



New South Wales

Workers Compensation Amendment (Insurance Reform) Regulation 2005

under the

Workers Compensation Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation Act 1987*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Commerce

Explanatory note

The object of this Regulation is to provide for arrangements for the exercise of functions by current managed fund insurers on behalf of the Nominal Insurer as “temporary agents” during the transition period before the appointment of scheme agents to exercise functions on behalf of the Nominal Insurer.

The arrangements provide for the following:

- (a) limitations on the authority of a managed fund insurer to act as a temporary agent,
- (b) the imposition of trustee duties on the directors of a managed fund insurer in respect of payments to or from the Insurance Fund,
- (c) the construction as references to the Nominal Insurer of references to managed fund insurers in certain existing contracts and in documents issued by them on behalf of the Nominal Insurer,
- (d) transitional funding arrangements,
- (e) the termination of temporary agency arrangements,
- (f) transitional arrangements for managed fund insurers who do not become temporary agents.

This Regulation is made under the *Workers Compensation Act 1987*, including Part 19A of Schedule 6 and section 280 (the general regulation-making power).

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Clause 1 Workers Compensation Amendment (Insurance Reform) Regulation 2005

Workers Compensation Amendment (Insurance Reform) Regulation 2005

under the

Workers Compensation Act 1987

1 Name of Regulation

This Regulation is the *Workers Compensation Amendment (Insurance Reform) Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

3 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Part 23, Division 5

Insert after Division 4 of Part 23:

Division 5 Insurance Reforms—2003 amending Act

239 Interpretation

- (1) In this Division:
temporary agent means agent for the Nominal Insurer pursuant to clause 3 (1) (g) of Part 19A of Schedule 6 to the 1987 Act.
- (2) Expressions used in this Division have the same meaning as in Part 19A (Provisions consequent on enactment of *Workers Compensation Amendment (Insurance Reform) Act 2003*) of Schedule 6 to the 1987 Act.

240 Authority to act as temporary agent

- (1) The authority of a managed fund insurer to act as a temporary agent is subject to the requirements of this clause (in addition to the requirements of any directions of the Nominal Insurer under this clause or clause 3 (1) (g) of Part 19A of Schedule 6 to the 1987 Act).
- (2) A managed fund insurer is, in the exercise of functions as a temporary agent, subject to the direction and control of the Nominal Insurer.
- (3) A managed fund insurer is authorised to act as temporary agent only in respect of the following policies of insurance (and in respect of claims and proceedings that relate to those policies):
 - (a) policies issued by or assigned to the insurer before the relevant date for the insurer,
 - (b) policies issued by the insurer as a temporary agent after the relevant date for the insurer,
 - (c) such other policies of insurance as the Nominal Insurer may from time to time authorise the insurer to act as agent for.
- (4) The Nominal Insurer may direct that a managed fund insurer (the *claims agent*) is authorised to act as temporary agent in respect of specified claims and proceedings or classes of claims and proceedings even though the claims concerned relate to a policy

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Schedule 1 Amendment

or policies of insurance that another managed fund insurer (the *policy agent*) is authorised to act as temporary agent in respect of, in which case:

- (a) the claims agent is authorised to act as temporary agent in respect of those claims and proceedings, and
 - (b) the policy agent is not authorised to act as temporary agent in respect of those claims and proceedings (but otherwise continues to be authorised to act as temporary agent in respect of the policies concerned).
- (5) A managed fund insurer must exercise the insurer's functions as temporary agent in accordance with any requirements that would have been applicable to the exercise of functions as a licensed insurer under the 1987 Act (including the conditions of the insurer's licence under the 1987 Act and any guidelines applicable under that Act to the exercise of those functions), except to the extent that any such requirement conflicts with the requirements of any directions of the Nominal Insurer.
- (6) In the exercise of functions as provided by subclause (3), the insurer is not subject to Division 4 (Statutory funds of licensed insurers) of Part 7 of the 1987 Act, except to the extent that the Nominal Insurer may otherwise direct.

241 Directors of managed fund insurers under trustee duty

- (1) A managed fund insurer must comply with the directions of the Nominal Insurer as to the payment of money by the insurer to or from the Insurance Fund in connection with the exercise of the insurer's functions as a temporary agent.
- (2) A director of a company that is a managed fund insurer is under the same liability, in the event of a contravention of such a direction, as the director would be if:
 - (a) the director had been a trustee under a trust for the execution of the direction, and
 - (b) the Authority and the appropriate policy holders had been beneficiaries of such a trust.
- (3) This clause does not apply if the director proves that:
 - (a) the contravention occurred without the knowledge of the director, or
 - (b) the director was not in a position to influence the conduct of the insurer in relation to the contravention, or
 - (c) the director, being in such a position, used all due diligence to prevent the contravention.

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- (4) The Authority may institute proceedings under this clause on behalf of the Authority and the appropriate policy holders.
 - (5) In this clause a reference to a director of a company includes any person who, for the purposes of the *Corporations Act 2001* of the Commonwealth, is deemed to be a director of the company.

242 Construction of references to managed fund insurer

- (1) Functions exercised as temporary agent need not be exercised in the name of the Nominal Insurer. In particular, any document (such as a policy of insurance or any correspondence) issued by a managed fund insurer as a temporary agent need not be issued in the name of the Nominal Insurer.
- (2) A reference to a managed fund insurer in any document issued by the insurer after the relevant date for the insurer is, to the extent that the reference relates to the exercise of any function of the insurer as a temporary agent after that relevant date, to be read as a reference to the insurer as agent for the Nominal Insurer.

243 Contracts—references to Nominal Insurer

For the purposes of clause 3 (1) (d) of Part 19A of Schedule 6 to the 1987 Act (which provides for a reference to a managed fund insurer in a prescribed contract to be taken to be a reference to the Nominal Insurer) the following contracts are prescribed:

- (a) contracts forming part of any arrangements for the reinsurance of specialised insurers, known collectively as *Workers Compensation Quota Share Re-insurance Agreements*,
- (b) the contract for *Provision of Workers Compensation Wage Audit Services for the WorkCover Authority of NSW* dated 18 February 2005 and designated by the Authority as contract 0300896.

244 Transitional funding arrangements

The following payments are authorised to be made from the Insurance Fund pursuant to section 154E (2) (k) of the 1987 Act:

- (a) payments required to be made by the Nominal Insurer to temporary agents under arrangements made with temporary agents for their remuneration in respect of functions exercised as temporary agents,
- (b) payments to a bank account operated by a managed fund insurer before the relevant date for the insurer for meeting claims under policies of insurance, being payments

authorised by the Nominal Insurer as necessary for the honouring of cheques drawn on the account before that relevant date.

245 Termination of temporary agency arrangements

- (1) If a managed fund insurer is appointed as a scheme agent, the authority of the insurer to act as a temporary agent is terminated when the appointment as scheme agent takes effect.
- (2) The authority of a managed fund insurer to act as a temporary agent can also be terminated at any time by the Nominal Insurer by giving notice of termination to the insurer in writing.
- (3) No compensation is payable for or in respect of the termination of the authority of a managed fund insurer to act as a temporary agent.
- (4) On the termination under this clause of a managed fund insurer's authority to act as a temporary agent:
 - (a) the insurance records of the insurer become the property of the Nominal Insurer, and
 - (b) the insurer must, in accordance with the directions of the Nominal Insurer, give possession of those insurance records to the Nominal Insurer or to such other person as the Nominal Insurer may direct.Maximum penalty: 100 penalty units.

- (5) In this clause:

insurance records of a managed fund insurer means all records that are the property of the insurer and that relate to policies of insurance issued by the insurer as a temporary agent or in respect of which the insurer exercised functions as a temporary agent, or to any claim, judgment or award made in respect of any such policies.

246 Application of 2003 amendments to managed fund insurers

The amendments made by Schedule 2 [35], [37], [38], [44], [47]–[50], [52]–[54] and [57]–[71] to the *Workers Compensation Amendment (Insurance Reform) Act 2003* do not apply to or in respect of a managed fund insurer unless and until a relevant date has been appointed for the insurer under Part 19A of Schedule 6 to the 1987 Act.

BY AUTHORITY