

# NSW Self Insurance Corporation Act 2004 No 106

[2004-106]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#), Sch 4.76 (not commenced — to commence on 1.7.2019)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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).

**chief executive** means the chief executive of the Self Insurance Corporation appointed under this Act.

**construction contract** means a contract or other agreement for the carrying out of construction work.

**Construction Risks Insurance Fund** means the Fund established under section 12C.

**contractor**, in relation to a construction contract, means a party to the contract who undertakes to carry out the construction work under the contract, and includes any subcontractors engaged by such a party to carry out work on the party's behalf.

**eligible State official** means a person who is:

- (a) an employee or officer of the State, or
  - (b) an employee, or a member, director or other officer, of an authority of the State,
- and, without limiting paragraph (a) or (b), includes a member of a committee or other body established for the purpose of assisting an authority of the State (including a Public Service agency or a Minister) in the exercise of its functions.

**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, an authority of the State or an eligible State official:

- (a) are managed as a self insurance scheme (including the collection of contributions from the State, an authority of the State or an eligible State official 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, an authority of the State or an eligible State official,

but does not include any arrangement under which:

- (c) insurance under the Home Building Compensation Fund is provided (or the Home Building Compensation Fund is managed) by or on behalf of the Self Insurance Corporation, or
- (d) principal arranged construction insurance is provided (or the Construction Risks Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.

**Home Building Compensation Fund** means the Fund established under section 12A.

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

**insurance agent**—see section 8A (4).

**insurance intermediary** means a person who enters into a contract, agreement or other arrangement with an insurance agent in connection with the provision of insurance under Part 6 of the [Home Building Act 1989](#) by or on behalf of the Self Insurance Corporation.

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

**mandatory Government arranged construction insurance** means principal arranged construction insurance that the State or an authority of the State is required (whether as a matter of law or Government policy) to arrange with the Self Insurance Corporation because of a direction of the Treasurer or the Secretary of the Treasury.

**Note—**

For example, the State or an authority of the State may, by means of a Treasury Circular issued by the Secretary of the Treasury, be required to arrange for specified insurance.

**principal**, in relation to a construction contract, means any of the following:

- (a) a party to the contract for which the construction work under the contract is being carried out,
- (b) a person (other than a party to the contract) who is a member of a partnership, joint venture or other arrangement for the benefit of which the construction work under the contract is being carried out.

**principal arranged construction insurance** means insurance that is arranged by a principal in relation to a construction contract to cover principals and contractors with respect to the risks associated with the construction work to which the construction contract relates.

**Public Service agency** has the same meaning as in the [Government Sector Employment Act 2013](#).

**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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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.
- (3) The Self Insurance Corporation is subject to the control and direction of the Minister in

the exercise of its functions.

## **5 Chief executive of Self Insurance Corporation**

- (1) The Minister is to appoint a person as the chief executive of the Self Insurance Corporation.

### **Note—**

Schedule 1A contains provisions relating to the chief executive of the Corporation.

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

## **6 (Repealed)**

# **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**

- (1) 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 (including by providing indemnities) to cover the liabilities to which a Government managed fund scheme applies,
  - (d) to act for the State, an authority of the State or an eligible State official in dealing with claims under a Government managed fund scheme (including the recovery of

amounts payable to the State, an authority of the State or an eligible State official in connection with such claims).

- (2) In exercising its functions under subsection (1) (c), the Self Insurance Corporation may enter into contracts of insurance as the insured but not as the insurer.

**Note—**

The Self Insurance Corporation may, for example, obtain insurance from another insurer to cover its own liabilities in providing cover under a Government managed fund scheme. However, it may not provide insurance to the State or any authority of the State or eligible State official whose liabilities are covered by such a scheme. Their liabilities may be managed by means of other agreements and arrangements, including by the provision of indemnities.

- (2A) To avoid doubt, the Self Insurance Corporation may exercise its functions under subsection (1) (d) by acting for a person who is a former eligible State official in dealing with claims under a Government managed fund scheme relating to the person's acts or omissions when the person was an eligible State official.
- (3) Nothing in the *State Owned Corporations Act 1989* (including clauses 5 and 6 of Schedule 10 to that Act) prevents the Self Insurance Corporation from providing indemnities to, or entering agreements or arrangements with, a director or other officer (or any other person concerned, or taking part, in the management) of a State owned corporation to cover the liabilities of such a director, officer or person.
- (4) Entering into insurance or other agreements or arrangements (including the provision of indemnities) to cover the liabilities to which a Government managed fund scheme applies is declared to be an excluded matter for the purposes of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 7 (Financial services and markets) of that Act.

**Note—**

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

## **8A Specific functions in relation to insurance under *Home Building Act 1989***

- (1) **General functions** The Self Insurance Corporation has the following functions with respect to insurance under Part 6 of the *Home Building Act 1989*:
- (a) to carry on the business of providing insurance for building work done in New South Wales that requires insurance under that Part,
  - (b) to manage the Home Building Compensation 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 insurance under that Part and the management of the Home Building Compensation 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) **Insurance guidelines** In exercising its functions with respect to insurance under Part 6 of the *Home Building Act 1989*, the Self Insurance Corporation is to comply with any Insurance Guidelines issued under the *Home Building Act 1989*.
- (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 insurance under Part 6 of the *Home Building Act 1989*.
- (4) **Insurance agents and brokers** Without limiting subsection (1) (c), the Self Insurance Corporation may enter into contracts, agreements or other arrangements (**insurance agency or broker arrangements**) for the appointment of persons to act as agents (**insurance agents**) or insurance brokers for the Corporation concerning the exercise of any of the functions of the Corporation in connection with the provision of insurance under Part 6 of the *Home Building Act 1989*.
- (5) An insurance agent or insurance broker is, in the exercise of functions under an insurance agency or broker arrangement, subject to the direction and control of the Self Insurance Corporation as provided by the terms of the insurance agency or broker arrangement.
- (6) A person incurs no personal liability for or in connection with a liability incurred by the person as an insurance agent or insurance broker 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 or broker'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 or broker arrangements.
- (8) **Requirements for providing insurance under Part 6 of the Home Building Act 1989** 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 insurance under Part 6 of the *Home Building Act 1989* being provided in relation to residential building work done by the builder,

- (b) that a builder arrange for the provision of insurance under Part 6 of the *Home Building Act 1989* only through a specified insurance agent or an insurance agent belonging to a specified class of insurance agents.

**8B (Repealed)**

**8C Specific functions relating to principal arranged construction insurance**

- (1) The Self Insurance Corporation has the following functions with respect to principal arranged construction insurance:
  - (a) to carry on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales,
  - (b) to manage the Construction Risks Insurance Fund,
  - (c) to enter into contracts, agreements or other arrangements with other persons (including re-insurers) for services relating to the exercise of the Corporation's functions in connection with the provision of such principal arranged construction insurance and the management of the Construction Risks Insurance Fund.
- (2) A project is a **major capital works project** for the purposes of subsection (1) (a) if:
  - (a) the construction contract for the project provides for the construction of a building, road, tramway, railway, bridge, tunnel or other capital works, and
  - (b) one or more of the principals in relation to the construction contract is or are the State or an authority of the State, and
  - (c) the project is:
    - (i) required to have mandatory Government arranged construction insurance, or
    - (ii) a project that the Minister, by order published in the Gazette, has declared to be a project involving major capital works for the purposes of this section.

**9 Delegation**

- (1) The Self Insurance Corporation may delegate to an authorised person any of the functions of the Corporation (other than this power of delegation).
- (2) In this section:

**authorised person** means:

  - (a) a member of staff of Insurance and Care NSW, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

## 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 Building Compensation Fund or Construction Risks 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 insurance under the Home Building Compensation Fund or principal arranged construction insurance or the management of the Home Building Compensation Fund or

Construction Risks 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*,
- (f) payment into the Construction Risks Insurance Fund of such amounts as may be approved by the Minister for transfer into that Fund.

- (3) All expenditure incurred by the Self Insurance Corporation (except expenditures incurred in connection with the provision of insurance under the Home Building Compensation Fund or principal arranged construction insurance or the operation of the Home Building Compensation Fund or Construction Risks Insurance Fund) is to be paid from the Fund.
- (3A) All expenditure incurred by or on behalf of a NSW Government agency in providing services (including staff and facilities) for or in connection with any Government managed fund scheme 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) if the Self Insurance Corporation is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Self Insurance Corporation is permitted to invest money under that Part, or
- (b) if the Self Insurance Corporation is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister.

## **Division 2 Home Building Compensation Fund**

### **12A Home Building Compensation Fund**

- (1) There is to be established in the Special Deposits Account a Home Building Compensation 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 insurance under Part 6 of the *Home Building Act 1989* that it provides,
  - (b) all money received by the Self Insurance Corporation from re-insurers in connection with insurance under Part 6 of the *Home Building Act 1989* 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 insurance under Part 6 of the *Home Building Act 1989* 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 insurance under Part 6 of the *Home Building Act 1989* 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.
- (2A) (Repealed)
- (3) Money may be paid from the Fund for any of the following purposes:
  - (a) the payment of claims made under any insurance under Part 6 of the *Home Building Act 1989* 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 insurance business under that Act 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,
- (d1) the payment of costs incurred by or on behalf of a NSW Government agency in providing services (including staff and facilities) for or in connection with the insurance scheme established under this section,
- (d2) the costs (as approved by the Minister administering Part 3 of the [State Insurance and Care Governance Act 2015](#)) incurred by the State Insurance Regulatory Authority in exercising functions in connection with that scheme,
- (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 Building Compensation Fund**

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

- (a) if the Self Insurance Corporation is a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way that the Self Insurance Corporation is permitted to invest money under that Part, or
- (b) if the Self Insurance Corporation is not a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way approved by the Minister.

### **Division 3 Construction Risks Insurance Fund**

#### **12C Construction Risks Insurance Fund**

- (1) There is to be established in the Special Deposits Account a Construction Risks 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 principal arranged construction insurance that it provides,
  - (b) all money received by the Self Insurance Corporation from re-insurers in connection with principal arranged construction 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 principal arranged construction 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 principal arranged construction insurance that it has issued,
  - (e) all money transferred to the Fund from the Self Insurance Fund,
  - (f) all money advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
  - (g) the proceeds of the investment of money in the Fund,
  - (h) 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 principal arranged construction 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 principal arranged construction insurance business of the Self Insurance Corporation,
  - (b1) the payment of costs incurred by or on behalf of a NSW Government agency in providing services for or in connection with the principal arranged construction 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.

## **12D Investment of money in Construction Risks Insurance Fund**

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

- (a) if the Self Insurance Corporation is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Self Insurance Corporation is permitted to invest money under that Part, or
- (b) if the Self Insurance Corporation is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister.

## **Division 4 General**

### **12E Investment strategies for funds**

The Treasurer may determine investment strategies for the investment of the Self Insurance Fund, the Home Building Compensation Fund and the Construction Risks Insurance Fund.

## **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, insurance brokers and insurance intermediaries (or former insurance agents, former brokers and former insurance intermediaries) and the giving of access to those records by such agents, brokers or intermediaries (or former agents, former brokers or former intermediaries),
  - (b) the obligations of insurance agents, insurance brokers and insurance intermediaries (or former insurance agents, former brokers 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, insurance brokers and insurance intermediaries (or former insurance agents, former brokers and former insurance intermediaries),
  - (d) any other conduct of insurance agents, insurance brokers and insurance intermediaries (including the monitoring of their conduct) in their capacities as agents, brokers 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 insurance under Part 6 of the *Home Building Act 1989* by or on behalf of the Self Insurance Corporation that are to be included, or that are taken to be included, in insurance agency or broker arrangements or in contracts, agreements or other arrangements between insurance agents, insurance brokers 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, the chief executive or a member of staff of Insurance and Care NSW authorised in that behalf by the Minister, and
- (b) with an attestation by the signature of the Minister, the chief executive 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 1A Provisions relating to chief executive**

(Section 5)

### **1 Term of office**

Subject to this Schedule, a person appointed as chief executive holds office for such period (not exceeding 5 years) as may be specified in the person's instrument of appointment.

### **2 Remuneration**

The chief executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine.

### **3 Vacancy in office of chief executive**

(1) The office of chief executive becomes vacant if the holder of that office:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office under clause 4, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) If the office of chief executive becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **4 Removal from office**

The Minister may remove the chief executive from office at any time for any or no stated reason and without notice.

### **5 Acting chief executive**

(1) The Minister may appoint a person to act in the office of chief executive during the illness or absence of the chief executive or during a vacancy in the office of chief executive. The person, while so acting, has all the functions of the chief executive and

is taken to be the chief executive.

- (2) The Minister may remove a person from any office to which the person was appointed under this clause at any time for any or no stated reason and without notice.
- (3) A person while acting in the office of chief executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of the person.

## **6 Status of chief executive**

- (1) The office of chief executive is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to the chief executive.
- (2) The chief executive is, for the purposes of section 73 of that Act, taken to be the holder of a position in a government sector agency.

## **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
  - any other Act that 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).

## **Part 4 Provisions consequent on enactment of NSW Self Insurance Corporation Amendment Act 2013**

### **5 Existing individual statements of cover**

- (1) Any statement of cover issued by the Self Insurance Corporation before the commencement of the *NSW Self Insurance Corporation Amendment Act 2013* that purported to cover the liabilities of an eligible State official on an individual basis is taken to be (and always to have been) legally enforceable by the official in its application to that official.
- (2) A **statement of cover** for the purposes of subclause (1) is a statement of Government policy issued by the Self Insurance Corporation concerning the manner in which the Self Insurance Fund is to be applied to meet the liabilities of authorities of the State (or their employees, members, directors or other officers).

### **6 Transfer of money from Self Insurance Fund to Construction Risks Insurance Fund**

- (1) This clause applies to any money deposited in the Self Insurance Fund (**existing principal arranged insurance funds**) that:
  - (a) was deposited in the Self Insurance Fund before the commencement of Division 3 of Part 4 of this Act, and
  - (b) would have been required to be paid into the Construction Risks Insurance Fund had Division 3 of Part 4 of this Act been in force when the money was originally received or recovered by the Self Insurance Corporation.
- (2) All existing principal arranged insurance funds are to be paid from the Self Insurance Fund into the Construction Risks Insurance Fund as soon as is reasonably practicable

after the establishment of the Construction Risks Insurance Fund.

## **Part 5 Provisions consequent on enactment of [Home Building Amendment Act 2014](#)**

### **7 Home Building Compensation Fund**

The Home Building Compensation Fund provided for by section 12A is a continuation of the Home Warranty Insurance Fund provided for by that section before the commencement of this clause.

## **Part 6 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2016](#)**

### **8 Eligible State officials**

The amendment made by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2016](#) to the definition of **eligible State official** extends to a member of a committee or other body established, before the commencement of that amendment, for the purpose of assisting an authority of the State (including a Public Service agency or a Minister) in the exercise of its functions.

## **Schedule 2 (Repealed)**