



New South Wales

# NSW Self Insurance Corporation Amendment Act 2013 No 45

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of NSW Self Insurance Corporation Act 2004 No 106	3

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New South Wales

# **NSW Self Insurance Corporation Amendment Act 2013 No 45**

Act No 45, 2013

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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. [Assented to 25 June 2013]

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

**1    Name of Act**

This Act is the *NSW Self Insurance Corporation Amendment Act 2013*.

**2    Commencement**

This Act commences on the date of assent to this Act.

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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.

**[2] Section 3 (1), definition of “Government managed fund scheme”**

Omit “or an authority of the State” wherever occurring.

Insert instead “, an authority of the State or an eligible State official”.

**[3] Section 3 (1), definition of “Government managed fund scheme”**

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.”.

Insert instead:

but does not include any arrangement under which:

- (c) home warranty insurance is provided (or the Home Warranty Insurance Fund is managed) by or on behalf of the Self Insurance Corporation, or
- (d) principal arranged construction insurance is provided (or the Construction Risks Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.

**[4] Section 8 Specific functions in relation to Government managed fund schemes**

Insert “(including by providing indemnities)” after “arrangements” in section 8 (c).

**[5] Section 8 (d)**

Omit “or an authority of the State” wherever occurring.

Insert instead “, an authority of the State or an eligible State official”.

**[6] Section 8 (2)–(4)**

Insert at the end of section 8:

- (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.

**Note.** 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.

- (3) Nothing in the *State Owned Corporations Act 1989* (including clauses 5 and 6 of Schedule 10 to that Act) prevents the Self Insurance Corporation from providing indemnities to, or entering

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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.

- (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 *Corporations Act 2001* of the Commonwealth in relation to Chapter 7 (Financial services and markets) of that Act.

**Note.** 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.

**[7] Section 8B Competition authorisations**

Omit “*Trade Practices Act 1974*” wherever occurring in section 8B (1) and (3).

Insert instead “*Competition and Consumer Act 2010*”.

**[8] Section 8C**

Insert after section 8B:

**8C Specific functions relating to principal arranged construction insurance**

- (1) The Self Insurance Corporation has the following functions with respect to principal arranged construction insurance:
- (a) to carry on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales,
  - (b) to manage the Construction Risks Insurance Fund,
  - (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.

- (2) A project is a *major capital works project* for the purposes of subsection (1) (a) 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, or
    - (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.

**[9] Section 11 Self Insurance Fund**

Insert “or Construction Risks Insurance Fund” after “Home Warranty Insurance Fund” in section 11 (1) (f).

**[10] Section 11 (2)**

Omit “home warranty insurance and the management of the Home Warranty Insurance Fund”.

Insert instead “home warranty insurance or principal arranged construction insurance or the management of the Home Warranty Insurance Fund or Construction Risks Insurance Fund”.

**[11] Section 11 (2) (f)**

Insert after section 11 (2) (e):

- (f) payment into the Construction Risks Insurance Fund of such amounts as may be approved by the Minister for transfer into that Fund.

**[12] Section 11 (3)**

Omit “home warranty insurance or the operation of the Home Warranty Insurance Fund”.

Insert instead “home warranty insurance or principal arranged construction insurance or the operation of the Home Warranty Insurance Fund or Construction Risks Insurance Fund”.

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**[13] Part 4, Division 3**

Insert after Division 2:

**Division 3 Construction Risks Insurance Fund**

**12C Construction Risks Insurance Fund**

- (1) There is to be established in the Special Deposits Account a Construction Risks Insurance Fund (*the Fund*).
- (2) The following are to be paid into the Fund:
  - (a) all money received by the Self Insurance Corporation as insurance premiums for principal arranged construction insurance that it provides,
  - (b) all money received by the Self Insurance Corporation from re-insurers in connection with principal arranged construction insurance that it provides,
  - (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,
  - (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,
  - (e) all money transferred to the Fund from the Self Insurance Fund,
  - (f) all money advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
  - (g) the proceeds of the investment of money in the Fund,
  - (h) all money directed or authorised to be paid into the Fund by or under this or any other Act.
- (3) Money may be paid from the Fund for any of the following purposes:
  - (a) the payment of claims made under any principal arranged construction insurance provided by the Self Insurance Corporation,
  - (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



construction insurance business of the Self Insurance Corporation,

- (c) the payment of amounts required to meet administrative expenses in relation to the Fund,
- (d) the payment into the Consolidated Fund of any amount that the Self Insurance Corporation considers (after applying an appropriate prudential margin) to be surplus to the requirements of the Fund from time to time to repay (whether in whole or in part) any money previously advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
- (e) the payment of any other amounts directed or authorised to be paid from the Fund by or under this or any other Act.

**12D Investment of money in Construction Risks Insurance Fund**

The Self Insurance Corporation may invest money in the Construction Risks Insurance Fund:

- (a) in the manner authorised by or under the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Self Insurance Corporation to invest the money, in any other manner approved by the Minister.

**[14] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

**[15] Schedule 1, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of NSW Self Insurance Corporation Amendment Act 2013**

**5 Existing individual statements of cover**

- (1) Any statement of cover issued by the Self Insurance Corporation before the commencement of the *NSW Self Insurance Corporation Amendment Act 2013* that purported to cover the liabilities of an eligible State official on an individual basis is taken to be (and always to have been) legally enforceable by the official in its application to that official.

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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).

**6 Transfer of money from Self Insurance Fund to Construction Risks Insurance Fund**

- (1) This clause applies to any money deposited in the Self Insurance Fund (*existing principal arranged insurance funds*) that:
- (a) was deposited in the Self Insurance Fund before the commencement of Division 3 of Part 4 of this Act, and
  - (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.
- (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.

[Second reading speech made in—

Legislative Assembly on 9 May 2013

Legislative Council on 20 June 2013]