

NSW Self Insurance Corporation Act 2004 No 106

[2004-106]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[NSW Self Insurance Corporation Amendment Bill 2013](#)

Authorisation

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NSW Self Insurance Corporation Act 2004 No 106



New South Wales

An Act to reconstitute the NSW Insurance Ministerial Corporation as the NSW Self Insurance Corporation and to clarify its functions; and for related purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *NSW Self Insurance Corporation Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

builder means a person who carries on the business of doing residential building work.

building management service provider means a person who provides builders with advice and other services concerning the management of builders' businesses (such as the management of financial risks).

exercise a function includes perform a duty.

function includes a power, authority or duty.

Government managed fund scheme means an arrangement under which workers compensation, motor vehicle accident, public and other liabilities of the State or an authority of the State:

- (a) are managed as a self insurance scheme (including the collection of contributions from the State or an authority of the State towards the cost of claims), and
- (b) are paid, or otherwise settled, by the State or by the Self Insurance Corporation on behalf of the State or an authority of the State,

but does not include any arrangement under which home warranty insurance is provided (or the Home Warranty Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.

home warranty insurance means insurance under a contract of insurance required to be entered into by or under Part 6 of the [Home Building Act 1989](#).

Home Warranty Insurance Fund means the Fund established under section 12A.

insurance agency arrangement—see section 8A (4).

insurance agent—see section 8A (4).

insurance intermediary means an insurance broker or other person who enters into a contract, agreement or other arrangement with an insurance agent in connection with the provision of home warranty insurance by or on behalf of the Self Insurance Corporation.

residential building work has the same meaning as in the [Home Building Act 1989](#).

Self Insurance Corporation means the corporation constituted under section 4.

Self Insurance Fund means the Fund established under section 11.

(2) Notes included in this Act do not form part of this Act.

Part 2 Establishment of Self Insurance Corporation

4 Constitution of NSW Self Insurance Corporation

- (1) There is constituted by this Act a corporation with the corporate name of NSW Self Insurance Corporation.
- (2) The Self Insurance Corporation is, for the purposes of any Act, a statutory body representing the Crown.

5 Management of Self Insurance Corporation

- (1) The affairs of the Self Insurance Corporation are to be managed by the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Self Insurance Corporation by the Minister, or with the authority of the Minister, is taken to have been done by the Self Insurance Corporation.

6 Staff of Self Insurance Corporation

- (1) The Self Insurance Corporation may arrange for the use of the services of any staff or facilities of any government department or public or local authority.
- (2) For the purpose of this Act, any such staff are taken to be staff of the Self Insurance

Corporation.

Part 3 Functions of Self Insurance Corporation

7 General functions

- (1) The Self Insurance Corporation has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) Without limiting subsection (1), the Self Insurance Corporation has the functions imposed on it under section 211B of the *Workers Compensation Act 1987* and sections 26 and 27 of the *Government Insurance Office (Privatisation) Act 1991*.

8 Specific functions in relation to Government managed fund schemes

The Self Insurance Corporation has the following functions with respect to Government managed fund schemes:

- (a) to operate one or more Government managed fund schemes (including the function of establishing, reorganising, amalgamating, dividing or winding up such schemes),
- (b) to enter into agreements or arrangements with other persons to provide services (as agents or otherwise) in relation to the operation of any Government managed fund scheme,
- (c) to enter into insurance or other agreements or arrangements to cover the liabilities to which a Government managed fund scheme applies,
- (d) to act for the State or an authority of the State in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to the State or an authority of the State in connection with such claims).

8A Specific functions in relation to home warranty insurance

- (1) **General functions** The Self Insurance Corporation has the following functions with respect to home warranty insurance:
 - (a) to carry on the business of providing home warranty insurance for building work done in New South Wales that requires such insurance under the *Home Building Act 1989*,
 - (b) to manage the Home Warranty Insurance Fund,
 - (c) to enter into contracts, agreements or other arrangements with building management service providers and other persons (including re-insurers) for services relating to the exercise of the Corporation's functions in connection with the provision of home warranty insurance and the management of the Home Warranty Insurance Fund.

Note—

See section 50 of the *Interpretation Act 1987* concerning the powers of statutory corporations in exercise of their functions. These powers include the power to hold and otherwise deal with property.

- (2) **Market practice and claims handling guidelines** In exercising its functions with respect to home warranty insurance, the Self Insurance Corporation is to comply with any applicable guidelines issued under section 91A of the *Home Building Act 1989*.

Note—

Section 91A of the *Home Building Act 1989* provides that the Minister administering that Act may issue guidelines with respect to appropriate market practices and claims handling procedures in connection with the provision of home warranty insurance by or on behalf of the Self Insurance Corporation.

- (3) A failure to comply with any such guidelines does not affect the validity of any action taken (or omitted to be taken) by or on behalf of the Self Insurance Corporation in connection with the exercise of its functions with respect to home warranty insurance.
- (4) **Insurance agents and intermediaries** Without limiting subsection (1) (c), the Self Insurance Corporation may enter into contracts, agreements or other arrangements (**insurance agency arrangements**) for the appointment of persons to act as agents (**insurance agents**) for the Corporation concerning the exercise of any of the functions of the Corporation in connection with the provision of home warranty insurance.
- (5) An insurance agent is, in the exercise of functions under an insurance agency arrangement, subject to the direction and control of the Self Insurance Corporation as provided by the terms of the insurance agency arrangement.
- (6) A person incurs no personal liability for or in connection with a liability incurred by the person as an insurance agent for the Self Insurance Corporation 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.
- (7) Sections 12, 13 and 18 of the *Public Finance and Audit Act 1983* do not apply in relation to insurance agents or insurance intermediaries in relation to the carrying out of functions under insurance agency arrangements.
- (8) **Requirements for providing home warranty insurance** Without limiting subsection (1), the Self Insurance Corporation may require any of the following:
- (a) that a builder engage the services of a specified building management service provider (or a building management service provider belonging to a specified class of such providers) as a condition of home warranty insurance being provided in relation to residential building work done by the builder,
 - (b) that a builder arrange for the provision of home warranty insurance only through a specified insurance agent or an insurance agent belonging to a specified class of

insurance agents.

8B Trade practices authorisations

- (1) The following are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
- (a) any insurance agency arrangement,
 - (b) the conduct of the parties to an insurance agency arrangement:
 - (i) in negotiating or entering into the arrangement, or
 - (ii) in performing the terms of the arrangement (including any terms that are to be included, or that are taken to be included, in the arrangement under the regulations),
 - (c) any contract, agreement or other arrangement between a building management service provider and the Self Insurance Corporation concerning the provision of services to builders that do residential building work that is insured by the Corporation,
 - (d) the conduct of the parties to a contract, agreement or other arrangement referred to in paragraph (c):
 - (i) in negotiating or entering into the contract, agreement or other arrangement, or
 - (ii) in performing the terms of the contract, agreement or other arrangement,
 - (e) any requirement of the Self Insurance Corporation of a kind referred to in section 8A (8) and any conduct of a person in relation to whom the requirement is imposed in complying with the requirement.
- (2) Subsection (1) extends to any contract, agreement or other arrangement that, by operation of clause 4 of Schedule 1, becomes:
- (a) an insurance agency arrangement, or
 - (b) a contract, agreement or other arrangement between a building management service provider and the Self Insurance Corporation concerning the provision of services to builders that do residential building work that is insured by the Corporation.

Note—

Clause 4 of Schedule 1 provides for certain contracts, agreements or other arrangements entered into by the Minister for or on behalf of the Crown before the commencement of section 8A to become contracts, agreements or other arrangements to which the Self Insurance Corporation is a party instead of the Crown.

- (3) Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

9 Delegation of functions

The Self Insurance Corporation may delegate to any person the exercise of any of its functions, other than this power of delegation.

10 Ownership and control of records

- (1) Subject to the regulations, all records (within the meaning of the *State Records Act 1998*) made and kept, or received and kept, by an agent or other person in the exercise of functions on behalf of the Self Insurance Corporation are the property of the Self Insurance Corporation.
- (2) The Self Insurance Corporation may give directions to such an agent or other person with respect to the possession, custody and control of, and the granting of access to, those records.
- (3) A person must not, without reasonable excuse, fail to comply with any such direction given by the Self Insurance Corporation to the agent or person.

Maximum penalty: 100 penalty units.

Part 4 Finance

Division 1 Self Insurance Fund

11 Self Insurance Fund

- (1) There is to be established in the Special Deposits Account a Self Insurance Fund (the **Fund**) into which is to be paid:
 - (a) all money received by the Self Insurance Corporation as contributions from the State or an authority of the State towards the cost of claims, and
 - (b) all money recovered by the Self Insurance Corporation from insurers, third parties or other persons in connection with claims to which a Government managed fund scheme applies, and
 - (c) all money advanced to the Self Insurance Corporation by the Minister or appropriated by Parliament for the purposes of the Fund, and
 - (d) all money directed or authorised to be paid into the Fund by or under this or any other Act, and
 - (e) the proceeds of the investment of money in the Fund, and

- (f) all money received by the Self Insurance Corporation from any other source (except any money that is payable into the Home Warranty Insurance Fund).
- (2) The Fund is to be applied for the purpose of enabling the Self Insurance Corporation to exercise its functions (except its functions in relation to the provision of home warranty insurance and the management of the Home Warranty Insurance Fund), including but not limited to the following:
- (a) payment of claims to which a Government managed fund scheme applies,
 - (b) payment of Government managed fund scheme administration expenses,
 - (c) payment of the costs (including disbursements) of risk management, actuarial and legal services provided in connection with Government managed fund schemes,
 - (d) payments to provide incentives to authorities of the State to enhance the management of liabilities,
 - (e) payment of contributions by the Self Insurance Corporation made in accordance with an arrangement entered into under section 211B (3) of the *Workers Compensation Act 1987*.
- (3) All expenditure incurred by the Self Insurance Corporation (except expenditures incurred in connection with the provision of home warranty insurance or the operation of the Home Warranty Insurance Fund) is to be paid from the Fund.
- (4) The Treasurer may from time to time direct the payment out of the Fund of such sums as the Treasurer considers to be surplus to the requirements of the Fund under this section and such sums are to be paid out of the Fund in accordance with the Treasurer's direction.
- (5) Any sum paid out of the Fund in accordance with the Treasurer's direction is taken to be appropriated by this Act to the Treasurer, and may be issued and applied for or towards the recurrent services, or capital works and services, of the Crown Finance Entity.
- (6) In this section:
- Crown Finance Entity** means the entity responsible for the assets, liability and transactions that are the overall responsibility of the Government (in contrast to being the responsibility of individual Government agencies).

12 Investment of money in Self Insurance Fund

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

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*,
or

- (b) if that Act does not confer power on the Self Insurance Corporation to invest the money, in any other manner approved by the Minister.

Division 2 Home Warranty Insurance Fund

12A Home Warranty Insurance Fund

- (1) There is to be established in the Special Deposits Account a Home Warranty Insurance Fund (**the Fund**).
- (2) The following are to be paid into the Fund:
 - (a) all money received by the Self Insurance Corporation as insurance premiums for home warranty insurance that it provides,
 - (b) all money received by the Self Insurance Corporation from re-insurers in connection with home warranty insurance that it provides,
 - (c) all money recovered by the Self Insurance Corporation by the exercise of any right of subrogation or other right of recovery in connection with home warranty insurance that it provides,
 - (d) all money received under any security, guarantee or recourse held by the Self Insurance Corporation in respect of any policies for home warranty insurance that it has issued,
 - (e) all money advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
 - (f) the proceeds of the investment of money in the Fund,
 - (g) all money directed or authorised to be paid into the Fund by or under this or any other Act.
- (3) Money may be paid from the Fund for any of the following purposes:
 - (a) the payment of claims made under any home warranty insurance provided by the Self Insurance Corporation,
 - (b) the payment of the costs (including disbursements and commissions) of risk management, actuarial, agency, brokerage, legal and other services provided in connection with the administration of the home warranty insurance business of the Self Insurance Corporation,
 - (c) the payment of amounts required to meet administrative expenses in relation to the Fund,
 - (d) the payment into the Consolidated Fund of any amount that the Self Insurance Corporation considers (after applying an appropriate prudential margin) to be

surplus to the requirements of the Fund from time to time to repay (whether in whole or in part) any money previously advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,

- (e) the payment of any other amounts directed or authorised to be paid from the Fund by or under this or any other Act.

12B Investment of money in Home Warranty Insurance Fund

The Self Insurance Corporation may invest money in the Home Warranty Insurance Fund:

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

Part 5 Miscellaneous

13 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the making and keeping of records by insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries) and the giving of access to those records by such agents or intermediaries (or former agents or former intermediaries),
- (b) the obligations of insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries) 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 insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries),
- (d) any other conduct of insurance agents and insurance intermediaries (including the monitoring of their conduct) in their capacities as agents and intermediaries,
- (e) the conduct of building management service providers (including the monitoring of their conduct) in relation to builders who do residential building work that is insured by the Self Insurance Corporation,

(f) without limiting paragraphs (a)–(e)—standard terms concerning the provision of home warranty insurance by or on behalf of the Self Insurance Corporation that are to be included, or that are taken to be included, in insurance agency arrangements or in contracts, agreements or other arrangements between insurance agents and insurance intermediaries.

(1B) Regulations made for the purposes of subsection (1A) (f) may extend to contracts, agreements or other arrangements entered into before the regulations commence.

(2) A regulation may create offences with a maximum penalty not exceeding 50 penalty units.

14 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

15 Seal of Corporation

The seal of the Self Insurance Corporation is to be kept by the Minister and may be affixed to a document only:

- (a) in the presence of the Minister or a member of the staff of the Corporation authorised in that behalf by the Minister, and
- (b) with an attestation by the signature of the Minister or that member of staff of the fact of the affixing of the seal.

16 Savings, transitional and other provisions

Schedule 1 has effect.

17 (Repealed)

18 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 16)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

State Revenue and Other Legislation Amendment (Budget Measures) Act 2006

NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010, to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Continuation of NSW Insurance Ministerial Corporation

The NSW Self Insurance Corporation is a continuation of, and the same legal entity as, the NSW Insurance Ministerial Corporation that was constituted by the *Government Insurance Office (Privatisation) Act 1991*.

3 Continuation of NSW Treasury Managed Fund

Nothing in this Act affects the continuation of the NSW Treasury Managed Fund, except that the NSW Treasury Managed Fund is taken to be a Government managed fund scheme subject to this Act.

Part 3 Provisions consequent on enactment of **NSW Self Insurance**

Corporation Amendment (Home Warranty Insurance) Act 2010

4 Certain pre-commencement arrangements to become arrangements of Self Insurance Corporation

- (1) This clause applies to any contract, agreement or other arrangement (a **pre-commencement arrangement**) entered into by the Minister, for or on behalf of the Crown, that:
 - (a) is entered into before the day on which section 8A of this Act (as inserted by the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*) commences, and
 - (b) is in force immediately before the commencement of section 8A of this Act, and
 - (c) is entered into for the purpose of enabling the Self Insurance Corporation to exercise its functions in relation to the provision of home warranty insurance when those functions are conferred on it by amendment to this Act.
- (2) A contract, agreement or other arrangement is entered into for the purpose referred to in subclause (1) (c) if:
 - (a) it is expressed to have been entered into for that purpose, or
 - (b) the Minister, by order published in the Gazette, declares it to have been entered into for that purpose.
- (3) On and from the transfer day:
 - (a) the Self Insurance Corporation becomes, by virtue of this clause and without the need for any novation, a party to each pre-commencement arrangement instead of the Crown, and
 - (b) any rights and liabilities of the Crown (**relevant rights and liabilities**) arising under, or in relation to, a pre-commencement arrangement become, by virtue of this clause, the rights and liabilities of the Self Insurance Corporation, and
 - (c) if a pre-commencement arrangement makes provision for the appointment of a person as an agent of the Self Insurance Corporation in relation to the provision of home warranty insurance—the person becomes an insurance agent of the Self Insurance Corporation, and the arrangement becomes an insurance agency arrangement, for the purposes of this Act, and
 - (d) all proceedings relating to a pre-commencement arrangement or any relevant rights and liabilities that are pending by or against the Minister or the Crown are taken to be proceedings pending by or against the Self Insurance Corporation, and
 - (e) any act, matter or thing done or omitted to be done in relation to a pre-

commencement arrangement or any relevant rights and liabilities by, to or in respect of the Minister or the Crown is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Self Insurance Corporation, and

(f) any reference in a pre-commencement arrangement to the Minister or the Crown is, subject to the regulations, to be read as a reference to the Self Insurance Corporation.

(4) The operation of this clause is not to be regarded:

(a) as a breach of contract or confidence or otherwise as a civil wrong, or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or other instrument.

(5) In this clause:

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

transfer day, in relation to a pre-commencement arrangement, means:

(a) if the arrangement is expressed to have been entered into for the purpose referred to in subclause (1) (c)—the day on which section 8A of this Act commences, or

(b) if the arrangement becomes a pre-commencement arrangement by virtue of a declaration made by the Minister in an order published under subclause (2) (b)—on the day on which the order is published in the Gazette or such later day as

may be specified in the order (being a day that is no earlier than the day on which section 8A of this Act commences).

Schedule 2 (Repealed)