



New South Wales

State Insurance and Care Legislation Amendment Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *State Insurance and Care Governance Act 2015*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* as follows—

- (a) to make further provision for governance arrangements for insurance and compensation schemes,
- (b) to extend the enforcement powers of the State Insurance Regulatory Authority in relation to the Workers Compensation Nominal Insurer, Insurance and Care NSW, the NSW Self Insurance Corporation and persons exercising claims administration functions on behalf of insurers,
- (c) to make further provision in relation to claims for workers compensation death benefits and the commutation of workers compensation liabilities.

The Bill also repeals the *Workers Compensation Legislation Amendment Act 2012* consequent on the amendments referred to in paragraph (c).

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 repeals the *Workers Compensation Legislation Amendment Act 2012* (**the 2012 amending Act**) consequent on the amendments made to the *Workers Compensation Act 1987* (**the 1987 Act**) referred to in paragraph (c) of the Overview. The 2012 amending Act contains

uncommenced provisions enabling regulations under the 1987 Act to permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria for commutation. The uncommenced provisions are inserted into the 1987 Act by Schedule 2, with minor modifications consequent on the establishment of the Personal Injury Commission (the *PIC*).

Schedule 1 Amendment of State Insurance and Care Governance Act 2015 No 19

Schedule 1[1] makes a clarifying amendment to set out the objects of the *State Insurance and Care Governance Act 2015* and the role of the authorities established by the Act. **Schedule 1[2]** makes a consequential amendment to insert certain definitions.

Schedule 1[3] requires the Minister, before giving a direction in the public interest to the board of directors of Insurance and Care NSW (*ICNSW*), to request the Board to advise whether the direction would be in the public interest. Currently the Board's advice must specify whether the direction would not be in the best interests of ICNSW. **Schedule 1[6]** amends a corresponding provision concerning the power of the Minister to give directions in the public interest to the State Insurance Regulatory Authority (*SIRA*). The amendment will require the Minister, before giving a direction in the public interest to SIRA, to consult with the SIRA Board and request the Board to advise the Minister whether, in its opinion, complying with the direction would be in the public interest. Within 1 month after the direction is given, the Minister is to publish in the Gazette a notice of reasons for giving the direction.

Schedule 1[5] inserts proposed section 9A, which sets out the principal objectives of ICNSW in exercising its functions. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[7] clarifies the principal objectives and functions of SIRA.

Schedule 1[8] increases, from 3 years to 4 years, the maximum period for which an appointed director of the ICNSW Board may hold office.

Schedule 2 Amendment of Workers Compensation Act 1987 No 70

Schedule 2[1] inserts proposed Part 3, Division 1A into the 1987 Act, which enables parties to a dispute about liability for death benefit compensation to settle the dispute if it has been referred to the PIC. **Schedule 2[27]** makes a consequential amendment. The proposed Division contains the following provisions—

- (a) proposed section 32AA defines words and expressions used in the proposed Division,
- (b) proposed section 32AB limits the application of the Division to disputes referred to the PIC. The proposed section also provides that the Division applies despite a provision of the *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act)* preventing parties from contracting out of liabilities imposed by the workers compensation legislation,
- (c) proposed section 32AC enables a party to the dispute to lodge with the PIC a proposed agreement for an amount to be paid in settlement of the lump sum death benefit payable under the 1987 Act. The parties to the agreement must include each dependant of the deceased person or, if there are no dependants, the legal personal representative of the deceased person. If the PIC makes a determination to give effect to the agreement, the insurer is taken to have accepted liability for death benefit compensation and the lump sum death benefit payable is the amount provided by the agreement as executed. The proposed section also enables the Workers Compensation Guidelines and the rules of the PIC to provide for certain matters relating to agreements.

Schedule 2[4] enables regulations under the 1987 Act to permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria for commutation. **Schedule 2[27]** makes a consequential amendment.

Schedule 2[2], [3], [6] and [17] confer on the President of the PIC functions relating to the commutation of workers compensation liabilities that are currently conferred on SIRA. **Schedule 2[5]** makes a consequential amendment.

Schedule 2[7] enables the rules of the PIC to provide for certain procedural matters relating to the commutation of workers compensation liabilities.

Schedule 2[8] provides that the regulations may exclude certain classes of claims from the requirement to obtain legal advice before entering into an agreement to commute a workers compensation liability to a lump sum. The regulations may also require the provision of independent financial advice to the worker at the insurer's expense. **Schedule 2[15]** makes a related amendment to remove the requirement the President of the PIC must be satisfied that legal advice has been obtained in relation to the commutation agreement.

Schedule 2[9] provides that a worker may withdraw from a commutation agreement at any time before it is approved by the President of the PIC, instead of within 14 days after entering into the agreement.

Schedule 2[10]–[13] and [16] make changes to terminology to provide for approval, rather than registration, of a commutation agreement.

Schedule 2[15] requires the President of the PIC to be satisfied that certain requirements have been complied with before approving a commutation agreement.

Schedule 2[14] enables the rules of the PIC to provide for the procedure for making an application for a commutation agreement.

Schedule 2[18] provides for the imposition of certain conditions by SIRA on the authority conferred on the Workers Compensation Nominal Insurer as a licensed insurer and provides the authority may not be cancelled or suspended. Certain conditions relating to prudential matters may be imposed only with the approval of the Minister for Finance.

Schedule 2[19] corrects a reference to insurers to make it clear that only licensed insurers are subject to guidelines made by SIRA relating to the filing of premiums under the 1987 Act.

Schedule 2[20] extends SIRA's power to require insurers to provide business and financial records so the power applies to ICNSW, the NSW Self Insurance Corporation and claims administration agents in the same way as it applies to insurers. **Schedule 3[1]** defines *claims administration agent*.

Schedule 2[21] makes it clear that provisions relating to the preparation by SIRA of claims manuals for use by insurers apply to self-insurers in the same way as they apply to other insurers.

Schedule 2[22] authorises SIRA to issue directions to licensed insurers and self-insurers with respect to a contravention of the insurer's licence, the 1987 Act, the 1998 Act or a requirement made under either Act. The direction may require the person to refrain from the contravening conduct or take certain other action. It is a condition of a licensed insurer's or self-insurer's licence to comply with a direction. Failure to comply with a direction is an offence.

Schedule 2[23] extends a provision relating to the auditing of accounting records of insurers to specialised insurers and self-insurers.

Schedule 2[24] inserts proposed Part 7, Division 4A, which includes provisions enabling a licensed insurer or a self-insurer to give an undertaking to SIRA in relation to a contravention or alleged contravention of the 1987 Act, the 1998 Act or an instrument made under either Act. Failure to comply with an undertaking is an offence. SIRA may apply to the District Court for an order to enforce the undertaking.

Schedule 2[26] provides that the approval of the relevant Minister is not required for the imposition of conditions by SIRA on the authority conferred on a Government employer as a self-insurer if the conditions relate to claims administration functions. **Schedule 2[25]** makes a consequential amendment. **Schedule 3[1]** defines *claims administration functions*.

Schedule 3 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

Schedule 3[1] defines *claims administration agent* as a person who acts as agent for an insurer in connection with the exercise of certain functions of the insurer (*claims administration functions*). The amendment also defines *claims administration functions* to include the making of certain decisions in relation to claims for workers compensation, the resolution of disputes and the treatment of injured workers.

Schedule 3[2]–[6] clarify the functions of SIRA under the workers compensation legislation, including functions relating to the resolution of disputes and complaints, the publication of information and worker rehabilitation and return-to-work programs.

Schedule 3[7] extends the definition of *insurer* for the purposes of provisions of the Act relating to information collection and sharing. The definition is extended to include a claims administration agent, ICNSW and the Self Insurance Corporation.

Schedule 3[8] extends the definition of *insurer* for the purposes of a provision containing powers of entry of inspectors. The definition is extended to include a claims administration agent, ICNSW and the Self Insurance Corporation.

Schedule 3[9] provides that proceedings for an offence in relation to which an insurer has given an undertaking may be instituted by SIRA within whichever of the following periods provides the longer time to institute proceedings—

- (a) 2 years after the offence,
- (b) 6 months after the undertaking is contravened,
- (c) 6 months after SIRA becomes aware of the contravention,
- (d) 6 months after SIRA agrees in writing to the withdrawal of the undertaking.

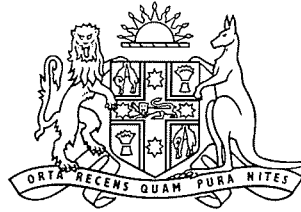


New South Wales

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New South Wales

State Insurance and Care Legislation Amendment Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *State Insurance and Care Governance Act 2015* and workers compensation legislation in relation to governance and regulatory arrangements for insurance and compensation schemes; to make further provision with respect to workers compensation death benefits and the commutation of workers compensation liabilities; and for other purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *State Insurance and Care Legislation Amendment Act 2022*.

2 Commencement

This Act commences on the following days—

- (a) for section 3 and Schedule 2[2]–[17]—on a day or days to be appointed by proclamation,
- (b) otherwise—the date of assent to this Act.

3 Repeal of Workers Compensation Legislation Amendment Act 2012 No 53

The *Workers Compensation Legislation Amendment Act 2012* is repealed.

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Schedule 1	Amendment of State Insurance and Care Governance Act 2015 No 19	1
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[1] Section 2A		3
	Insert after section 2—	4
2A Objects of Act		5
	(1) The objects of this Act are—	6
	(a) to establish appropriate governance and regulatory arrangements for insurance and compensation schemes, and	7
	(b) to promote the efficient and effective delivery of insurance and compensation schemes.	8
	(2) For those purposes, this Act—	9
	(a) constitutes Insurance and Care NSW to act for the Nominal Insurer and provide services for insurance and compensation schemes administered by other authorities, and	10
	(b) constitutes the State Insurance Regulatory Authority as the regulator of State insurance and care schemes and the authority responsible for effective oversight of the schemes.	11
	Note— For provisions relating to the work health and safety regulator, SafeWork NSW, see the <i>Work Health and Safety Act 2011</i> , Schedule 2.	12
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[2] Section 3 Definitions		20
	Insert in alphabetical order in section 3(1)—	21
	<i>State insurance and care scheme</i> means an insurance or compensation scheme established by the scheme legislation.	22
	<i>scheme legislation</i> means—	23
	(a) the workers compensation and motor accidents legislation, and	24
	(b) the <i>Home Building Act 1989</i> , and	25
	(c) other prescribed legislation.	26
		27
[3] Section 7 Power of Minister to give directions in public interest		28
	Omit “not be in the best interests of ICNSW” from section 7(3)(b).	29
	Insert instead “be in the public interest”.	30
[4] Part 2, Division 2, heading		31
	Omit the heading. Insert instead—	32
Division 2 Objectives and functions of ICNSW		33
[5] Section 9A		34
	Insert before section 10—	35
9A Principal objectives of ICNSW		36
	The principal objectives of ICNSW in exercising its functions are as follows—	37
	(a) to ensure that access to compensation for claimants is balanced with the need to maintain the affordability of insurance and the efficiency and viability of State insurance and care schemes,	38
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(b)	to promote efficiency, transparency and accountability in the conduct of its operations.	1 2
[6]	Section 20 Ministerial directions	3
	Insert after section 20(2)—	4
(2A)	Before giving a direction under this section, the Minister must—	5
(a)	consult with the SIRA Board, and	6
(b)	ask the Board to advise the Minister whether, in its opinion, complying with the direction would be in the public interest.	7 8
(2B)	The Minister must publish a notice in the Gazette setting out the reasons a direction was given under this section and why it is in the public interest that the direction was given.	9 10 11
(2C)	The notice is to be published within 1 month after the direction is given.	12
[7]	Sections 23 and 24	13
	Omit the sections. Insert instead—	14
23	Principal objectives of SIRA	15
	The principal objectives of SIRA in exercising its functions are as follows—	16
(a)	to ensure that access to compensation for claimants is balanced with the need to maintain the affordability of insurance and the efficiency and viability of State insurance and care schemes,	17 18 19
(b)	to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with the injuries,	20 21 22
(c)	to ensure that persons covered by State insurance and care schemes have access to treatment that will assist with their recovery.	23 24
24	Functions of SIRA	25
(1)	SIRA has the functions conferred or imposed on it by or under this Act or any other Act, including the scheme legislation.	26 27
(2)	The functions of SIRA also include the following—	28
(a)	to lead the strategic development and effective oversight of State insurance and care schemes,	29 30
(b)	to promote the effective management of claims under the scheme legislation,	31 32
(c)	to promote the efficient and effective management and resolution of disputes and complaints under the scheme legislation,	33 34
(d)	to promote workplace injury prevention, effective injury management and return to work measures and programs,	35 36
(e)	to be responsible for overseeing and monitoring compliance with the scheme legislation,	37 38
(f)	to collect, analyse and publish data relating to the performance of State insurance and care schemes,	39 40
(g)	to advise the Minister administering the scheme legislation on appropriate strategies, policies and practices in relation to State insurance and care schemes.	41 42 43

[8] Schedule 1 Provisions relating to directors of ICNSW Board

1

Omit “3 years” from Schedule 1, clause 3. Insert instead “4 years”.

2

Schedule 2	Amendment of Workers Compensation Act 1987	1
	No 70	2
[1] Part 3, Division 1A		3
	Insert after Division 1—	4
Division 1A	Compensation payable on death—death benefit disputes	5
		6
32AA	Definitions	7
(1)	In this Division—	8
	<i>death benefit dispute</i> means a dispute about liability for death benefit compensation that has been referred for determination by the Commission.	9 10
(2)	For the purposes of determining whether a person is a dependant of a deceased person under this Division—	11 12
(a)	the deceased person is taken to be a worker, and	13
(b)	the death of the person is taken to have resulted from an injury.	14
	Note— See the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , section 4, definition of <i>dependants</i> .	15 16
32AB	Application	17
(1)	This Division applies to a claim for death benefit compensation that is the subject of a death benefit dispute.	18 19
(2)	This Division has effect despite the 1998 Act, section 234.	20
32AC	Settlement of claim where liability disputed	21
(1)	A party to a death benefit dispute may lodge with the Commission a proposed agreement for an amount to be paid in settlement of the part of the claim that relates to the lump sum death benefit under Division 1.	22 23 24
(2)	The amount proposed to be paid in settlement must not be more than the amount of the lump sum death benefit otherwise payable under Division 1.	25 26
(3)	The parties to the agreement must include the insurer and—	27
(a)	each dependant of the deceased person, or	28
(b)	if there are no dependants—the legal personal representative of the deceased person.	29 30
(4)	The Commission must not entertain proceedings to give effect to the agreement unless satisfied that—	31 32
(a)	there is a reasonable basis for the insurer to dispute liability for the death benefit compensation, and	33 34
(b)	the amount of compensation proposed to be paid in settlement of the claim is reasonable in the circumstances, and	35 36
(c)	each dependant of the deceased person is a party to the agreement or, if the Commission is satisfied there are no dependants, the legal personal representative of the deceased person is a party to the agreement.	37 38 39
(5)	There is a reasonable basis for an insurer to dispute liability only if the dispute is based on facts provable on the material available to the Commission and a reasonably arguable view of the law.	40 41 42

(6)	In proceedings for the death benefit dispute, each party to the agreement must be represented by an Australian legal practitioner unless otherwise directed by the Commission.	1 2 3
(7)	If the Commission makes a determination to give effect to an agreement under this Division—	4 5
(a)	the insurer is taken to have accepted liability for death benefit compensation for the death, and	6 7
(b)	subject to paragraph (c), death benefit compensation is payable in accordance with Division 1 as if the death had resulted from an injury, and	8 9 10
(c)	the amount of lump sum death benefit payable under section 25 is the amount provided by the agreement as executed.	11 12
(8)	The Workers Compensation Guidelines may make provision in relation to the management of a claim to which an agreement under this Division relates.	13 14
(9)	The Commission rules may make provision for or in relation to applications under this section and the procedure for making a determination to give effect to an agreement under this Division.	15 16 17
[2]	Section 87EAA Medical expenses compensation not to be commuted for catastrophic injuries	18 19
	Omit “Authority is satisfied that, and certifies that it is satisfied that,” from section 87EAA(1).	20 21
	Insert instead “President is satisfied that”.	22
[3]	Section 87EA Preconditions to commutation	23
	Omit “Authority is satisfied that, and certifies that it” from section 87EA(1).	24
	Insert instead “President”.	25
[4]	Section 87EA(2) and (2A)	26
	Omit section 87EA(2). Insert instead—	27
(2)	Despite subsection (1), a liability in respect of an injury may be commuted to a lump sum under this Division in a particular case if the President is satisfied that—	28 29 30
(a)	the case is of a class prescribed by the regulations as a class to which this subsection applies, and	31 32
(b)	the circumstances of the case satisfy the requirements prescribed by the regulations as requirements that must be satisfied for this subsection, and	33 34 35
(c)	unless the regulations otherwise provide, the lump sum to which the liability will be commuted is not inadequate and not excessive.	36 37
(2A)	In considering whether the lump sum to which a liability will be commuted is not inadequate and not excessive, the President may have regard to the following matters—	38 39 40
(a)	a dispute about liability to pay compensation under the Workers Compensation Acts,	41 42
(b)	the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury,	43 44
(c)	the worker’s diminished ability to compete in an open labour market,	45

(d)	other benefits that the worker may be entitled to from another source.	1
[5]	Section 87EA(3)	2
	Omit “Authority”. Insert instead “President”.	3
[6]	Section 87EA(4)	4
	Omit the subsection.	5
[7]	Section 87EB	6
	Insert after section 87EA—	7
	87EB Commission rules	8
	The Commission rules may make provision for the procedure for an application for a determination under section 87EAA(1) or 87EA(1) or (2) and the documentation to accompany the application.	9 10 11
[8]	Section 87F Commutation by agreement	12
	Insert after section 87F(2)—	13
	(2A) A worker is not required to obtain advice under this section in relation to a claim belonging to a class of claims prescribed by the regulations.	14 15
	(2B) The regulations may require the provision of independent financial advice to a worker, at the expense of the insurer, before the worker enters into a commutation agreement and the requirement applies despite any other provision of this section.	16 17 18 19
[9]	Section 87F(4)	20
	Omit “has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer”.	21 22
	Insert instead “may withdraw from a commutation agreement by giving written notice to the insurer and the President at any time before it is approved under this Division”.	23 24
[10]	Section 87F(6) and (7)	25
	Omit “registered” and “Registration” wherever occurring in section 87F(6) and (7).	26
	Insert instead “approved” and “Approval”, respectively.	27
[11]	Section 87H, heading	28
	Omit the heading. Insert instead—	29
	87H Approval of commutation	30
[12]	Section 87H(1)	31
	Omit “registration of the agreement by the President”.	32
	Insert instead “approval of the agreement”.	33
[13]	Section 87H(1), note	34
	Omit “registered”. Insert instead “approved”.	35
[14]	Section 87H(1A)	36
	Insert after section 87H(1)—	37

(1A)	The Commission rules may make provision for or in relation to the procedure for making applications under this Division.	1 2
[15]	Section 87H(2)	3
	Omit the subsection. Insert instead—	4
(2)	The President must refuse to approve a commutation agreement unless the President is satisfied—	5 6
(a)	as to the matters referred to in section 87EA(1) or (2), and	7
(b)	for a liability to which section 87EAA applies—that the injury is not a catastrophic injury within the meaning of that section.	8 9
[16]	Section 87H(3), (4) and (6)	10
	Omit “register”, “registering” and “registered” wherever occurring.	11
	Insert instead “approve”, “approving” and “approved”, respectively.	12
[17]	Section 87I Payment	13
	Omit “The annual report of the Authority” from section 87I(3).	14
	Insert instead “The annual review of the Commission”.	15
[18]	Section 154B Functions of Nominal Insurer	16
	Omit section 154B(1). Insert instead—	17
(1)	The Nominal Insurer is taken to be a licensed insurer for the purposes of this Act.	18 19
(1A)	The Authority may impose conditions on the authority conferred by this section on the Nominal Insurer as a licensed insurer.	20 21
(1B)	The conditions that may be imposed on an authority conferred by this section are conditions of a kind that the authority could impose on a licence under Division 3, except section 182(2)(a) and (c).	22 23 24
(1C)	A condition relating to a matter arising under the following provisions may be imposed on the authority only with the approval of the Minister administering the <i>State Insurance and Care Governance Act 2015</i> , Part 2—	25 26 27
(a)	the 1987 Act, section 145 or 145A or Part 7, Division 1A, Subdivision 2,	28
(b)	the <i>State Insurance and Care Governance Act 2015</i> , section 12 or Part 2, Division 4.	29 30
(1D)	Section 183 does not apply to the authority conferred by this section.	31
[19]	Section 168 Workers Compensation Market Practice and Premiums Guidelines	32
	Insert “licensed” after “require” in section 168(2)(a).	33
[20]	Section 189 Information and records as to business etc to be supplied to Authority by insurers	34 35
	Omit section 189(1), definition of insurer. Insert instead—	36
	<i>insurer</i> means—	37
(a)	a licensed insurer or former licensed insurer, or	38
(b)	a self-insurer or former self-insurer, or	39
(c)	a scheme agent, or	40
(d)	a claims administration agent, or	41

(e)	ICNSW, or	1
(f)	the Self Insurance Corporation.	2
[21]	Section 192A Claims administration manual	3
	Omit section 192A(6). Insert instead—	4
(6)	In this section—	5
	<i>insurer</i> includes a self-insurer.	6
[22]	Section 195	7
	Insert after section 194—	8
195	Directions to insurers regarding contraventions	9
(1)	If the Authority is satisfied an insurer has contravened its licence, the Workers Compensation Acts or a requirement made by the Authority under the Workers Compensation Acts, the Authority may issue a written direction requiring the insurer to—	10 11 12 13
(a)	refrain from conduct contravening the licence or the Workers Compensation Acts or other requirement, or	14 15
(b)	take action to comply with, or to prevent or remedy a contravention of, the licence or the Workers Compensation Acts or other requirement, or	16 17
(c)	take other action prescribed by the regulations.	18
(2)	An insurer must comply with a direction issued to the insurer under this section. Maximum penalty—1,000 penalty units.	19 20 21
(3)	It is a condition of an insurer's licence under this Act that the insurer must comply with a direction issued to the insurer under this section.	22 23
(4)	The Authority must, as soon as practicable after issuing a direction under this section, publish on its website a statement of the effect of the direction and the reasons for issuing the direction.	24 25 26
(5)	In this section— <i>Workers Compensation Acts</i> includes instruments made under the Workers Compensation Acts.	27 28 29
[23]	Section 202 Audit of accounting records of insurers	30
	Omit section 202(1AA).	31
[24]	Part 7, Division 4A	32
	Insert after Division 4—	33
	Division 4A Enforceable undertakings	34
209A	Definitions	35
	In this Division—	36
	<i>insurer</i> means—	37
(a)	a licensed insurer, or	38
(b)	a self-insurer.	39
	<i>Workers Compensation Acts</i> includes instruments made under the Workers Compensation Acts.	40 41

209B	Authority may accept undertaking	1
(1)	The Authority may accept a written undertaking given by an insurer in relation to a contravention or alleged contravention by the insurer of the Workers Compensation Acts.	2 3 4
(2)	The giving of an undertaking does not constitute an admission of guilt by the insurer in relation to the contravention or alleged contravention to which the undertaking relates.	5 6 7
209C	Notice of decision	8
(1)	The Authority must give the insurer seeking to give an undertaking under this Division written notice of—	9 10
(a)	the Authority’s decision to accept or reject the undertaking, and	11
(b)	the reasons for the decision.	12
(2)	The Authority must, as soon as practicable after making a decision to accept or reject the undertaking, publish notice of the decision on the Authority’s website.	13 14 15
209D	When an undertaking is enforceable	16
	An undertaking under this Division takes effect and becomes enforceable—	17
(a)	when the insurer receives notice of the Authority’s decision to accept the undertaking, or	18 19
(b)	at any later date specified by the Authority.	20
209E	Compliance with undertaking	21
	An insurer must not contravene an undertaking given by the insurer under this Division that is in effect.	22 23
	Maximum penalty—1,000 penalty units.	24
209F	Contravention of undertaking	25
(1)	The Authority may apply to the District Court for an order if an insurer contravenes an undertaking given under this Division.	26 27
(2)	If the Court is satisfied the insurer that made the undertaking has contravened the undertaking, the Court, in addition to imposing a penalty, may make one or both of the following orders—	28 29 30
(a)	an order directing the insurer to comply with the undertaking,	31
(b)	an order discharging the undertaking.	32
(3)	In addition to the orders referred to in subsection (2), the Court may make other orders the Court considers appropriate in the circumstances, including orders directing the insurer to pay to the State—	33 34 35
(a)	the costs of the proceedings, and	36
(b)	the reasonable costs of the Authority in monitoring compliance with the undertaking in the future.	37 38
(4)	This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.	39 40
209G	Withdrawal or variation of undertaking	41
(1)	An insurer who has given an undertaking under this Division may at any time, with the written agreement of the Authority—	42 43

(a)	withdraw the undertaking, or	1
(b)	vary the undertaking.	2
(2)	However, the provisions of the undertaking may not be varied to provide for a different alleged contravention of the Act.	3 4
(3)	The Authority may at any time, with the written agreement of the insurer, withdraw its decision to accept an undertaking.	5 6
(4)	The Authority must, as soon as practicable after an undertaking is withdrawn or varied, publish on the Authority's website notice of—	7 8
(a)	the withdrawal or variation, and	9
(b)	the reasons for the withdrawal or variation.	10
209H	Proceedings and civil penalties for alleged contravention	11
(1)	No proceedings may be brought against an insurer, and a civil penalty may not be issued to an insurer, for a contravention or alleged contravention of the Workers Compensation Acts if—	12 13 14
(a)	an undertaking under this Division is in effect in relation to the contravention, or	15 16
(b)	an undertaking under this Division has been given and completely discharged by the insurer.	17 18
(2)	The Authority may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to the contravention have been finalised.	19 20 21
(3)	If the Authority accepts an undertaking before the proceedings are finalised, the Authority must take all reasonable steps to have the proceedings discontinued as soon as possible.	22 23 24
[25]	Section 211B Government employers covered by Government managed fund scheme to be self-insurers	25 26
	Omit "However, the Authority may, with the approval of the Treasurer, impose conditions on the authority conferred by this section on such self-insurers (being conditions of a kind that the authority could impose on the licence of a self-insurer under this Division)." from section 211B(4).	27 28 29 30
[26]	Section 211B(4A)–(4C)	31
	Insert after section 211B(4)—	32
(4A)	However, the Authority may, subject to this section and with the approval of the Minister, impose conditions on the authority conferred by this section.	33 34
(4B)	The conditions that may be imposed on an authority conferred by this section are conditions of a kind that the authority could impose on the licence of a self-insurer under this Division.	35 36 37
(4C)	The approval of the Minister is not required for conditions relating to claims administration functions.	38 39
[27]	Schedule 6 Savings, transitional and other provisions	40
	Insert before Part 20, with appropriate Part numbering—	41

Part	Provisions consequent on State Insurance and Care Legislation Amendment Act 2022	1
		2
1	Definition	3
	In this clause—	4
	<i>2022 amending Act</i> means the <i>State Insurance and Care Legislation Amendment Act 2022</i> .	5
		6
2	Application of amendments to Workers' Compensation (Dust Diseases) Act 1942	7
		8
	An amendment made by the 2022 amending Act does not apply for the purposes of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> .	9
		10
3	Death benefit disputes	11
	The amendment made by the 2022 amending Act to insert Part 3, Division 1A of the 1987 Act does not apply—	12
		13
	(a) to a death occurring before the amendment commences, or	14
	(b) for the purposes of the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> .	15
		16
4	Commutation	17
(1)	An amendment made by the 2022 amending Act to the 1987 Act, Part 3, Division 9 extends to—	18
		19
	(a) an injury received before the amendment commences, and	20
	(b) a claim for compensation made before the amendment commences.	21
(2)	An amendment made by the 2022 amending Act to the 1987 Act, Part 3, Division 9 does not apply to a liability for compensation in relation to which an application for registration of a commutation agreement was made, but not determined, before the amendment commences.	22
		23
		24
		25

Schedule 3	Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>claims administration agent</i> means a person who, under a contract or other arrangement, acts as agent for an insurer in connection with the exercise of the claims administration functions of the insurer.	5
		6
		7
	<i>claims administration functions</i> means the following functions of an insurer under this Act—	8
		9
	(a) the making of decisions about liability for compensation,	10
	(b) the making of work capacity decisions,	11
	(c) the making of decisions about the resolution of disputes,	12
	(d) the making of decisions about the treatment, rehabilitation or return to work of injured workers,	13
		14
	(e) the making of other decisions of a kind prescribed by the regulations,	15
	(f) the giving of notices under this Act,	16
	(g) the payment of compensation under this Act.	17
[2] Section 22 Objectives and general functions of Authority under workers compensation legislation		18
		19
	Insert after section 22(1)(d)—	20
	Note— The dispute resolution functions of the Authority do not include dealing with disputes about compensation or disputes between insurers and injured workers. For provisions relating to those matters, see this Act, section 105 and the <i>Personal Injury Commission Act 2020</i> , Schedule 5, Part 4.	21
		22
		23
		24
[3] Section 22(2)(b)		25
	Omit section 22(2)(b) and (c). Insert instead—	26
	(b) to establish procedures for dealing with complaints made by employers in relation to matters arising under the workers compensation scheme,	27
		28
[4] Section 22(2)(f1)		29
	Insert after section 22(2)(f)—	30
	(f1) to publish and disseminate information in relation to the workers compensation scheme,	31
		32
[5] Section 23 Specific functions		33
	Omit section 23(1)(d), (j) and (j1).	34
[6] Section 23(1)(h)		35
	Omit section 23(1)(h) and (i). Insert instead—	36
	(h) to develop and facilitate the operation of programs to promote worker rehabilitation and return to work,	37
		38
[7] Section 40A Definitions		39
	Omit the definition of <i>insurer</i> . Insert instead—	40
	<i>insurer</i> means—	41
	(a) a licensed insurer or former licensed insurer, or	42

(b)	a self-insurer or former self-insurer, or	1
(c)	a scheme agent, or	2
(d)	a claims administration agent, or	3
(e)	ICNSW, or	4
(f)	the Self Insurance Corporation.	5
[8]	Section 238 Powers of entry by inspectors	6
	Omit the definition of <i>insurer</i> from section 238(1). Insert instead—	7
	<i>insurer</i> means—	8
(a)	a licensed insurer or former licensed insurer, or	9
(b)	a self-insurer, or	10
(c)	an insurance broker or commission agent engaged in workers compensation insurance business, or	11 12
(d)	without limiting the 1987 Act, section 154M(2)—a scheme agent or	13
(e)	a claims administration agent, or	14
(f)	ICNSW, or	15
(g)	the Self Insurance Corporation.	16
[9]	Section 247 Time for instituting proceedings	17
	Insert after section 247(3)—	18
(4)	Despite subsection (1), proceedings for an offence in relation to which an undertaking has been given under the 1987 Act, Part 7, Division 4A may be instituted by the Authority within whichever of the following periods provides the longer time for proceedings to be instituted—	19 20 21 22
(a)	2 years after the act or omission alleged to constitute the offence,	23
(b)	6 months after the undertaking is contravened,	24
(c)	6 months after the Authority becomes aware the undertaking has been contravened,	25 26
(d)	6 months after the Authority agrees in writing to the withdrawal of the undertaking.	27 28