

[Act 2001 No 54]



New South Wales

Legal Profession Amendment (Professional Indemnity Insurance) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* as follows:

- (a) to require payments to be made from the Indemnity Fund for the purpose of satisfying the obligations of HIH Casualty and General Insurance Limited (*HIH*), or any other member of the HIH group, under an approved professional indemnity insurance policy,
- (b) to allow payments to be made from the Indemnity Fund for the purpose of satisfying the obligations of any other defaulting insurer under an approved professional indemnity insurance policy,

* Amended in committee—see table at end of volume.

- (c) to allow the Attorney General to obtain advice as to the state and sufficiency of the Indemnity Fund, and other matters relating to the Indemnity Fund, from an independent investigator,
- (d) to allow the company responsible for the management of the Indemnity Fund to require different contributions to be paid to the Indemnity Fund by particular solicitors or classes of solicitors,
- (e) to require certain indemnity arrangements to be made in respect of insurable solicitors if the duration of current practising certificates held by insurable solicitors is extended beyond 30 June 2001, and to extend the regulation-making powers conferred by the Act in connection with any change made to the duration of practising certificates,
- (f) to make other amendments of a minor, consequential or ancillary nature.

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 on 30 June 2001.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Arrangements relating to HIIH group and other defaulting insurers

At present, the Law Society Council cannot issue or renew a practising certificate of an insurable solicitor unless there is or will be in force in respect of the solicitor an insurance policy of a kind approved by the Attorney General. The Indemnity Fund may be used to pay the premiums in respect of that insurance policy and to “top up” the coverage provided by that insurance policy (that is, to meet the difference between the indemnity provided by the policy and the liability of any person insured under it). Insurable solicitors are required to make contributions to the Indemnity Fund.

HIIH was the approved insurer in respect of the professional indemnity insurance policy that applied to solicitors for the period from 1 July 1998 to immediately before 1 July 2001. HIIH, and other members of the HIIH group, were approved insurers under policies that had effect before 1 July 1998. A provisional liquidator was appointed in respect of members of the HIIH group on 15 March 2001.

Explanatory note

The amendments will require the Indemnity Fund to be used for the purpose of indemnifying persons who are insured under an HIIH group insurance policy, to the extent of the indemnity provided by the insurance policy.

Payments from the Indemnity Fund will result in the company that manages the Indemnity Fund being subrogated to the rights and remedies of the insured person under the approved insurance policy in connection with the subject matter of the payment.

The company that manages the Indemnity Fund will be able to enter into agreements with an HIIH group member (including with a liquidator or provisional liquidator), and an insured person, in connection with the making of payments from the Indemnity Fund.

The company will be able to require the persons insured under an HIIH group policy, or formerly insured under such a policy, to pay a special annual contribution or levy to the Indemnity Fund so as to ensure that it is sufficient to meet the obligations provided for by the amendments.

The amendments will also allow the Indemnity Fund to be used, in accordance with arrangements approved from time to time by the Attorney General, for the purpose of indemnifying persons who are insured under an insurance policy that was issued or renewed by a defaulting insurer. An insurer will be considered to be a defaulting insurer if the company is satisfied that:

- (a) the insurer is unwilling or unable to meet any claims or other liabilities under the approved insurance policy, or
- (b) a liquidator or provisional liquidator has been appointed in respect of the insurer, or
- (c) the insurer has been dissolved.

See **Schedule 1 [8]** and **[12]**. **Schedule 1 [1], [4], [5], [13]** and **[15]** are consequential amendments.

Independent investigation of Indemnity Fund

The amendments will allow the Attorney General to appoint an appropriately qualified person to conduct an investigation into the state and sufficiency of the Indemnity Fund, and other matters relating to the Indemnity Fund. The investigator will have power to require information or other records in connection with the investigation. A report is to be made to the Attorney General following the investigation. The reasonable costs of the investigation are payable from the Indemnity Fund.

See **Schedule 1 [7]** and **[14]**.

Contributions to Indemnity Fund

At present, the company that manages the Indemnity Fund determines the contributions payable to the Indemnity Fund by insurable solicitors. The company may make different determinations in respect of particular classes of solicitors. The amendments will allow the company to make a different determination in respect of a particular solicitor (or class of solicitors).

See **Schedule 1 [9]**.

Arrangements relating to extensions of practising certificates

Section 36 of the Act provides that practising certificates are to be renewed on 1 July each year or another date specified by the regulations. The amendments contain transitional arrangements that will have effect if a regulation is made that specifies another date (that is, a date other than 1 July) for the renewal of practising certificates held by insurable solicitors.

The purpose of the amendments is to ensure that, if the duration of current practising certificates is extended as a result of such a change to the renewal date, suitable indemnity arrangements are made in respect of insurable solicitors for the extension period. The Law Society will not be able to issue a practising certificate to an insurable solicitor that will be in force for the next practising period (or any part of that period) unless suitable indemnity arrangements have been made in respect of the extension period (that is, unless an approved insurance policy has effect in relation to the extension period or solicitors will be indemnified under an agreement entered into with the Attorney General to use the Indemnity Fund for that purpose). The agreement with the Attorney General must include requirements as to the contributions and other levies payable to the Indemnity Fund, so as to ensure that the Indemnity Fund is sufficient to meet the purposes for which it may be used.

The amendments to section 36 will also authorise the regulations:

- (a) to specify the period in which renewed practising certificates remain in force, and
- (b) to make other savings and transitional provisions consequent on a change being made to the renewal date for practising certificates.

See **Schedule 1 [2]**, **[3]** and **[16]**. **Schedule 1 [6]** is a consequential amendment. **Schedule 1 [18]** contains transitional provisions.

Other amendments

An amendment is also made to section 45 of the Act for the purposes of law revision. Section 45 provides for the payment of annual contributions to the Indemnity Fund by insurable solicitors. The amendment takes account of the fact that regulations under section 36 may change the annual date for renewal of practising certificates from 1 July to some other date. See **Schedule 1 [10]** and **[11]**.

The amendments allow savings and transitional regulations to be made as a consequence of the proposed Act. See **Schedule 1 [17]**.