

1990 - No. 245

WORKERS COMPENSATION ACT 1987 - REGULATION

(Relating to defaulting insurers)

NEW SOUTH WALES



[Published in Gazette No. 56 of 1 May 1990]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Workers Compensation Act 1987, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY

Minister for Industrial Relations and Employment.

The Workers Compensation (General) Regulation 1987 is amended by inserting after Part 12 the following Part:

PART 13 - DEFAULTING INSURERS

Definitions

35. In this Part:

"defaulting insurer" means an insurer to which an order of the Minister in force under clause 36 relates, but does not include an insolvent insurer;

"insolvent insurer" means an insolvent insurer within the meaning of Division 7 of Part 7 of the Act.

Declaration of defaulting insurers

36. If the Minister is satisfied that a licensed insurer or former licensed insurer is unable to meet claims and other liabilities under policies of insurance issued or renewed by it, the Minister

may, by order in writing, declare that the insurer is a defaulting insurer for the purposes of this Part.

Premiums Adjustment Fund may be applied to meet claims etc. of defaulting insurer

37. (1) For the purposes of section 203 (3) of the Act, amounts standing to the credit of the Premiums Adjustment Fund may be applied by the Authority for the purposes of:

- (a) satisfying claims, judgments or awards arising from or relating to policies of insurance issued or renewed by a defaulting insurer (whether before or after the commencement of this clause); and
- (b) meeting the management expenses incurred in respect of satisfying those claims, judgments or awards.

(2) The Authority is not to apply an amount under this clause except in accordance with an arrangement between the Authority and the defaulting insurer, whereby the defaulting insurer agrees to the payments being made on its behalf by the Authority and agrees to repay any money so paid on its behalf.

(3) Any such repayments are to be credited to the Premiums Adjustment Fund.

(4) Amounts applied by the Authority under this clause are to be applied in accordance with such priorities among claims, judgments and awards as the Authority determines.

Premiums Adjustment Fund may be applied to meet deficiency in Insurers' Guarantee Fund

38. (1) For the purposes of section 203 (3) of the Act, amounts standing to the credit of the Premiums Adjustment Fund may be applied by the Authority for the purpose of meeting any deficiency in the Insurers' Guarantee Fund, having regard to the payments required to be made from that Fund under the Act in connection with insolvent insurers.

(2) Any amount applied under this clause is to be advanced by the Authority and paid into the Insurers' Guarantee Fund.

(3) Repayments of any such advance are to be credited to the Premiums Adjustment Fund.

Contributions to Premiums Adjustment Fund for the purposes of this Part

39. (1) The Authority may determine, from time to time, the amount required to be contributed to the Premiums Adjustment Fund if there is insufficient money in that Fund for the purposes of this Part.

(2) The Authority may direct insurers (within the meaning of Division 4 of Part 7 of the Act) to pay to the Authority for payment into the Premiums Adjustment Fund, such contributions and from such statutory funds of the insurers, as the Authority determines in order that the requisite amount is contributed to the Premiums Adjustment Fund.

(3) The Authority is required to make any such determination in such equitable manner as the Authority determines having regard to the amounts standing to the credit of the statutory funds of each insurer.

(4) For the purposes of section 197 (i) of the Act, the payment of contributions under this clause from statutory funds is authorised.

(5) The Authority may refund any contributions by insurers under this clause. Any such refund is, for the purposes of section 196 (f) of the Act, to be paid into the statutory fund from which the contributions were made.

EXPLANATORY NOTE

The object of this Regulation is to enable the Workcover Authority to provide funds to meet workers compensation claims which are not paid because of the default of an insurer. The funds are to be provided on an interim basis pending the appointment of a liquidator to the defaulting insurer and the full implementation of the Insurers' Guarantee Fund provisions of the Workers Compensation Act 1987.
