

FIRST PRINT

**WORKERS COMPENSATION LEGISLATION (AMENDMENT)
BILL 1991 (No. 2)**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to transfer responsibility for medical referees and medical panels from the WorkCover Authority to the Compensation Court; and
- (b) to ensure that the total amount to be contributed to the WorkCover Authority Fund by insurers and self-insurers each year is contributed despite any change in the estimate of the relevant premium income on which contributions are based; and
- (c) to make a minor amendment relating to criminal proceedings for false workers compensation claims; and
- (d) to make miscellaneous changes to the legislation dealing with insolvent insurers, including:
 - (i) provision for an interim distribution of surplus money held for the payment of claims involving certain of those insolvent insurers; and
 - (ii) transfer of the administration of that legislation from the GIO to the WorkCover Authority; and
 - (iii) validations to take account of developments in the liquidations involving Bishopsgate Insurance Australia Limited and AGCI.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 is a formal provision which gives effect to the Schedule of amendments to the Compensation Court Act 1984.

Clause 4 is a formal provision which gives effect to the Schedule of amendments to the Workers Compensation Act 1987.

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Clause 5 is a formal provision which gives effect to the Schedule of amendments to the Bishopsgate Insurance Australia Limited Act 1983, the Associated General Contractors Insurance Company Limited Act 1980 and certain other Acts relating to insolvent insurers.

Clause 6 enacts special provisions relating to insolvent insurers, including provisions:

- (a) authorising an interim distribution of surplus money as soon as the proposed Act receives the Royal assent; and
- (b) validating action taken with respect to any scheme of arrangement relating to Bishopsgate Insurance Australia Limited; and
- (c) validating the payment of management expenses to the GIO as part of the costs of administration of the special funds.

SCHEDULE 1—AMENDMENT OF COMPENSATION COURT ACT 1984

Schedule 1 provides for the appointment of medical referees (including a chief medical officer) and the constitution of medical panels. The provisions are similar to the existing provisions except that:

- (a) the chief medical officer is to be an officer of the Compensation Court and not an officer of the WorkCover Authority; and
- (b) other medical referees are to be appointed by the Chief Judge; and
- (c) medical panels will continue to be constituted by medical referees nominated by the chief medical officer, but on behalf of the Court and not the WorkCover Authority.

SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION ACT 1987

Medical referees and panels

Schedule 2 (1), (3)–(5) and (9) make amendments as a consequence of the amendments made by Schedule 1.

False compensation claims

Schedule 2 (2) removes the restriction in section 92B of the Act that provides that the summary offence of making false workers compensation claims is not applicable if the claim form is verified by statutory declaration.

Insurers' Guarantee Fund

Schedule 2 (6) and (7) make minor changes to the provisions relating to insolvent insurers that are covered by the Insurers' Guarantee Fund.

Contributions to WorkCover Authority Fund

Schedule 2 (8) provides for the redetermination of contributions by insurers and self-insurers to the WorkCover Authority Fund to ensure that the appropriate total amount to be contributed to the Fund by insurers and self-insurers each year is contributed despite any change in the estimate of the relevant premium income on which the contributions are based. Under the Act, contributions are based on a common percentage of each insurer's premium income for the financial year concerned—the

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percentage being determined prior to that financial year on the basis of the estimated total amount of premium income that will be received by all insurers during the year and on the basis of the total amount required to be contributed to the Fund to meet the estimated amount of expenditure from the Fund. The WorkCover Authority's original estimate of premium income may need to be revised because of unexpected changes in economic circumstances.

**SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE
AUSTRALIA LIMITED ACT 1983**

The Act establishes a fund under the management of the GIO to meet the workers compensation liabilities of the insolvent Bishopsgate Insurance Australia Limited ("the Company"). The Act requires certain licensed insurers to pay contributions to the fund to meet those liabilities. After dissolution of the Company the Act provides for remaining entitlements to be paid out of the Insurers' Contribution Fund.

Transfer of administration

Schedule 3 (1) transfers the administration of the Act from the GIO to the WorkCover Authority and provides (after the closure of the fund) for payment of liabilities from the Insurers' Guarantee Fund instead of the Insurers' Contribution Fund.

Scheme of arrangement

Schedule 3 (3) and (4) make the necessary consequential changes to take account of the changing of the Bishopsgate liquidation to a scheme of arrangement.

Distribution of surplus to contributors

The Act presently provides that if any surplus money remains in the fund once the GIO has paid out or made provision for paying out money authorised or required to be paid out by the Act, the GIO is to repay that money attributable to contributors to the contributors (with any remaining amounts being paid to either the liquidator or the Insurers' Contribution Fund).

Schedule 3 (7) amends the Act to enable the GIO to make an interim distribution of the surplus to the contributors instead of the contributors having to wait until the money has been dealt with as presently required. The interim distribution and the final distribution are to be made on the basis that all surplus money is to be paid to the insurance companies which contributed to the fund (after deduction of any amount required to meet liabilities and contingencies in respect of future claims).

Schedule 3 (8) makes a consequential amendment to the regulation-making power.

Other changes

Schedule 3 (2) makes a similar minor change to the provisions relating to the fund as is made by Schedule 2 (6).

Schedule 3 (5) and (6) provide that payments may continue to be made from the fund before it is closed to satisfy existing judgments and awards (as well as other claims) when Bishopsgate Insurance Australia Limited is dissolved. At present payments under existing judgments and awards may only be made from the Insurers' Contribution Fund.

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**SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980**

Transfer of administration

Schedule 4 (1) amends the Act to effect a similar transfer of administration as proposed under Schedule 3 (1) in the case of Bishopsgate Insurance.

Direct payment of claims

Schedule 4 (2) amends the Act to allow GIO to pay workers compensation claims directly to claimants of AGCI instead of through the liquidator. A similar procedure applies in the case of the Bishopsgate liquidation.

Recoveries under indemnity given by Palmdale Insurance Limited to AGCI

Schedule 4 (4) facilitates the recovery of money from the liquidator of Palmdale Insurance Limited, a company in liquidation that was associated with AGCI and gave AGCI an indemnity in respect of certain of its liabilities (including its liabilities under relevant workers compensation insurance policies).

Distribution of surplus

Schedule 4 (7)–(9) amend the Act to enable an interim or final distribution of surplus contributions to the original contributors to the insolvent insurer under the Act in the same manner as is proposed under Schedule 3 for Bishopsgate Insurance.

Other changes

Schedule 4 (3) repeals a provision relating to recoveries from re-insurers of AGCI which is of no further use.

Schedule 4 (5) and (6) provide that payments may continue to be made from the fund before it is closed to satisfy existing awards (as well as other claims) when AGCI is dissolved. At present payments under existing awards may only be made from the Insurers' Contribution Fund.

**SCHEDULES 5–7—AMENDMENT OF OTHER ACTS RELATING TO
INSOLVENT INSURERS**

Schedules 5–7 amend Acts relating to other insolvent workers compensation insurers (including Northumberland Insurance Company; Riverina Insurance Company; and Standard Insurance Company) to effect a similar transfer of administration as proposed under Schedule 3 (1) in the case of Bishopsgate Insurance.

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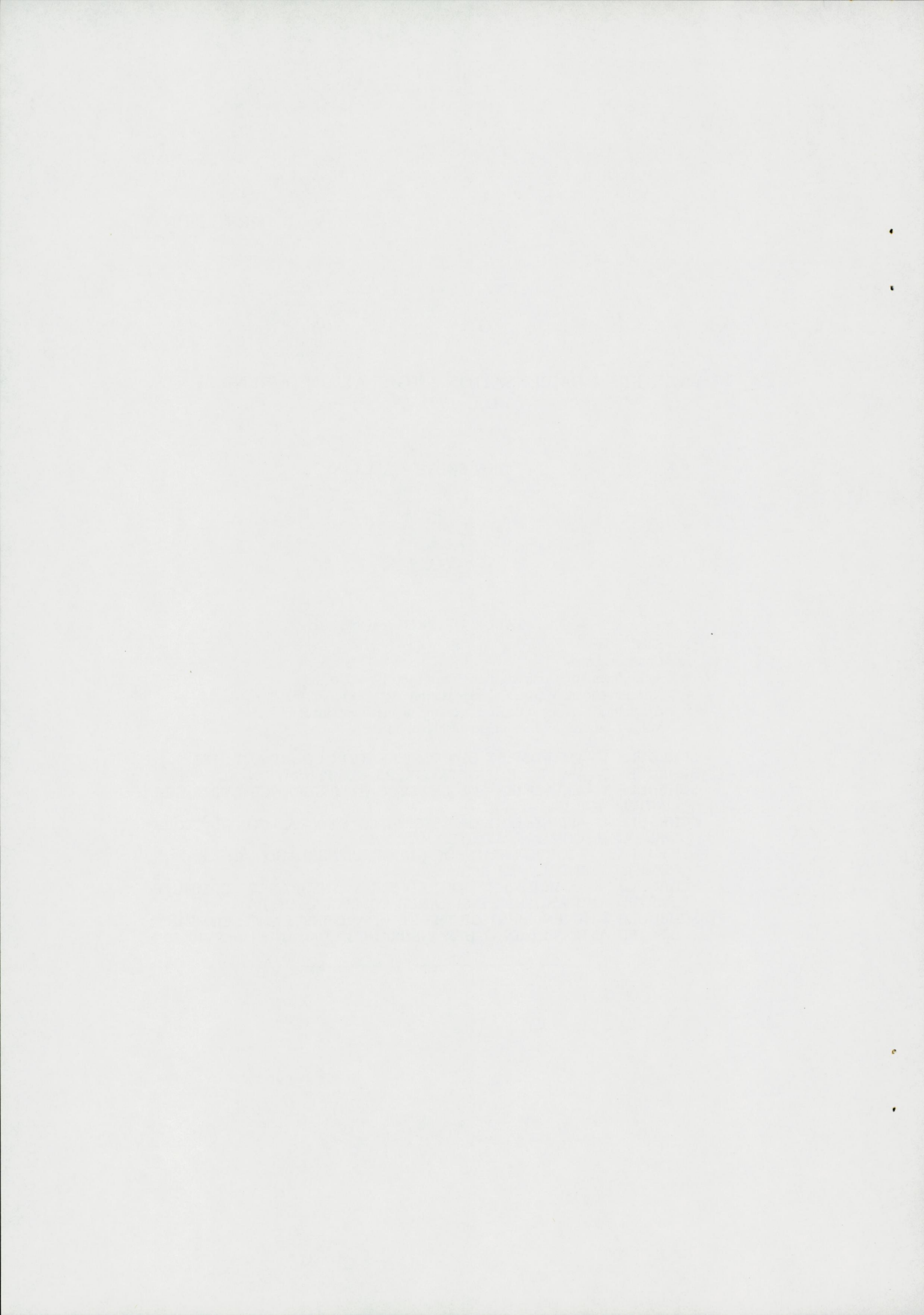
NEW SOUTH WALES



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**WORKERS COMPENSATION LEGISLATION (AMENDMENT)
BILL 1991 (No. 2)**

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No. , 1991

A BILL FOR

An Act to amend the Compensation Court Act 1984 and the Workers Compensation Act 1987 and certain other Acts with respect to medical referees and panels and certain insolvent workers compensation insurers; and for other purposes.

Workers Compensation Legislation (Amendment) 1991 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Workers Compensation Legislation (Amendment) Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 6 commences on the date of assent to this Act.

Amendment of Compensation Court Act 1984 No. 89

3. The Compensation Court Act 1984 is amended as set out in Schedule 1.

Amendment of Workers Compensation Act 1987 No. 70

4. The Workers Compensation Act 1987 is amended as set out in Schedule 2.

Amendment of various Acts relating to insolvent insurers

5. Each Act specified in Schedules 3–7 is amended in the manner set out in those Schedules.

Special provisions relating to insolvent insurers

6. (1) The Government Insurance Office may, at any time before the commencement of Schedule 3 (7), make a periodic interim repayment of money in the fund established under the Bishopsgate Insurance Australia Limited Act 1983. The repayment is to be made in accordance with section 16 of that Act, as proposed to be inserted by Schedule 3 (7), and, after the commencement of Schedule 3 (7), is taken to have been duly made under that section.

(2) The Government Insurance Office may, at any time before the commencement of Schedule 4 (7), make a periodic interim repayment of money in the fund established under the Associated General Contractors Insurance Company Limited Act 1980. The repayment is to be made in accordance with section 16 of that Act, as proposed to be inserted by Schedule 4 (7), and, after the commencement of Schedule 4 (7), is taken to have been duly made under that section.

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(3) Any scheme of arrangement in relation to Bishopsgate Insurance Australia Limited in which the Government Insurance Office participates before the commencement of section 6A of the Bishopsgate Insurance Australia Limited Act 1983 (as proposed to be inserted by Schedule 3 (3)) is taken to be a scheme of arrangement in which that Office was duly authorised to participate. The amendments made to that Act by this Act apply to any such scheme of arrangement.

(4) The Government Insurance Office is entitled, and is taken always to have been entitled, as part of the costs of the administration of a fund established by any of the Acts amended by Schedules 4–7 and in accordance with any such Act, to such management fee as is reasonable having regard to the work involving the fund.

**SCHEDULE 1—AMENDMENT OF COMPENSATION COURT
ACT 1984**

(Sec. 3)

(1) Section 14 (**Appointment of officers**):

- (a) In section 14 (1), after “assistant registrars”, insert “, a chief medical officer”.
- (b) In section 14 (2), after “assistant registrars”, insert “, chief medical officer”.

(2) Part 2, Division 5:

After Division 4, insert:

Division 5—Medical referees and panels

Medical referees

14A. (1) The Chief Judge may appoint medical practitioners to be medical referees (in addition to the chief medical officer) for the purposes of this Act and the Workers Compensation Act 1987.

(2) The Chief Judge is to obtain the advice of the chief medical officer or other suitable persons on the appointment of medical referees.

(3) A medical practitioner may be appointed as a medical referee whether or not the practitioner is an officer of the Court and whether or not the practitioner resides in New South Wales.

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 1—AMENDMENT OF COMPENSATION COURT
ACT 1984—*continued*

(4) If a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or worker, or by an insurer interested in that case, the medical referee is not qualified to act as medical referee in that case.

Medical panels

14B. (1) Medical panels are to be constituted in accordance with this section for the purposes of this Act and the Workers Compensation Act 1987.

(2) A medical panel is to be constituted, in respect of any particular matter or class of matters, by 2 or more medical referees nominated by (or in accordance with arrangements made by) the chief medical officer.

(3) Any such nomination or arrangement made by the chief medical officer is subject to any direction of the Court.

(4) The chief medical officer may nominate himself or herself as a member of a medical panel.

(3) Schedule 4 (**Savings and transitional provisions**):

(a) At the end of clause 1 (1), insert:

Workers Compensation Legislation (Amendment) Act 1991.

(b) After Part 2, insert:

**Part 3—Workers Compensation Legislation
(Amendment) Act 1991**

Existing medical referees and panels

6. (1) A medical referee appointed under section 127 of the Workers Compensation Act 1987 and holding office immediately before the repeal of that section is taken to have been appointed under section 14A of this Act.

(2) A medical panel constituted under section 128 of the Workers Compensation Act 1987 and which has not completed its work immediately before the repeal of that section is taken to have been constituted under section 14B of this Act.

(3) Any matter pending before a medical referee or medical panel under section 130 or 131 of the Workers Compensation Act 1987 on the commencement of this clause

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 1—AMENDMENT OF COMPENSATION COURT
ACT 1984—*continued*

is not affected by the amendments made to that section by the Workers Compensation Legislation (Amendment) Act 1991.

(4) In any other Act, an instrument made under any Act or any other document, a reference to a medical referee appointed under, or a medical panel constituted under, the Workers Compensation Act 1987 is to be read as a reference to a medical referee appointed under, or a medical panel constituted under, this Act.

SCHEDULE 2—AMENDMENT OF WORKERS
COMPENSATION ACT 1987

(Sec. 4)

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definitions of “medical panel” and “medical referee”, insert instead:

“**medical panel**” means a medical panel constituted under section 14B of the Compensation Court Act 1984;

“**medical referee**” means a medical referee appointed under section 14A of the Compensation Court Act 1984, and includes the chief medical officer appointed under that Act;

(2) Section 92B (**False claims etc.**):

(a) Omit section 92B (2) (a).

(b) After section 92B (2), insert:

(3) This section applies to a statement even though it has been verified by statutory declaration.

(3) Section 127 (**Medical referees**), section 128 (**Medical panels**):
Omit the sections.

(4) Section 130 (**Medical examination of worker at direction of Court etc.**):

From section 130 (1), omit “by the Authority”, insert instead “by the registrar of the Compensation Court”.

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SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION
ACT 1987—*continued*

- (5) Section 131 (**Reference of medical disputes to referee or panel on application of worker or employer**):
- (a) From section 131 (2) and (3), omit “Authority” wherever occurring, insert instead “registrar of the Compensation Court”.
 - (b) From section 131 (4) and (8), omit “regulations” wherever occurring, insert instead “rules of the Compensation Court”.
- (6) Section 227 (**Insurers’ Guarantee Fund**):
- (a) From section 227 (2) (c), omit “section 231 (3)”, insert instead “section 231 (2) or (3)”.
 - (b) In section 227 (3), after “Division”, insert “, any other Act”.
- (7) Section 231 (**Appointment of Authority as agent and attorney of employer and worker**):
- In section 231 (5) (b) (i), after “finalising any claim”, insert “against which the employer is indemnified under the policy”.
- (8) Section 261 (**Contributions to Fund by insurers and self-insurers**):
- After section 261 (6), insert:
- (6A) The Authority may, at any time during or after a financial year, re-determine the percentages determined pursuant to subsections (2) and (3) in respect of the financial year if the estimated total amount of premium income and deemed premium income for the financial year is less than the previous estimated amount on which the original determination of the percentage was based.
 - (6B) If a percentage is re-determined, the Authority is to make the necessary adjustments to the contributions payable by insurers and self-insurers.
- (9) Schedule 6 (**Savings, transitional and other provisions**), Part 12 (**Provisions relating to medical examinations and disputes**):
- Omit clause 1.

**SCHEDULE 3—AMENDMENT OF BISHOPSGATE
INSURANCE AUSTRALIA LIMITED ACT 1983**

(Sec. 5)

(1) Sections 2A, 2B:

After section 2, insert:

**WorkCover Authority to assume functions of GIO under
this Act**

2A. (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.

(2) Accordingly, after that commencement:

- (a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions; and
- (b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority; and
- (c) anything done or omitted to be done in connection with the exercise or performance of those functions before that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.

(3) In this section, a reference to a function includes a reference to a power, authority or duty.

**Insurers' Guarantee Fund to replace Insurers'
Contribution Fund**

2B. (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the Workers Compensation Act 1987.

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SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE
AUSTRALIA LIMITED ACT 1983—*continued*

(2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.

(2) Section 3 (**Fund**):

From section 3 (1) (a) (iii), omit "section 7 (1) (c)", insert instead "section 7 (1)".

(3) Section 6A:

After section 6, insert:

Scheme of arrangement

6A. (1) The Government Insurance Office may, for the purposes of this Act, participate in any scheme of arrangement in relation to the Company.

(2) The regulations may make provision for or with respect to any matter under this Act which is affected by any such arrangement.

(4) Section 7 (**Appointment of Government Insurance Office as agent and attorney of employer**):

(a) In section 7 (1) (c), after "winding-up of the Company" wherever occurring, insert "or under any scheme of arrangement in relation to the Company".

(b) After section 7 (1), insert:

(1A) A reference in subsection (1) (c) to a claim, judgment or award satisfied by the Government Insurance Office includes (in the case of payments under a scheme of arrangement in relation to the Company) a reference to any contingent liability in respect of any such claim, judgment or award that has not been satisfied or any such future claim, judgment or award.

(5) Section 14 (**Continuance of payment of workers' compensation in certain cases**):

Omit the section.

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE
AUSTRALIA LIMITED ACT 1983—*continued*

(6) Section 15 (**Entitlements payable after dissolution of the Company**):

(a) Omit section 15 (1), insert instead:

(1) When the Company has been dissolved, a person who would have had (but for the dissolution taking place) an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company is entitled to payment of that amount:

(a) out of the fund; and

(b) after the fund is closed, out of the Contribution Fund.

(b) After section 15 (3), insert:

(3A) When the Company has been dissolved, the payments of compensation under judgments or awards pertaining to policies of insurance issued by the Company which would (but for the dissolution taking place) be payable by the Company are to continue and be paid:

(a) out of the fund; and

(b) after the fund is closed, out of the Contribution Fund.

(c) In section 15 (4) (a), after “pursuant to that claim”, insert “or referred to in subsection (3A)”.

(7) Sections 16, 17:

Omit the sections, insert instead:

Application of surplus money in fund

16. (1) Money that remains in the fund after the Government Insurance Office has paid out (or made provision for paying out) all money authorised or required to be paid out of the fund by this Act is to be repaid in accordance with this section to the persons who have made contributions to the fund.

(2) The Government Insurance Office is required to make provision for all liabilities (including contingent liabilities) of the fund after its closure, including by making an appropriate payment to the Contribution Fund.

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SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE
AUSTRALIA LIMITED ACT 1983—*continued*

(3) If the Government Insurance Office is satisfied that contributors will become entitled to a repayment from the fund, it may make periodic interim repayments of money in the fund to contributors in accordance with this section.

(4) The Government Insurance Office is entitled to rely on the advice of an actuary as to the amount available for repayments under this section.

(5) Money is to be repaid to contributors under this section in the same proportions as the contributions were made.

(6) The Government Insurance Office may require each contributor who is repaid money by way of an interim repayment under this section to make a payment (not exceeding the amount repaid) to the fund if the amount standing to the credit of the fund before its closure is insufficient to meet the estimated liabilities (including contingent liabilities) of the fund.

(7) The Government Insurance Office may recover any amount overpaid or required to be paid under subsection (6) as a debt due to the Office.

(8) Repayments are not to be made under this section to the following contributors:

- (a) contributors who no longer exist or who cannot be located by the Government Insurance Office after due inquiry;
- (b) defaulting insurers within the meaning of Division 6A of Part 7 of the Workers Compensation Act 1987 or insolvent insurers within the meaning of Division 7 of Part 7 of that Act;
- (c) companies in liquidation.

Money otherwise payable to any such contributor may be paid into a suspense account by the Government Insurance Office and may, at any time, be paid into the Contribution Fund.

Application of money received after closure of fund

17. (1) Any money received, after the fund is closed, by the Government Insurance Office from the liquidator of the

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE AUSTRALIA LIMITED ACT 1983—*continued*

Company by way of dividend (or under any scheme of arrangement in relation to the Company) as agent and attorney of an employer is to be paid into an account in a bank in New South Wales.

(2) The money so paid is to be distributed to the contributors to the fund in the manner provided under section 16 for the distribution of the surplus remaining on the closure of the fund.

(8) Section 20 (**Regulations**):

(a) From section 20 (c), omit “and”.

(b) At the end of section 20 (d), insert:

; and

(e) the repayment of money to contributors.

SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980

(Sec. 5)

(1) Sections 2A, 2B:

After section 2, insert:

WorkCover Authority to assume functions of GIO under this Act

2A. (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.

(2) Accordingly, after that commencement:

(a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions; and

(b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980—
continued

Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority; and

- (c) anything done or omitted to be done in connection with the exercise or performance of those functions before that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.

(3) In this section, a reference to a function includes a reference to a power, authority or duty.

Insurers' Guarantee Fund to replace Insurers' Contribution Fund

2B. (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the Workers Compensation Act 1987.

(2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.

- (2) Section 8 (**Claims may be finalised etc. by Government Insurance Office as agent**):

In section 8 (2), after "Office", insert "(except to the extent that the liquidator of the Company otherwise agrees)".

- (3) Section 13 (**Payment into fund of money recovered by liquidator**):

Omit section 13 (1).

- (4) Section 13A:

After section 13, insert:

Recoveries under indemnity given by Palmdale Insurance to Company

13A. (1) Any money received by the Government Insurance Office from the liquidator of Palmdale Insurance

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SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980—
continued

Limited in connection with the indemnity given by Palmdale Insurance Limited to the Company by Deed of Indemnity dated 31 March 1976 is to be paid into the fund or, after the closure of the fund, in accordance with section 16A.

(2) For the purpose of determining any entitlement to such a payment, the liabilities of the Company include any contingent liability of the Government Insurance Office in respect of money which will in future be required to be borrowed by the liquidator of the Company from the fund, or which will in future be required to be paid by the Government Insurance Office from the fund or paid from the Contribution Fund, for the purpose of satisfying any claim, judgment or award arising from or pertaining to any policy of insurance issued by the Company.

(5) Section 14 (**Continuance of payment of workers' compensation in certain cases**):

Omit the section.

(6) Section 15 (**Entitlements payable after dissolution of the Company**):

(a) Omit section 15 (1), insert instead:

(1) When the Company has been dissolved, a person who would have had (but for the dissolution taking place) an entitlement to payment of any amount arising from or pertaining to any policy of insurance issued by the Company is entitled to payment of that amount:

(a) out of the fund; and

(b) after the fund is closed, out of the Contribution Fund.

(b) After section 15 (3), insert:

(3A) When the Company has been dissolved, the payments of compensation under judgments or awards pertaining to policies of insurance issued by the Company which would (but for the dissolution taking place) be payable by the Company are to continue and be paid by the Government Insurance Office:

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SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980—
continued

- (a) out of the fund; and
- (b) after the fund is closed, out of the Contribution Fund.
- (c) In section 15 (4) (a), after “pursuant to that claim”, insert “or referred to in subsection (3A)”.

(7) Sections 16, 16A:

Omit section 16, insert instead:

Application of surplus money in fund

16. (1) Money that remains in the fund after the Government Insurance Office has paid out (or made provision for paying out) all money authorised or required to be paid out of the fund by this Act is to be repaid in accordance with this section to the persons who have made contributions to the fund.

(2) The Government Insurance Office is required to make provision for all liabilities (including contingent liabilities) of the fund after its closure, including by making an appropriate payment to the Contribution Fund.

(3) If the Government Insurance Office is satisfied that contributors will become entitled to a repayment from the fund, it may make periodic interim repayments of money in the fund to contributors in accordance with this section.

(4) The Government Insurance Office is entitled to rely on the advice of an actuary as to the amount available for repayments under this section.

(5) Money is to be repaid to contributors under this section in the same proportions as the contributions were made.

(6) The Government Insurance Office may require each contributor who is repaid money by way of an interim repayment under this section to make a payment (not exceeding the amount repaid) to the fund if the amount standing to the credit of the fund before its closure is insufficient to meet the estimated liabilities (including contingent liabilities) of the fund.

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SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980—
continued

(7) The Government Insurance Office may recover any amount overpaid or required to be paid under subsection (6) as a debt due to the Office.

(8) Repayments are not to be made under this section to the following contributors:

- (a) contributors who no longer exist or who cannot be located by the Government Insurance Office after due inquiry;
- (b) defaulting insurers within the meaning of Division 6A of Part 7 of the Workers Compensation Act 1987 or insolvent insurers within the meaning of Division 7 of Part 7 of that Act;
- (c) companies in liquidation.

Money otherwise payable to any such contributor may be paid into a suspense account by the Government Insurance Office and may, at any time, be paid into the Contribution Fund.

Application of money received after closure of fund

16A. (1) Any money received, after the fund is closed, by the Government Insurance Office from the liquidator of the Company by way of dividend or otherwise pursuant to section 17 (1), or from the liquidator of Palmdale Insurance Limited as referred to in section 13A, is to be paid into an account in a bank in New South Wales.

(2) The money so paid is to be distributed to the contributors to the fund in the manner provided under section 16 for the distribution of the surplus remaining on the closure of the fund.

(8) Section 17 (**Recovery of money paid from fund**):

- (a) Omit section 17 (1) (b), insert instead:
 - (b) the amount of any contingent liability of the Company referred to in section 13A (2).
- (b) Omit section 17 (2) and (3), insert instead:
 - (2) The amounts referred to in subsection (1) are debts provable in the winding up of the Company.
- (c) Omit section 17 (4).

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL
CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980—
continued

(9) Section 20 (**Regulations**):

At the end of section 20 (c), insert:

; and

(d) the repayment of money to contributors.

SCHEDULE 5—AMENDMENT OF NORTHUMBERLAND
INSURANCE COMPANY LIMITED ACT 1975

(Sec. 5)

Sections 2A, 2B:

After section 2, insert:

**WorkCover Authority to assume functions of GIO under
this Act**

2A. (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.

(2) Accordingly, after that commencement:

- (a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions; and
- (b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority; and
- (c) anything done or omitted to be done in connection with the exercise or performance of those functions before that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.

(3) In this section, a reference to a function includes a reference to a power, authority or duty.

Workers Compensation Legislation (Amendment) 1991 (No. 2)

**SCHEDULE 5—AMENDMENT OF NORTHUMBERLAND
INSURANCE COMPANY LIMITED ACT 1975—*continued***

**Insurers' Guarantee Fund to replace Insurers'
Contribution Fund**

2B. (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the Workers Compensation Act 1987.

(2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.

**SCHEDULE 6—AMENDMENT OF RIVERINA INSURANCE
COMPANY LIMITED AND ANOTHER INSURANCE
COMPANY ACT 1971**

(Sec. 5)

Sections 2A, 2B:

After section 2, insert:

**WorkCover Authority to assume functions of GIO under
this Act**

2A. (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.

(2) Accordingly, after that commencement:

- (a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions; and
- (b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority; and
- (c) anything done or omitted to be done in connection with the exercise or performance of those functions before

Workers Compensation Legislation (Amendment) 1991 (No. 2)

**SCHEDULE 6—AMENDMENT OF RIVERINA INSURANCE
COMPANY LIMITED AND ANOTHER INSURANCE COMPANY
ACT 1971—*continued***

that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.

(3) In this section, a reference to a function includes a reference to a power, authority or duty.

Insurers' Guarantee Fund to replace Insurers' Contribution Fund

2B. (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the Workers Compensation Act 1987.

(2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.

**SCHEDULE 7—AMENDMENT OF THE STANDARD
INSURANCE COMPANY LIMITED AND CERTAIN OTHER
INSURANCE COMPANIES ACT 1963**

(Sec. 5)

Sections 2A, 2B:

After section 2, insert:

WorkCover Authority to assume functions of GIO under this Act

2A. (1) After the commencement of this section, the WorkCover Authority has the functions of the Government Insurance Office under this Act.

(2) Accordingly, after that commencement:

- (a) the WorkCover Authority is the successor of the Government Insurance Office in connection with the rights and liabilities arising from the exercise or performance of those functions; and

Workers Compensation Legislation (Amendment) 1991 (No. 2)

SCHEDULE 7—AMENDMENT OF THE STANDARD
INSURANCE COMPANY LIMITED AND CERTAIN OTHER
INSURANCE COMPANIES ACT 1963—*continued*

- (b) a reference in this Act to the Government Insurance Office, or a reference in any other Act or in any statutory instrument, contract or other document to the Government Insurance Office in connection with the exercise or performance of those functions, is to be read as a reference to the WorkCover Authority; and
- (c) anything done or omitted to be done in connection with the exercise or performance of those functions before that commencement by, to or in respect of the Government Insurance Office is (to the extent that it has any effect) taken to have been done or omitted by, to or in respect of the WorkCover Authority.

(3) In this section, a reference to a function includes a reference to a power, authority or duty.

Insurers' Guarantee Fund to replace Insurers' Contribution Fund

2B. (1) After the commencement of this section, any amount required or authorised by or under this Act to be paid into or out of the Insurers' Contribution Fund is to be paid into or out of the Insurers' Guarantee Fund established under section 227 of the Workers Compensation Act 1987.

(2) Accordingly, after that commencement a reference in this Act to the Insurers' Contribution Fund is to be read as a reference to that Guarantee Fund.



LEGISLATIVE COUNCIL

WORKERS COMPENSATION LEGISLATION (AMENDMENT)

BILL 1991 (NO.2)

SECOND READING

MINISTER TO SAY

I move that this Bill be now read a second time.

This Bill is designed to make a number of administrative changes and other minor refinements to statutes relating to workers compensation.

The proposed measures are: the transfer to the Compensation Court of responsibility for medical panels; the strengthening of penalty provisions for false compensation claims; streamlining of arrangements for the administrative levy payable by insurers under the WorkCover scheme; and updating of various Acts covering claims against certain insolvent pre-WorkCover insurers.

At present, medical panels and referees under the Workers Compensation Act fall within the administration of the WorkCover Authority.

Since the function of medical panels and referees is to decide medical aspects of disputed workers compensation claims, it is considered more appropriate for them to be attached to the Compensation Court which has the main jurisdiction for determining disputed claims under the Act.

To assist in determining matters that are litigated, the Court already, under existing arrangements, refers many medical questions for report by panels.

The proposed transfer of administrative responsibility to the Court will enable the necessary interaction between panels and the Court to operate more efficiently.

Another item contained in the Bill concerns penalties for the making of knowingly false statements in connection with workers compensation claims.

The relevant section was introduced by amendment of the Workers Compensation Act in 1989 and experience has shown that the limitation to which it is subject - namely, it does not apply to false statements in the form of a statutory declaration - is inappropriate.

The proposed removal of that restriction, provided by the Bill, will make the provision more effective as a deterrent to fraud and will bring the Workers Compensation Act into line with the corresponding provision in the Motor Accidents Act.

The Bill also includes an amendment to streamline the procedure applicable to the levy payable by insurers under the Workers Compensation Act, to fund the operations of the WorkCover Authority and the Compensation Court.

For each financial year, the levy is a specified percentage of premium income received by licensed insurers during the year. A corresponding requirement applies to employers licensed as self-insurers.

However, the rate of premium income may fluctuate in the course of a year owing to economic circumstances, with the result that amounts contributed by insurers may be insufficient to meet the actual operating costs of the Authority and the Court.

The proposed amendment will introduce a mechanism by which the levy rate may be re-determined in the course of a financial year, in order to ensure that originally-budgeted amount is in fact collected by the WorkCover Authority Fund.

Lastly, the Bill contains a number of proposed amendments to update and rationalise a number of special schemes established some years ago under the Bishopsgate Insurance Australia Limited Act and similar Acts.

Those schemes each provided for the establishment of a special fund - contributed to by insurers at the time - to cover claims affected when certain former licensed insurers went into liquidation.

The process of running off claims under those schemes and of recovering relevant amounts from the company liquidators has reached the point where it is appropriate to make a number of refinements in anticipation of closure of the special funds.

Accordingly, the Bill provides for the eventual transfer to the WorkCover Authority of responsibility for remaining claims. This is consistent with the Authority's previous assumption of responsibility for the Insurers' Guarantee Fund under the Workers Compensation Act - which is a standing Fund to cover any further insolvencies.

In addition, the existing provisions under which insurers and self-insurers who originally contributed to the special funds may receive distributions of surplus amounts is to be extended so as to allow interim distributions to take place - after setting aside actuarially-assessed reserves to meet any outstanding liabilities.

In the case of the Bishopsgate Insurance Australia Limited Act and the Associated General Contractors Insurance Company Limited Act, modifications are included to take account of developments in the liquidations of those companies.

The liquidators of those two companies have each proposed special arrangements with creditors - which include the funds under the New South Wales Acts - to expedite completion of the liquidation process.

The Bill accordingly provides for the amendment of each Act to fit in with the practical arrangements proposed.

The funds under the Bishopsgate Act and the Associated General Contractors Insurance Act will benefit from this, by receiving quicker payment of dividends from the liquidators - which will then be available for payment of claimant workers, or where appropriate, distribution to contributors.

Other items of an ancillary nature are also included.

I commend the Bill.

