



New South Wales

Workers Compensation Amendment (Terrorism Insurance Arrangements) Act 2002 No 123

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New South Wales

Workers Compensation Amendment (Terrorism Insurance Arrangements) Act 2002 No 123

Act No 123, 2002

An Act to amend the *Workers Compensation Act 1987* to provide for a New South Wales workers compensation terrorism re-insurance scheme; and for other purposes. [Assented to 16 December 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Amendment (Terrorism Insurance Arrangements) Act 2002*.

2 Commencement

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

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

Part 7 Insurance

Insert after Division 7:

Division 8 Terrorism Re-insurance Fund

239AA Definitions

In this Division:

act of terrorism—see section 239AB.

insurer includes a licensed insurer, a self-insurer and a specialised insurer.

threshold amount—see section 239AC.

TRF means the Terrorism Re-insurance Fund (if any) established under section 239AE.

239AB Meaning of “act of terrorism”

- (1) An *act of terrorism* is an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (2) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this Act. An act may be so characterised only if it:
 - (a) causes or threatens to cause death, personal injury or damage to property, and
 - (b) is designed to influence a government or to intimidate the public or a section of the public, and
 - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

239AC Meaning and application of “threshold amount”

- (1) The threshold amount is the amount of \$1 million.
- (2) The threshold amount applies to the total amount of claims referred to in this Division in respect of an act of terrorism specified in a declaration under section 239AD, and not to the amount of claims in respect of that act that are made against each individual insurer.
- (3) The threshold amount is to be apportioned among the insurers who have a liability in respect of a claim referred to in this Division.

Note. See section 239AH (6) for the *insurer's proportion of the threshold amount*.

239AD Minister may make declaration as to significant terrorism-related liabilities

- (1) The Minister may, by order published in the Gazette, declare that an act of terrorism specified in the declaration has given rise to significant terrorism-related liabilities.
- (2) The Minister may not make such a declaration unless:
 - (a) an insurer has requested the Minister to do so, and
 - (b) the Minister is satisfied that:
 - (i) an act of terrorism occurred after 4pm on 30 June 2002 or at any time on any day after that date, and
 - (ii) the act of terrorism has given rise to liabilities (whether liabilities of one or more self-insurers, or liabilities under policies of insurance issued or renewed by one or more insurers that are not self-insurers, or both) for payment of amounts that, in total, exceed the threshold amount.

239AE Terrorism Re-insurance Fund

- (1) On the first occasion (if any) that a declaration is made under section 239AD, there is to be established a fund to be known as the “Terrorism Re-insurance Fund” (or *TRF*).
- (2) The following are to be paid into the TRF:
 - (a) all contributions required under this Division or the regulations to be paid by insurers,
 - (b) income from the investment of money in the TRF,

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- (c) any amounts authorised by the regulations to be paid into the TRF from the funds of the Authority,
 - (d) all money recovered by the Authority pursuant to section 239AJ,
 - (e) any other amounts that may lawfully be paid into the TRF.
- (3) The following are to be paid out of the TRF:
- (a) the costs of administration of the TRF,
 - (b) such other payments as may be authorised or required by this Division or the regulations to be so paid.
- (4) The TRF is, subject to this Act, under the direction, control and management of the Authority.
- (5) The Authority may invest and re-invest money in the TRF in such investments as may be determined from time to time by the Authority. Any such investment may at any time be realised, hypothecated or otherwise dealt with or disposed of in whole or in part by the Authority.

239AF Insurers to provide Authority with information

- (1) If an insurer requests the Minister to make a declaration under section 239AD, the Authority may from time to time, by notice in writing to any insurer (specifying the act in respect of which the declaration is sought), require the insurer to provide the Authority with information in relation to that act in accordance with this section.
- (2) The information is to be provided, in writing, no later than 21 days after the notice is served on the insurer.
- (3) The following information is to be provided:
 - (a) a statement as to whether the insurer has, as an insurer, incurred any liability for payment as a result of the act specified in the notice,
 - (b) if the insurer has incurred such a liability:
 - (i) details of any claims received by the insurer in respect of the liability,
 - (ii) details of any amount paid in respect of those claims,

- (iii) an estimate (calculated in accordance with the method specified in the notice) of any further amount that the insurer will be required to pay (in respect of both claims already received by the insurer and anticipated claims),
 - (iv) details of any contracts or arrangements for re-insurance that are in force to the benefit of the insurer in connection with any such liability,
 - (c) such other information as may be prescribed by the regulations.
- (4) If the insurer subsequently has reason to revise any information provided under this section, the insurer is required to furnish the Authority with the revised information in accordance with the WorkCover Guidelines (which may make provision with respect to the furnishing of that information).
- (5) An insurer who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

239AG Contributions to Terrorism Re-insurance Fund

- (1) On each occasion that a declaration is made under section 239AD, the Authority is to determine, in accordance with this section:
 - (a) the total amount to be paid to the TRF, and
 - (b) the amount to be contributed by each insurer.
- (2) The total amount to be paid to the TRF is the amount that the Authority estimates will be necessary to satisfy all claims (both against self-insurers and under policies of insurance issued or renewed by insurers that are not self-insurers) in respect of the act of terrorism specified in the declaration, less the greater of the following amounts:
 - (a) the total of the maximum amounts payable to insurers under contracts or arrangements for re-insurance in respect of liability for claims arising from the act of terrorism,
 - (b) the threshold amount.

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- (3) The Authority is to determine the amount to be paid to the TRF by an insurer in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A is the amount of wages (within the meaning of the insurance premiums order relating to the financial year in which the act of terrorism occurred) by reference to which the insurer's premium (or, if the insurer is a self-insurer, the insurer's deemed premium income) for that financial year was calculated.

B is the total amount of wages (as referred to in **A** above) of all insurers.

C is the amount determined under subsection (1) (a).

- (4) The Authority is to give each insurer written notice of the amount determined under this section in respect of the insurer. The notice must specify the date or dates (the date being (or, if more than one date is specified, the first date being) a date not less than 15 days after the notice is given) by which the insurer must pay the amount or specified instalments of the amount (or, if the notice requires payment of a lesser amount in accordance with subsection (5), that lesser amount or specified instalments of that lesser amount) to the Authority.
- (5) The notice may (but need not) offset in accordance with section 239AI the amount (if any) to be reimbursed to the insurer under section 239AH and reduce the amount to be paid by the insurer under this section accordingly.
- (6) If the Authority considers it necessary to do so (because, for example, of the discovery of additional liabilities of insurers arising from the act of terrorism concerned or because the amount estimated to be necessary to satisfy all claims was insufficient to do so), the Authority may make further determinations, in accordance with this section, in respect of the same act of terrorism. Subsections (4) and (5) apply in relation to any such further determination under subsection (3) in the same way as they apply in relation to the original determination under that subsection.

- (7) If an amount is not paid in accordance with a notice under this section (regardless of whether the insurer concerned is to receive any reimbursement under section 239AH):
- (a) the Authority may recover the amount (together with interest at the prescribed rate) as a debt in a court of competent jurisdiction, and
 - (b) the insurer concerned is guilty of an offence.
- Maximum penalty: 100 penalty units.

239AH Partial reimbursement of insurers from Terrorism Re-insurance Fund

- (1) If a declaration has been made under section 239AD, an insurer may apply to the Authority for reimbursement of part of the amount paid by the insurer in respect of claims arising from the act of terrorism specified in the declaration.
- (2) The Authority may, in accordance with this section, reimburse an insurer who makes an application under subsection (1).
- (3) Any such reimbursement is to be made out of the TRF.
- (4) The Authority may reimburse an insurer only if it is satisfied that:
 - (a) the insurer has made the payments specified in the insurer's application for reimbursement, and
 - (b) the payments were made in respect of claims (whether because the insurer is a self-insurer or under policies of insurance issued or renewed by the insurer) arising from the act of terrorism specified in the declaration under section 239AD, and
 - (c) the amount to be reimbursed is no more than the total amount paid by the insurer in respect of those claims less the amount of the insurer's excess.
- (5) The Authority may:
 - (a) make an interim calculation of an insurer's proportion of the threshold amount, and

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- (b) make an interim reimbursement (or reimbursements) to an insurer,

on the basis of initial information provided by the insurer to the Authority under section 239AF, and may make further calculations or reimbursements (or both) on the basis of any further or revised information provided under that section.

- (6) In this section:

insurer's excess means the greater of the following:

- (a) the insurer's proportion of the threshold amount,
(b) the maximum amount that is payable to the insurer under any contract or arrangement for re-insurance in respect of its liability for claims arising from the act of terrorism.

insurer's proportion of the threshold amount means the amount calculated in accordance with the following formula:

$$\frac{X}{Y} \times Z$$

where:

X is the amount of the insurer's liability in respect of claims arising from the act of terrorism.

Y is the total amount of liability of all insurers in respect of those claims.

Z is the threshold amount.

239AI Authority may offset

- (1) The Authority may apply all or part of the amount to be reimbursed to an insurer under section 239AH so as to reduce the amount of any money due from and unpaid by the insurer under section 239AG (including money by way of interest calculated on the amount originally demanded under that section).
- (2) The Authority is to make any necessary adjustments consequent on the application of a reimbursement (or part of a reimbursement) under this section and is to give the insurer written notice of:
- (a) the way in which the reimbursement (or part of the reimbursement) has been applied, and

- (b) any adjustments that have been made, and
- (c) the amount (if any) that remains due from the insurer under section 239AG after the application of the reimbursement (or part of the reimbursement).

239AJ Subrogation

- (1) On reimbursing an insurer under section 239AH in relation to a claim paid by the insurer, the Authority is subrogated, to the extent of the amount of the reimbursement, to all the rights and remedies of that insurer against any other person in respect of recovery of the money paid by the insurer in relation to the claim.
- (2) A certificate given by the General Manager certifying that a specified amount has been reimbursed, under section 239AH, to a specified insurer in relation to specified payments made by the insurer is evidence of the matter certified.
- (3) The Authority may exercise the rights and remedies to which the Authority is subrogated under this section in the name of the Authority or in the name of the insurer concerned.

239AK Regulations

- (1) The regulations may make provision for or with respect to the TRF.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) requiring insurers to make contributions and further contributions to the TRF,
 - (b) the manner and method of determining any such contributions and further contributions,
 - (c) the payment, and proceedings for the recovery, of contributions and further contributions to the TRF,
 - (d) the making of applications for reimbursement from the TRF, including the information to be provided to the Authority in connection with any such application,
 - (e) the circumstances and the manner in which contributions of insurers, and other amounts standing to the credit of the TRF, may be distributed to insurers otherwise than by way of reimbursement under section 239AH.

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- (3) The regulations may exempt from the operation of all or any of the provisions of this Division any specified insurer or class of insurers in such circumstances (if any), and subject to such conditions (if any), as may be specified in the regulations.

239AL Review

- (1) The Minister is to conduct a review of this Division to determine whether the policy objectives of the Division remain valid and whether the provisions of the Division remain appropriate for securing those objectives.
- (2) The review is to be conducted as soon as possible after 30 June 2004, and a report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the completion of the review.

[Second reading speech made in—
Legislative Assembly on 15 November 2002
Legislative Council on 3 December 2002]

BY AUTHORITY