proposed section 17A is similar to section 66A of the Motor Accidents Act 1988 (which allows an insurer to be joined as a party to proceedings involving an allegedly false claim under that Act and to challenge evidence). The proposed section will enable an insurer to apply to a court to be joined as a party to proceedings which have been brought against a person insured under a contract of insurance entered into with the insurer if the insurer believes the claim in respect of which the proceedings are brought has not been made in good faith. Under the proposed section, if the court gives the insurer leave to be joined, the insurer may call and examine witnesses (including a defendant) and lead other evidence to test the genuineness of the claim. The proposed section provides that the insurer will be able to cross-examine its own witness and also that this right applies to an insurer who is already the defendant in the proceedings.

The proposed section applies despite section 53 of the Evidence Act 1898 which limits the extent to which a party can discredit its own witness. It will also apply to proceedings commenced before or after the commencement of the proposed section.



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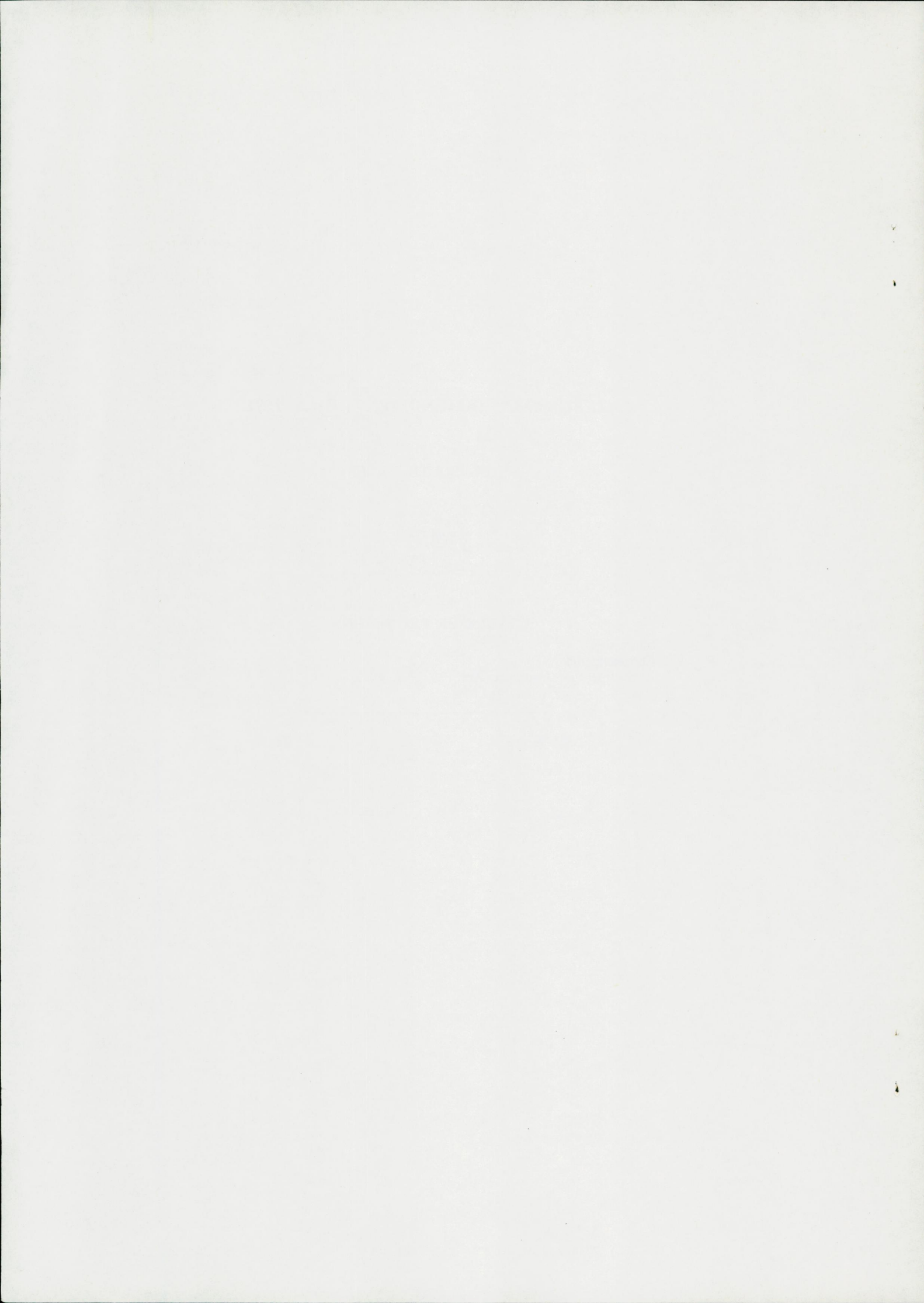
INSURANCE (AMENDMENT) BILL 1991

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Insurance Act 1902 No. 49
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INSURANCE (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Insurance Act 1902 in relation to the rights of insurers in respect of false claims.

Insurance (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Insurance (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Insurance Act 1902 No. 49

3. The Insurance Act 1902 is amended by inserting after Part 5 the following Part:

PART 5A—PROCEDURAL AND EVIDENTIARY PROVISIONS

Rights of insurer to challenge evidence where false claim alleged

17A. (1) If:

- (a) civil proceedings have been commenced against a person in respect of a claim (being a claim in respect of which the person is or may be indemnified under a contract of insurance); and
- (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,

the insurer may apply to the court to be joined as a party to the proceedings.

(2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person (including a defendant) able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim.

(3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to:

- (a) any other claim in which the witness was involved; and
- (b) the credibility of the witness.

(4) If the court gives leave to do so, the insurer may:

- (a) cross-examine the witness; and
- (b) lead other evidence to refute the evidence given by the witness,

as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).

Insurance (Amendment) 1991

(5) Any right to examine or cross-examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.

(6) This section applies despite section 53 of the Evidence Act 1898.

(7) This section applies to an insurer as a defendant in relation to a claim (being a claim referred to in subsection (1)) in the same way as this section applies to an insurer who is granted leave to be joined as a party.

(8) This section does not apply to proceedings in respect of a claim under the Motor Accidents Act 1988.

(9) This section applies to civil proceedings commenced before or after the commencement of this section.



FIRST PRINT

INSURANCE (AMENDMENT) BILL 1991 (No. 2)

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Insurance Act 1902 to enable an insurer to challenge evidence in proceedings involving an allegedly false claim brought against a person indemnified under a contract of insurance entered into with the insurer. This right to challenge evidence applies where the insurer is joined (by leave of the court) as a party to the proceedings and will enable the insurer to cross-examine any witness that it calls.

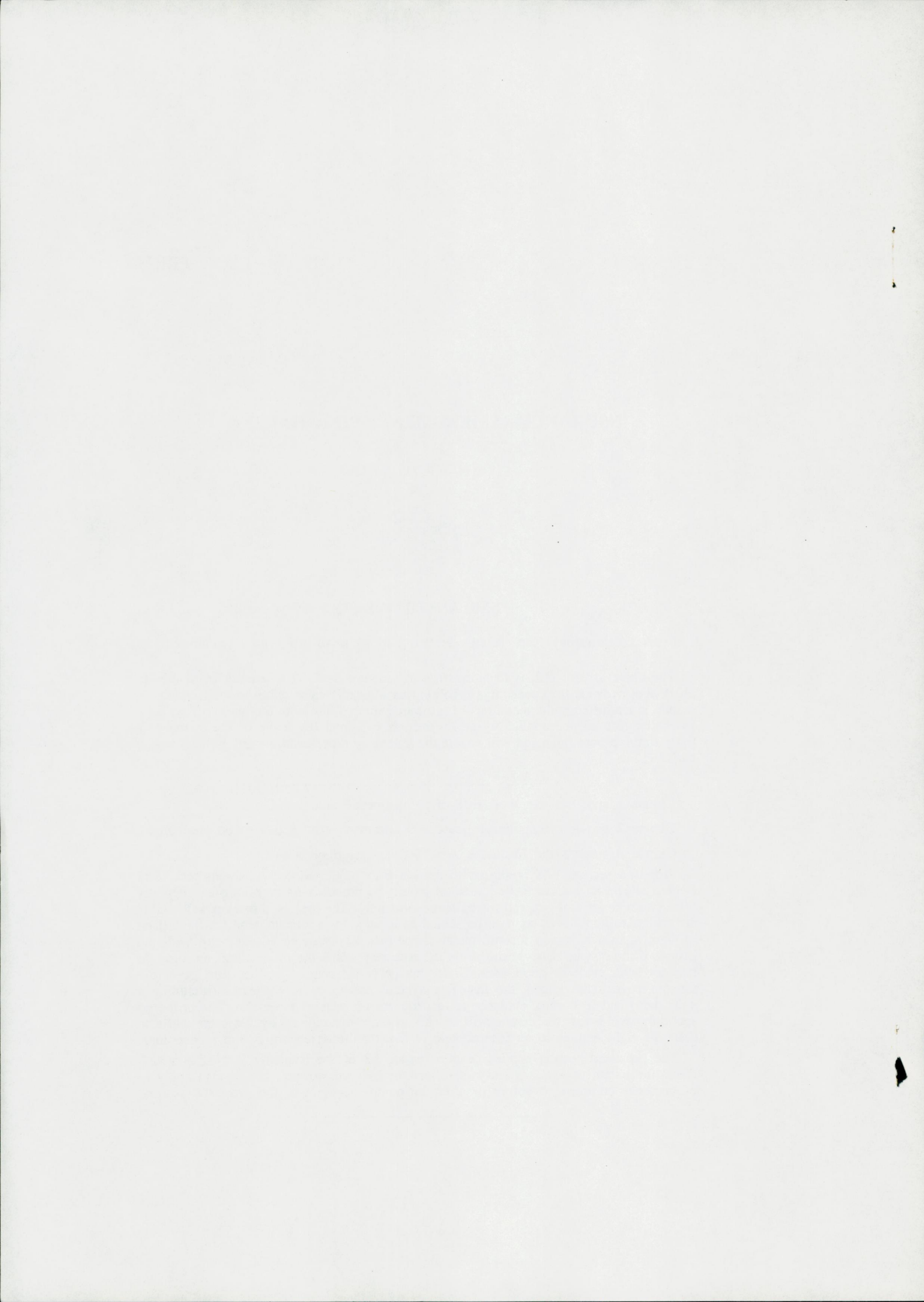
Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day to be proclaimed.

Clause 3 amends the Insurance Act 1902 as described above.

Proposed section 17A is similar to section 66A of the Motor Accidents Act 1988 (which allows an insurer to be joined as a party to proceedings involving an allegedly false claim under that Act and to challenge evidence). The proposed section will enable an insurer to apply to a court to be joined as a party to proceedings which have been brought against a person insured under a contract of insurance entered into with the insurer if the insurer believes the claim in respect of which the proceedings are brought has not been made in good faith. Under the proposed section, if the court gives the insurer leave to be joined, the insurer may call and examine witnesses (including a defendant) and lead other evidence to test the genuineness of the claim. The proposed section provides that the insurer will be able to cross-examine its own witness and also that this right applies to an insurer who is already the defendant in the proceedings.

The proposed section applies despite section 53 of the Evidence Act 1898 which limits the extent to which a party can discredit its own witness. It will also apply to proceedings commenced before or after the commencement of the proposed section.



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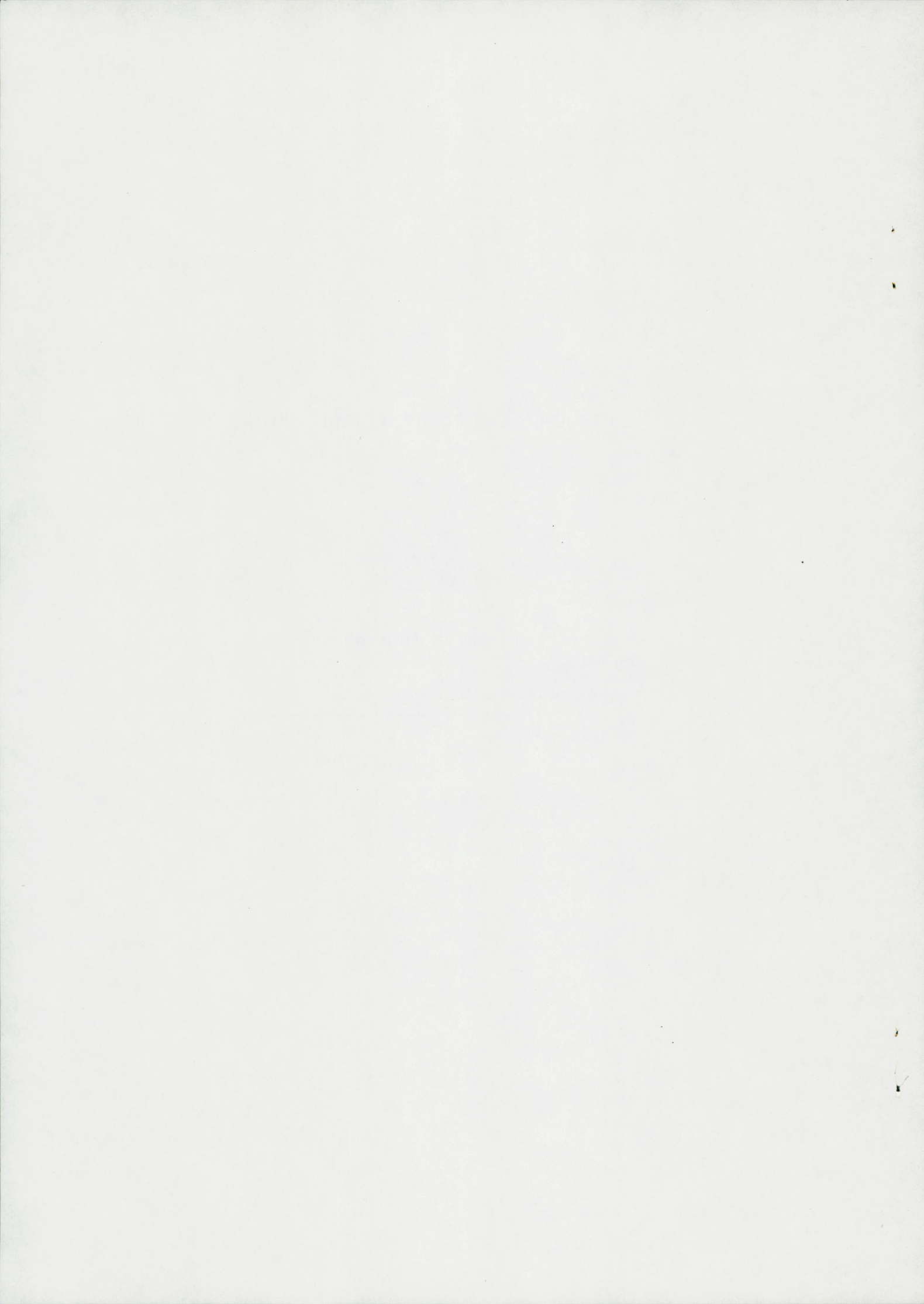
INSURANCE (AMENDMENT) BILL 1991 (No. 2)

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Insurance Act 1902 No. 49
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INSURANCE (AMENDMENT) BILL 1991 (No. 2)

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Insurance Act 1902 in relation to the rights of insurers in respect of false claims.

Insurance (Amendment) 1991 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Insurance (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Insurance Act 1902 No. 49

3. The Insurance Act 1902 is amended by inserting after Part 5 the following Part:

**PART 5A—PROCEDURAL AND EVIDENTIARY
PROVISIONS**

Rights of insurer to challenge evidence where false claim alleged

17A. (1) If:

- (a) civil proceedings have been commenced against a person in respect of a claim (being a claim in respect of which the person is or may be indemnified under a contract of insurance); and
- (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,

the insurer may apply to the court to be joined as a party to the proceedings.

(2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person (including a defendant) able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim.

(3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to:

- (a) any other claim in which the witness was involved; and
- (b) the credibility of the witness.

(4) If the court gives leave to do so, the insurer may:

- (a) cross-examine the witness; and
- (b) lead other evidence to refute the evidence given by the witness,

as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).

Insurance (Amendment) 1991 (No. 2)

(5) Any right to examine or cross-examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.

(6) This section applies despite section 53 of the Evidence Act 1898.

(7) This section applies to an insurer as a defendant in relation to a claim (being a claim referred to in subsection (1)) in the same way as this section applies to an insurer who is granted leave to be joined as a party.

(8) This section does not apply to proceedings in respect of a claim under the Motor Accidents Act 1988.

(9) This section applies to civil proceedings commenced before or after the commencement of this section.

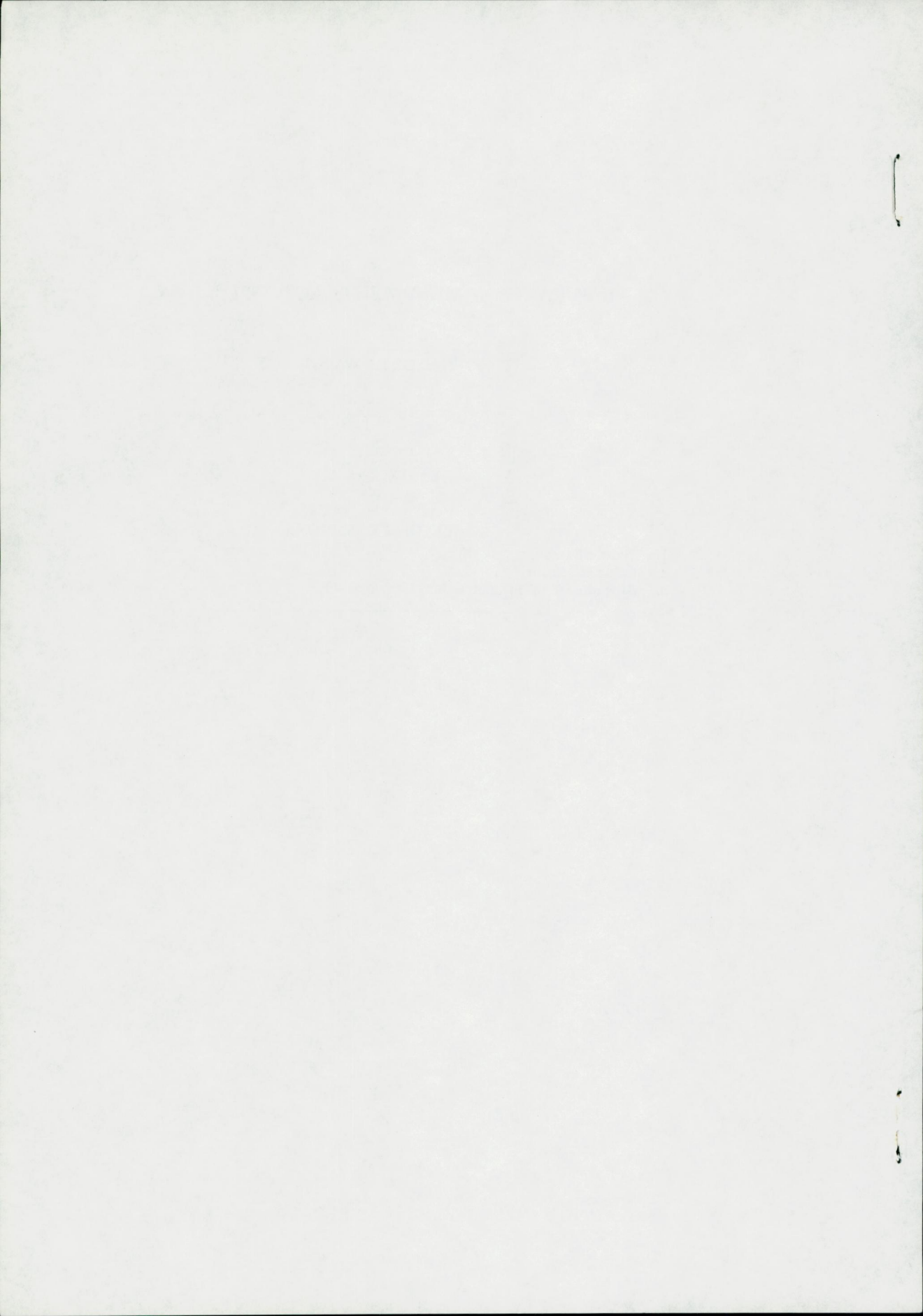
INSURANCE (AMENDMENT) ACT 1991 No. 46

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Insurance Act 1902 No. 49
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INSURANCE (AMENDMENT) ACT 1991 No. 46

NEW SOUTH WALES



Act No. 46, 1991

An Act to amend the Insurance Act 1902 in relation to the rights of insurers in respect of false claims. [Assented to 11 December 1991]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Insurance (Amendment) Act 1991.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Insurance Act 1902 No. 49

3. The Insurance Act 1902 is amended by inserting after Part 5 the following Part:

**PART 5A—PROCEDURAL AND EVIDENTIARY
PROVISIONS**

Rights of insurer to challenge evidence where false claim alleged

17A. (1) If:

- (a) civil proceedings have been commenced against a person in respect of a claim (being a claim in respect of which the person is or may be indemnified under a contract of insurance); and
- (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,

the insurer may apply to the court to be joined as a party to the proceedings.

(2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person (including a defendant) able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim.

(3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to:

- (a) any other claim in which the witness was involved; and
- (b) the credibility of the witness.

(4) If the court gives leave to do so, the insurer may:

- (a) cross-examine the witness; and
- (b) lead other evidence to refute the evidence given by the witness, as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).

Insurance (Amendment) 1991

(5) Any right to examine or cross-examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.

(6) This section applies despite section 53 of the Evidence Act 1898.

(7) This section applies to an insurer as a defendant in relation to a claim (being a claim referred to in subsection (1)) in the same way as this section applies to an insurer who is granted leave to be joined as a party.

(8) This section does not apply to proceedings in respect of a claim under the Motor Accidents Act 1988.

(9) This section applies to civil proceedings commenced before or after the commencement of this section.

[*Minister's second reading speech made in—
Legislative Assembly on 2 July 1991
Legislative Council on 3 December 1991*]

