

Passed by both Houses



New South Wales

Workers Compensation Amendment (Insurance Reform) Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Workers Compensation Amendment (Insurance Reform) Bill 2003

Act No , 2003

An Act to amend the *Workers Compensation Act 1987* to reform the legislative framework for workers compensation insurance; to make miscellaneous and consequential amendments to that Act, the *Workplace Injury Management and Workers Compensation Act 1998* and certain other Acts; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedules 1 and 2.

4 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Principal amendments to Workers Compensation Act 1987 relating to insurance

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

agency arrangement means the contract or other arrangement by which a scheme agent is appointed.

Insurance Fund means the Workers Compensation Insurance Fund established under section 154D.

Nominal Insurer means the Workers Compensation Nominal Insurer referred to in section 154A.

scheme agent means a person appointed under section 154G to act as agent for the Nominal Insurer in connection with the exercise of any of the functions of the Nominal Insurer.

[2] Part 7, Division 1A

Insert before Division 1:

Division 1A Provisions relating to Nominal Insurer, Insurance Fund and scheme agents

Subdivision 1 Nominal Insurer

154A Establishment of Nominal Insurer

- (1) There is established by this Act a Workers Compensation Nominal Insurer.
- (2) The Nominal Insurer:
 - (a) is a legal entity, and
 - (b) may take proceedings and be proceeded against in the name of the Workers Compensation Nominal Insurer, and
 - (c) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and

- (d) may do and suffer all other things that persons may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions.
- (3) The Nominal Insurer is not and does not represent the State or any authority of the State.

154B Functions of Nominal Insurer

- (1) The Nominal Insurer is taken to be a licensed insurer as if it were the holder of a licence in force under Division 3 of Part 7 and as if that licence were not subject to any conditions.
- (2) The Nominal Insurer has such functions as may be necessary or convenient for enabling the Nominal Insurer to function and operate to the fullest extent as a licensed insurer.
- (3) Without limiting subsection (2), the Nominal Insurer may issue directions to any employer with respect to the insurance arrangements of the employer.
- (4) The Nominal Insurer has such other functions as may be conferred or imposed on the Nominal Insurer by or under this or any other Act or law or by the regulations.
- (5) The liabilities of the Nominal Insurer as insurer under a policy of insurance can only be satisfied from the Insurance Fund and are not liabilities of the State, the Authority or any authority of the State.

154C Authority to act for Nominal Insurer

- (1) The Authority acts for the Nominal Insurer and anything done or omitted to be done by the Authority on behalf of or in the name of the Nominal Insurer is taken to have been done or omitted by the Nominal Insurer.
- (2) In acting for the Nominal Insurer, the Authority has and may exercise all the functions of the Authority under this Act, the 1998 Act or any other Act or law.
- (3) A liability incurred by the Authority when acting for the Nominal Insurer is a liability of the Nominal Insurer and not a liability of the Authority or the State.

- (4) To remove doubt, it is declared that the provisions of Division 2A of Part 3 of the *Public Finance and Audit Act 1983* extend to authorise a performance audit by the Auditor-General under that Division in respect of any activities of the Authority when acting for the Nominal Insurer.

Subdivision 2 Insurance Fund

154D Establishment and operation of Insurance Fund

- (1) There is established a fund to be known as the “Workers Compensation Insurance Fund”.
- (2) The assets of the Insurance Fund are subject to a statutory trust to be held on trust for the purposes to which assets of the Insurance Fund are authorised or required to be applied by or under this Act and for the benefit of workers and employers as provided by this Act.
- (3) The Nominal Insurer is responsible for managing the operation of the Insurance Fund, including the investment of the assets of the Insurance Fund. The assets of the Insurance Fund may be invested in such manner as the Nominal Insurer thinks fit.
- (4) Employers are entitled to participate in the distribution of any surplus in the Insurance Fund, and are responsible for meeting any deficit in the Insurance Fund, by means of the fixing of premiums, levies and contributions as provided by this Act.
- (5) The assets of the Insurance Fund cannot be applied for the purpose of enabling any payment as a dividend to the credit of the Consolidated Fund, whether by virtue of a direction of the Minister under this Act or the 1998 Act or pursuant to a requirement under section 59B of the *Public Finance and Audit Act 1983*, or otherwise.
- (6) For the purposes of this Act and any other Act or law, each of the State, the Nominal Insurer, the Authority and any authority of the State:
- (a) has no beneficial interest in or entitlement to the assets of the Insurance Fund, and
 - (b) has no liability to meet any deficit in the Insurance Fund and no entitlement to any surplus in the Insurance Fund, and

- (c) is not trustee of the Insurance Fund.
- (7) The regulations may make provision for or with respect to the manner in which the financial statements of, or relating to, the Insurance Fund are to be prepared.

154E Assets of Insurance Fund

- (1) The following amounts are to be paid to, and become the assets of, the Insurance Fund:
 - (a) premiums received by the Nominal Insurer for policies of insurance issued under this Act,
 - (b) other amounts paid to the Nominal Insurer in connection with any such policy of insurance, including:
 - (i) any amount paid by the Authority under section 175, and
 - (ii) any late payment fee paid by an employer for the late payment of a premium, and
 - (iii) any amount repaid by an employer pursuant to section 160, and
 - (iv) any money recovered under section 151Z (or under section 64 of the former Act), and
 - (v) any money recovered under a re-insurance contract or arrangement,
 - (c) income (including realised and unrealised capital gains) arising from the investment of the assets of the Insurance Fund,
 - (d) any other money authorised to be paid into the Insurance Fund by or under this Act or the regulations.
- (2) The assets of the Insurance Fund may be applied for the following purposes only:
 - (a) meeting claims under policies of insurance issued (or taken to have been issued) by the Nominal Insurer,
 - (b) the payment of direct expenses associated with any such claims (not being expenses of a class excluded by the regulations from this paragraph),

- (c) the payment to the Authority or to persons employed by or acting for the Authority of management expenses relating to the Insurance Fund (not exceeding such amount as the Minister may from time to time determine),
- (d) the provision of rebates or refunds (including interest) to employers by the Nominal Insurer for overpayment of premiums for policies of insurance issued (or taken to have been issued) by the Nominal Insurer or for any other reason that the Nominal Insurer considers appropriate,
- (e) the payments required for any contract or arrangement for re-insurance in respect of liabilities under policies of insurance issued (or taken to have been issued) by the Nominal Insurer,
- (f) meeting the costs of any actuarial investigation of the Insurance Fund,
- (g) meeting the costs of any management, consultancy or auditing fees incurred in connection with the exercise of the functions of the Nominal Insurer,
- (h) the payment by the Nominal Insurer of contributions under this Act to the Guarantee Fund, the WorkCover Authority Fund or the Terrorism Re-insurance Fund as referred to in section 239AE,
- (i) the payments authorised or required to be made by the Nominal Insurer to scheme agents under their agency arrangements,
- (j) exercising any other functions of the Nominal Insurer,
- (k) making any other payment authorised by or under this Act or the regulations.

154F Auditing of Insurance Fund

- (1) The Auditor-General is to inspect and audit the accounts and records of financial transactions of or relating to the Insurance Fund at least once during each financial year.
- (2) The Auditor-General is to report to the Minister as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General call for special notice.

- (3) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1) of the *Public Finance and Audit Act 1983* or in any special report that the Auditor-General may at any time think fit to make under section 52 (3) of that Act.
- (4) The Nominal Insurer must pay to the Auditor-General out of the Insurance Fund such amounts, at such times, as the Minister decides towards defraying the costs and expenses of any inspection and audit under this section.

Note. The Auditor-General has powers under section 36 of the *Public Finance and Audit Act 1983* in respect of an inspection and audit under this section.

Subdivision 3 Scheme agents

154G Agents of Nominal Insurer

- (1) The Nominal Insurer may enter into arrangements (*agency arrangements*) by contract or otherwise for the appointment of persons to act as agent (*a scheme agent*) for the Nominal Insurer in connection with the exercise of any functions of the Nominal Insurer.
- (2) A scheme agent is, in the exercise of functions under an agency arrangement, subject to the direction and control of the Nominal Insurer as provided by the terms of the agency arrangement.
- (3) A person incurs no personal liability for or in connection with a liability incurred by the person as agent for the Nominal Insurer in the exercise of functions in good faith with due care and skill and within the scope of the agent's actual authority to act.
- (4) This section does not limit the power of the Authority to act for the Nominal Insurer.

154H Authority's functions not limited by agency arrangement

Nothing in an agency arrangement limits or otherwise affects the exercise by the Authority of any function of the Authority with respect to licensed insurers or scheme agents.

154I Authority's functions extended to scheme agents

Subject to this Act, any function conferred on the Authority with respect to licensed insurers (or insurers generally) by or under a provision of this Act, the 1998 Act or the regulations under either Act may be exercised in relation to scheme agents, and for that purpose:

- (a) a reference to a licensed insurer or insurer in a provision conferring such a function is to be read as including a reference to a scheme agent, and
- (b) a reference to the conditions of a licence of a licensed insurer is to be read as including a reference to the conditions of a scheme agent's agency arrangement with the Nominal Insurer.

154J Refusal of insurance by scheme agents

- (1) A scheme agent who is authorised to issue policies of insurance on behalf of the Nominal Insurer must not refuse to issue a policy of insurance to any employer or to renew a policy of insurance issued to an employer, except with the consent of the Nominal Insurer or as required or permitted by an express provision of the agency arrangement.

Maximum penalty: 1,000 penalty units.

- (2) The WorkCover Guidelines under the 1998 Act may provide for the circumstances in which the consent of the Nominal Insurer as referred to in subsection (1) may be given.

154K Ownership of records

- (1) Subject to the regulations, all records and other documents made and kept, or received and kept, by a scheme agent in the exercise of functions on behalf of the Nominal Insurer are the property of the Nominal Insurer.
- (2) The Nominal Insurer may give directions to a scheme agent with respect to possession, custody and control of, and the granting of access to, those records and other documents.
- (3) A scheme agent must comply with any such directions given by the Nominal Insurer to the scheme agent.

Maximum penalty: 1,000 penalty units.

- (4) A reference in this section to a scheme agent includes a reference to a person who was formerly (but is no longer) a scheme agent.

154L Remuneration of scheme agents

- (1) A scheme agent is entitled to payment by the Nominal Insurer of remuneration (whether as fees, commission or otherwise) as provided by or under the relevant agency arrangement.
- (2) The remuneration of scheme agents is payable by the Nominal Insurer out of the Insurance Fund.

154M Certain provisions extended to scheme agents

- (1) A reference in section 163, 164 or 169 to a licensed insurer or insurer includes, in the application of the section to any matter concerning the Nominal Insurer, a reference to a scheme agent acting on behalf of the Nominal Insurer in connection with that matter.
- (2) Except as may otherwise be provided by the regulations, a reference in any of the following provisions of the 1998 Act to a licensed insurer or insurer includes, in the application of the provision to any matter concerning the Nominal Insurer, a reference to a scheme agent acting on behalf of the Nominal Insurer in connection with that matter:

Sections 43, 45, 47, 50, 52, 56–59, 65, 66, 69, 71–75, 76, 107, 108, 113, 117, 118, 126, 136, 141, 232, 235A, 235B, 238, 260, 261, 264, 266–272, 274–276, 279, 280, 281, 282, 284, 287, 291, 295, 301, 308, 330, 337, 345 and 356.

154N Regulations

- (1) The regulations may make provision for or with respect to the following:
- (a) requiring the making and keeping of records by scheme agents and the giving of access to those records by scheme agents,
- (b) the obligations of scheme agents with respect to confidentiality and disclosure of information (including personal information),

- (c) the ownership, custody and control of records and other documents made and kept, or received and kept, by scheme agents.
- (2) The regulations may create offences, punishable by a penalty not exceeding 200 penalty units, for a contravention by a person of an obligation imposed on the person by or under an agency arrangement.
- (3) A reference in this section to a scheme agent includes a reference to a person who was formerly (but is no longer) a scheme agent.

Schedule 2 Miscellaneous and consequential amendments to Workers Compensation Act 1987

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *actuarial investigation*, *Contribution Fund*, *Premiums Adjustment Fund*, *private insurance start time* and *statutory fund* from section 3 (1).

[2] Section 7A Application of Act in respect of coal industry

Omit section 7A (2) (c). Insert instead:

- (c) Divisions 1A, 2–5, 6A and 7 of Part 7.

[3] Section 17 Loss of hearing—special provisions

Omit section 17 (1) (f). Insert instead:

- (f) where the Commission is satisfied that a contribution required to be made under paragraph (d) cannot be recovered by an employer referred to in paragraph (c), the Commission may direct the Nominal Insurer to pay to that employer out of the Insurance Fund such amount, not exceeding the amount of the contribution, as the Commission considers appropriate and the Nominal Insurer is to pay out that amount accordingly as if it were a payment made in respect of a claim under Division 6 of Part 4,

[4] Section 22 Compensation to be apportioned where more than one injury

Omit section 22 (2) (c). Insert instead:

- (c) a liability in respect of a claim under Division 6 of Part 4, and

[5] Section 22A Further provisions concerning apportionment of liability under section 22

Omit “under the Uninsured Liability and Indemnity Scheme” from section 22A (7).

Insert instead “in respect of a claim under Division 6 of Part 4”.

[6] Part 4, heading

Omit “**Compensation—claims and proceedings**”.

Insert instead “**Uninsured liabilities**”.

[7] Part 4, Division 6, heading

Omit “**Uninsured Liability and Indemnity Scheme**”.

Insert instead “**Uninsured liabilities**”.

[8] Section 138 Definitions

Omit the definition of *Scheme*.

[9] Sections 139, 141A, 143, 144 and 144A

Omit the sections.

[10] Section 140 Persons eligible to make claims

Omit “under the Scheme may be made as provided by this section” from section 140 (1).

Insert instead “under this Division may be made against the Nominal Insurer”.

[11] Section 140 (2A)

Omit “and payment cannot be made under the Scheme”.

Insert instead “under this Division”.

[12] Sections 140 (3), 141 (1) and (4), 142, 145, 145A (2) and (3), 146 (2) and (6), 147 (3), 148 (1) (Application of other provisions of Act) and 148A (Nominal Insurer’s right of subrogation)

Omit “Authority” wherever occurring. Insert instead “Nominal Insurer”.

[13] Section 140 (3)

Omit “under subsection (2)”. Insert instead “under this Division”.

[14] Sections 140 (4) and (5) (a), 141 (1) and (2) (b) and 142 (1) and (3)

Omit “the Scheme” wherever occurring. Insert instead “this Division”.

[15] Section 141 Making of claims

Omit “Authority” from section 141 (2) where firstly and thirdly occurring.
Insert instead “Nominal Insurer”.

[16] Sections 142 (2) (a) and 145 (1) and (2)

Omit “WorkCover Authority Fund” wherever occurring.
Insert instead “Insurance Fund”.

[17] Section 142 (4)

Insert after section 142 (3):

- (4) For the purposes of subsection (3), *licensed insurer* means a specialised insurer or self-insurer.

[18] Sections 142A and 142B

Insert after section 142:

142A Nominal Insurer becomes insurer for claims

- (1) Subject to this section and the regulations, the provisions of this Act and the 1998 Act apply to and in respect of a claim under this Division as if the Nominal Insurer were the insurer under this Act of the relevant employer at the relevant time.
- (2) The regulations may prescribe modifications to the provisions of this Act and the 1998 Act for the purposes of their application under this section to and in respect of a claim under this Division.
- (3) A claim under this Division for work injury damages cannot be made until a claim under this Division for lump sum compensation in respect of the injury has been made and determined.

142B Proceedings before Commission on claim for compensation

- (1) On an application to the Commission for a determination of a claim for compensation under this Division, or on the commencement of proceedings in a court in respect of a claim for work injury damages under this Division:

- (a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Nominal Insurer as respondents to, or defendants in, the proceedings, and
- (b) the Nominal Insurer may, by service of a notice on any person who, in the opinion of the Nominal Insurer, may be liable to pay to the applicant compensation under this Act (or may have insured that liability), join that person as a party to the proceedings.

- (2) The Commission may make orders providing for the reimbursement of the Insurance Fund under section 145.

[19] Section 145 Employer or insurer to reimburse Insurance Fund

Omit “under the Scheme” from section 145 (1) (a).

Insert instead “by the Nominal Insurer in respect of a claim under this Division”.

[20] Section 145A Recovery from directors of corporations liable to reimburse Insurance Fund

Omit section 145A (1). Insert instead:

- (1) If a corporation is liable to reimburse the Insurance Fund an amount for a payment made in respect of a claim under this Division and the amount is not recoverable from the corporation, the Nominal Insurer is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

[21] Section 145A (2)

Omit “for a payment made under the Scheme”.

Insert instead “for such a payment”.

[22] Section 145A (4) (a)

Omit “under the Scheme”.

Insert instead “in respect of the claim under this Division”.

[23] Section 146 Commutation of weekly payments

Omit section 146 (1).

[24] Sections 146 (2), 147 (3) and 148 (1) and (2)

Omit “under the Scheme” wherever occurring.

Insert instead “in respect of a claim under this Division”.

[25] Section 146 (4)

Omit “under the Scheme”.

Insert instead “that is the subject of a claim under this Division”.

[26] Section 147 Miscellaneous provisions

Omit section 147 (1). Insert instead:

- (1) If an award of compensation or work injury damages is made that is the subject of a claim under this Division, the Nominal Insurer may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based if:
 - (a) the employer did not appear and defend the proceedings for the award of compensation or work injury damages, or
 - (b) the award of compensation or work injury damages was made before the making of the claim under this Division and was obtained in default of appearance by the employer, or by consent of the worker and the employer, or
 - (c) the Nominal Insurer thinks that any such inquiries should be made for any reason it thinks fit.

[27] Section 147 (4)

Omit “the Authority” where firstly occurring.

Insert instead “the Nominal Insurer”.

[28] Section 151Y Funding of self-insurers, government employers etc for retrospective claims

Omit section 151Y (3). Insert instead:

(3) The Authority may require licensed insurers and former licensed insurers to pay into the special account such amounts as the Authority may direct by notice served on the insurers concerned.

(3A) Amounts paid into the special account may be refunded for the purposes of making necessary adjustments.

[29] Section 156A Misleading conduct by insurers and insurance intermediaries

Insert after paragraph (a) (ii) of the definition of *insurance intermediary* in section 156A (1):

(iii) as an agent for the Nominal Insurer, or

[30] Section 163 Register to be kept by insurers

Omit “the Authority” from section 163 (2).

Insert instead “the Nominal Insurer”.

[31] Section 163

Omit “20 penalty units” from the penalty at the end of the section.

Insert instead “1,000 penalty units”.

[32] Section 169 Premiums to be calculated in accordance with insurance premiums order

Omit “100 penalty units” from section 169 (3).

Insert instead “1,000 penalty units”.

[33] Section 176

Omit the section.

[34] Section 183A Imposition of civil penalty on or censure of licensed insurer or self-insurer

Omit section 183A (4).

[35] Section 184 Cancellation of policies following cancellation or suspension of insurer's licence

Omit the definition of *prescribed day* from section 184 (1). Insert instead:

prescribed day means the day on which the licence of the insurer ceases to be in force.

[36] Section 184 (2)

Omit “(including where a licence is cancelled under section 176)”.

[37] Section 185 Assignment of policies of former insurers etc

Omit section 185 (4)–(6).

[38] Section 185 (9) (b)

Omit the paragraph.

[39] Section 189 Information and records as to business etc to be supplied to Authority by insurers

Insert “, and includes a scheme agent” after “former self-insurer” in the definition of *insurer* in section 189 (1).

[40] Section 190 Notification to Authority of certain defaults in relation to insurers

Omit “or a self-insurer” from section 190 (1).

Insert instead “, a self-insurer or a scheme agent”.

[41] Section 192 Exclusion of insurance brokers, agents or intermediaries

Insert before section 192 (1):

(1A) A reference:

- (a) in this section to a licensed insurer includes a reference to a scheme agent, and
- (b) in subsections (1)–(3) to an agent does not include a reference to a scheme agent.

[42] Section 192 (5)

Omit “licensed”.

[43] Section 192

Omit “50 penalty units” from the penalty at the end of the section.

Insert instead “200 penalty units”.

[44] Part 7, Division 4, heading

Omit “Statutory funds of licensed insurers”.

Insert instead “Regulation of insurers and miscellaneous provisions”.

[45] Section 193

Omit the section. Insert instead:

193 Definitions

In this Division:

accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

insurer means a licensed insurer or self-insurer.

[46] Section 194

Insert after section 193:

194 Directions to insurers with respect to claims procedures

(1) The Authority may give insurers (or any particular insurer or class of insurers) directions for or with respect to requiring the adoption and use by them of specified processes, procedures, strategies, policies and methods in the handling and administration of claims for compensation or work injury damages, either generally or in respect of a specified class or classes of cases.

(2) It is a condition of an insurer’s licence under this Act that the insurer must comply with a direction under this section.

[47] Sections 195–200, 203, 206, 207, 208A and 208B

Omit the sections.

[48] Section 201 Accounts and returns

Omit “(including records in relation to the statutory fund of the insurer)” from section 201 (1).

[49] Section 201 (3)

Omit “(including returns in relation to the statutory fund of the insurer)”.

[50] Section 201 (6)

Omit the subsection.

[51] Section 202 Audit of accounting records of insurers

Insert before section 202 (1):

(1AA) A reference in this section to an insurer does not include a reference to a specialised insurer or a self-insurer.

[52] Section 202 (1)

Omit “(including the records in relation to the statutory fund of an insurer)”.

[53] Section 202 (1A) and (6)

Omit the subsections.

[54] Section 202 (4)

Insert at the end of the subsection:

Maximum penalty: 1,000 penalty units.

[55] Section 202A

Insert after section 202:

202A Performance audits by Authority

- (1) The Authority may conduct an audit of all or any particular workers compensation activities of an insurer to determine whether the insurer is carrying out those activities effectively, economically and efficiently and in compliance with the workers compensation legislation and any relevant agency arrangement.

- (2) A single audit under this section may relate to the activities of more than one insurer.
- (3) An officer of the Authority appointed by the Authority for the purposes of this section is, for the purposes of the exercise of the Authority's functions under this section, entitled to inspect the accounting and other records of an insurer.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.
Maximum penalty: 1,000 penalty units.
- (5) An insurer must provide all reasonable assistance to the Authority for the purpose of facilitating the exercise of functions by the Authority under this section.
- (6) The Authority may publish such reports and other information concerning an audit under this section as the Authority thinks fit.

[56] Section 208 Contributions by specialised insurers to Insurance Fund

Omit "licensed" wherever occurring. Insert instead "specialised".

[57] Section 208 (1)

Omit "Premiums Adjustment Fund". Insert instead "Insurance Fund".

[58] Section 208AA Contributions by exiting employers

Omit the definition of *managed fund insurer* from section 208AA (1).

[59] Section 208AA (1), definition of "managed fund liabilities"

Omit the definition. Insert instead:

insured liabilities of an exiting employer means the following outstanding liabilities of the exiting employer:

- (a) any liabilities of the exiting employer under this Act in respect of workers employed by the exiting employer while insured under a policy of insurance issued by an insurer licensed or previously licensed under Division 3 of Part 7 (other than a specialised insurer),

- (b) any liabilities of the exiting employer independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State or Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while insured under a policy of insurance referred to in paragraph (a).

[60] Section 208AA (1), definition of “responsible insurer”

Omit “of this Act or section 192 of the 1988 Act” from paragraph (b).

[61] Section 208AA (2)

Omit the subsection. Insert instead:

- (2) The object of this section is to provide for the protection of the Insurance Fund against deficiencies that may result from the insured liabilities of exiting employers.

[62] Section 208AA (4) (a)

Omit “Premiums Adjustment Fund”. Insert instead “Insurance Fund”.

[63] Section 208AA (5)

Omit “managed fund liabilities”. Insert instead “insured liabilities”.

[64] Section 208AA (6) (a)

Omit “or under section 174 of the 1998 Act”.

[65] Section 208AA (6) (e)

Omit “this clause”. Insert instead “this section”.

[66] Part 7, Division 6

Omit the Division.

[67] Section 224C Insurance Fund may be applied to meet claims etc of defaulting insurers

Omit “Premiums Adjustment Fund” and “Authority” wherever occurring. Insert instead “Insurance Fund” and “Nominal Insurer” respectively.

[68] Sections 224D, 224E, 224F and 233

Omit the sections.

[69] Sections 227 (2) (a1) and 228 (2C)

Omit “Premiums Adjustment Fund” wherever occurring.

Insert instead “Insurance Fund”.

[70] Section 227 (2) (c)

Omit “(other than an amount required by section 222 (Repayments to the Contribution Fund) to be paid into the Contribution Fund)”.

[71] Section 227 (2) (d)

Omit the paragraph.

[72] Schedule 6 Savings, transitional and other provisions

Insert after Part 19:

**Part 19A Provisions consequent on enactment of
Workers Compensation Amendment
(Insurance Reform) Act 2003**

1 Definitions

In this Part:

amending Act means the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

managed fund insurer means an insurer who is a licensed insurer (other than a specialised insurer) immediately before the commencement of this Part.

relevant date, in relation to a managed fund insurer, means the date appointed by the Authority by order published in the Gazette as the relevant date for the insurer for the purposes of this Part.

statutory fund means a statutory fund maintained by a managed fund insurer immediately before the relevant date for the insurer.

2 Licensing of insurers

On and from the commencement of this Part, a licence may only be granted under Division 3 of Part 7 of this Act if it is endorsed with a specialised insurer endorsement.

3 General transitional arrangements in relation to managed fund insurers

- (1) On and from the relevant date for a managed fund insurer, the following provisions have effect:
 - (a) the managed fund insurer cannot issue a policy of insurance for the purposes of this Act,
 - (b) the Nominal Insurer becomes the insurer under every policy of insurance issued by the managed fund insurer before that date as if the Nominal Insurer had issued the policy instead of the licensed insurer,
 - (c) anything done or omitted to be done by the managed fund insurer before that date in respect of such a policy of insurance or any claim or liability under the policy is taken to have been done by the managed fund insurer as agent for the Nominal Insurer,
 - (d) a reference to a managed fund insurer in any contract that is of a class prescribed by regulations is, to the extent necessary to give effect to the other provisions of this subclause and subject to the regulations, taken to be a reference to the Nominal Insurer,
 - (e) any liability of a managed fund insurer as insurer under such a policy of insurance existing immediately before that date is taken to be a liability of the Nominal Insurer as insurer under that policy,
 - (f) any claim or proceeding against the managed fund insurer in respect of such a policy of insurance or any claim or liability under the policy is taken to be a claim or proceeding against the Nominal Insurer,
 - (g) the managed fund insurer may (except as otherwise provided by the regulations or as directed by the Nominal Insurer) continue to act as agent for the Nominal Insurer.

- (2) The regulations may make provision for the arrangements that are to apply in relation to a managed fund insurer who acts as agent for the Nominal Insurer under subclause (1) (g).
- (3) Nothing in subclause (1) or (2) gives rise to any entitlement on the part of a managed fund insurer to be appointed as a scheme agent.
- (4) Nothing in subclause (1) affects the liability of a managed fund insurer (or of a director of a company that is a managed fund insurer) for any breach of duty as a trustee arising under this Act or any other Act or law whether before or after the commencement of this Part.

4 Closure of statutory funds

- (1) On the relevant date for a managed fund insurer, the statutory fund of the managed fund insurer is closed and the assets and liabilities of that fund are transferred to, and become the assets and liabilities of, the Insurance Fund.
- (2) Any amount payable to the statutory fund of a managed fund insurer before the relevant date for the insurer that is unpaid on that date becomes payable on that date to the Insurance Fund.

5 Certain repealed provisions continue to have effect until relevant date

The provisions repealed by Schedule 2 [47] to the amending Act continue to have effect, despite their repeal, in relation to a managed fund insurer until the relevant date for the insurer.

6 Cancellation of licence of managed fund insurer

- (1) On the relevant date for a managed fund insurer, the licence of the managed fund insurer under Division 3 of Part 7 of this Act is cancelled.
- (2) No compensation (including compensation for loss of business or any goodwill associated with a business) is payable in respect of the cancellation of such a licence.
- (3) The cancellation of the licence of a managed fund insurer does not in itself give rise to any right of action against the managed fund insurer, the Authority, the Nominal Insurer or a scheme agent.

- (4) A managed fund insurer has no entitlement to appointment as a scheme agent and is not entitled to any compensation as a result of not being appointed as a scheme agent.

7 Insurance records of managed fund insurers

- (1) On the relevant date for a managed fund insurer, all insurance records of the managed fund insurer become the property of the Nominal Insurer.
- (2) If an insurance record is in such a form that information can only be produced or made available from it by means of the use of particular equipment or information technology (such as computer software), the managed fund insurer must, after the relevant date, take such action as may be necessary to ensure that the information remains able to be produced or made available to the Nominal Insurer.
- (3) The regulations may:
- (a) make provision for or with respect to the requirements of managed fund insurers in relation to the insurance records of the insurer, and
 - (b) create offences punishable by a penalty not exceeding 200 penalty units for contravention of any such requirement.
- (4) 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 or to any claim, judgment or award made in respect of any such policies.

8 Existing agreements under section 208AA

An agreement entered into under section 208AA and in force immediately before the commencement of Schedule 2 [58] to the amending Act is taken to be an agreement entered into under that section as amended by the amending Act.

9 Premiums Adjustment Fund

On the repeal of section 203 by Schedule 2 [47] to the amending Act, the assets and liabilities of the Premiums Adjustment Fund become assets and liabilities of the Insurance Fund.

10 Insurers' Contribution Fund

- (1) On the repeal of section 218 by Schedule 2 [66] to the amending Act, the assets and liabilities of the Insurers' Contribution Fund become assets and liabilities of the Insurance Fund.
- (2) Any entitlement to payment from the Insurers' Contribution Fund immediately before the repeal of section 218 becomes an entitlement to payment from the Insurance Fund.

11 Pending claims etc under ULIS

Without limiting clause 1 of Part 20 of this Schedule, the regulations may make provision for or with respect to the following:

- (a) the manner in which claims made under Division 6 of Part 4 and pending on the commencement of Schedule 2 [8] to the amending Act are to be dealt with,
- (b) the transfer to the Nominal Insurer and the Insurance Fund of the assets, rights and liabilities of the Authority and the WorkCover Authority Fund in relation to claims made under Division 6 of Part 4 before that commencement,
- (c) any other matter that is consequential on the amendments made to Division 6 of Part 4 by the amending Act.

[73] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1):

Workers Compensation Amendment (Insurance Reform) Act 2003

Schedule 3 Amendment of other Acts

(Section 4)

3.1 Freedom of Information Act 1989 No 5

Schedule 2 Exempt bodies and offices

Insert at the end of the Schedule:

The Workers Compensation Nominal Insurer established under the *Workers Compensation Act 1987*—functions relating to the issuing of policies of insurance to employers and the calculation of premiums (but only in relation to individual employers), the management of specific claims and to asset and funds management and investment.

3.2 Public Finance and Audit Act 1983 No 152

Section 63F

Insert after section 63E:

63F Status of Workers Compensation Insurance Fund

The Workers Compensation Insurance Fund established under the *Workers Compensation Act 1987* is not part of (and the assets and liabilities of that Fund are not part of):

- (a) the Total State Sector for the purposes of the preparation of the Total State Sector Accounts under this Act, or
- (b) the general government sector for the purposes of this Act or the *General Government Debt Elimination Act 1995*.

3.3 State Records Act 1998 No 17

Section 3 Definitions

Insert at the end of the definition of *public office* in section 3 (1) before the note to that definition:

but does not include the Workers Compensation Nominal Insurer established under the *Workers Compensation Act 1987*.

3.4 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of *Uninsured Liability and Indemnity Scheme* from section 4 (1).

[2] Section 23A

Insert after section 23:

23A Nominal Insurer functions of Authority

- (1) The Authority has such additional functions as may be necessary or convenient for enabling the Authority to act for the Nominal Insurer and to ensure that the Nominal Insurer's functions are able to be exercised without restriction by any of the Authority's other functions.
- (2) When acting for the Nominal Insurer, the Authority has and may exercise all the functions of the Nominal Insurer and is not limited by any of the Authority's other functions.
- (3) When acting for the Nominal Insurer, the Authority must exercise its functions so as to ensure the efficient exercise of the functions of the Nominal Insurer and the proper collection of premiums for policies of insurance and the payment of claims in accordance with this Act and the 1987 Act.

[3] Section 55A

Insert after section 55:

55A Compliance by scheme agents

A scheme agent must comply with the requirements of this Chapter.

Maximum penalty: 1,000 penalty units.

Note. Section 154M (2) of the 1987 Act provides that certain provisions of this Act (including certain provisions of this Chapter) extend to scheme agents acting on behalf of the Nominal Insurer.

[4] Sections 97 (5) (c) and 108 (2) (c)

Omit "Uninsured Liability and Indemnity Scheme" wherever occurring.

Insert instead "Insurance Fund".

[5] Section 108 Interim awards

Omit “the Uninsured Liability and Indemnity Scheme” from section 108 (2) (a) wherever occurring.

Insert instead “Division 6 of Part 4 of the 1987 Act”.

[6] Section 238 Powers of entry and inspection by officers of Authority

Insert “or the Nominal Insurer” after “by the Authority” in the definition of *authorised officer* in section 238 (1).

[7] Section 238 (1)

Insert “and (without limiting section 154M (2) of the 1987 Act) includes any scheme agent” after “insurance business” in the definition of *insurer*.

[8] Section 238AA Power to obtain information, documents and evidence

Insert “or the Nominal Insurer” after “by the Authority” in section 238AA (7).

[9] Section 239 Authority may obtain documents from court registry or Registrar

Insert after section 239 (4):

- (5) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

[10] Section 243 Disclosure of information

Insert after section 243 (3):

- (4) In this section, a reference to the Authority is taken to include a reference to the Nominal Insurer.

[11] Section 243A

Insert after section 243:

243A Information gathering and use by Authority and Nominal Insurer

- (1) The Authority and the Nominal Insurer may collect, analyse, use and disclose data, statistics and other information relating to any of the following:
 - (a) claims for compensation and work injury damages,

-
- (b) the functions, activities and performance of scheme agents, specialised insurers and self-insurers,
 - (c) policies of insurance,
 - (d) the investment of assets of the Insurance Fund.
- (2) For that purpose, the Authority and the Nominal Insurer may obtain information from scheme agents, specialised insurers, self-insurers and from any other source.
- (3) This section extends to authorise the Authority and the Nominal Insurer to collect and analyse, and to disclose to such persons or classes of persons as may be prescribed by the regulations, personal information about the health of an individual, but only in relation to (or in connection with) the matters referred to in subsection (1).
- (4) Section 243 does not prevent the disclosure of information in accordance with this section.

[12] Section 284 Insurer liable to pay fee if claim goes to assessment

Omit section 284 (3).

[13] Section 345 Costs penalties where appeal unsuccessful

Omit section 345 (2).

[14] Schedule 5A Injury management pilot projects

Omit clause 6 (2) and (4).

[15] Schedule 5A, clause 6 (3) (c)

Omit “statutory funds of insurers”. Insert instead “Insurance Fund”.