

# State Insurance and Care Governance Act 2015 No 19

[2015-19]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[State Insurance and Care Governance Amendment \(ICNSW Board\) Act 2023 No 16](#) (not commenced)
- **See also**  
[State Insurance and Care Governance Amendment \(ICNSW Governance\) Bill 2023](#)

### 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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# State Insurance and Care Governance Act 2015 No 19



New South Wales

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# State Insurance and Care Governance Act 2015 No 19



New South Wales

An Act relating to the governance of State insurance and care schemes; to constitute Insurance and Care NSW and the State Insurance Regulatory Authority; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *State Insurance and Care Governance Act 2015*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act—

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**ICNSW Board** means the board of directors of Insurance and Care NSW.

**Insurance and Care NSW** (or **ICNSW**) means Insurance and Care NSW constituted under this Act.

**Nominal Insurer** means the Workers Compensation Nominal Insurer established under section 154A of the *Workers Compensation Act 1987*.

**SIRA Board** means the Board of the State Insurance Regulatory Authority.

**State Insurance Regulatory Authority** (or **SIRA**) means the State Insurance Regulatory Authority constituted under this Act.

**workers compensation and motor accidents legislation** means any of the following Acts and the instruments under those Acts—

- (a) *Workplace Injury Management and Workers Compensation Act 1998*,
- (b) *Workers Compensation Act 1987*,
- (c) *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (d) *Motor Accidents Compensation Act 1999*,
- (e) *Motor Accidents Act 1988*,
- (f) *Motor Accident Injuries Act 2017*.

**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 Insurance and Care NSW**

### **Division 1 Constitution and management of ICNSW**

#### **4 Constitution of Insurance and Care NSW**

- (1) There is constituted by this Act a body corporate with the corporate name of Insurance and Care NSW.
- (2) ICNSW is, for the purposes of any Act, a NSW Government agency.

**Note—**

See section 13A of the *Interpretation Act 1987*.

#### **5 Board of directors of ICNSW**

- (1) There is to be a board of directors of Insurance and Care NSW.
- (2) The ICNSW Board is to consist of the following directors—
  - (a) the chief executive of ICNSW,
  - (b) up to 8 other directors appointed by the Minister (the **appointed directors**).

**Note—**

Schedule 1 contains provisions relating to the board of directors of ICNSW.

- (3) The appointed directors are to be persons who, in the opinion of the Minister, together have skills and experience relevant to the administration of State insurance and care schemes and that will assist ICNSW in exercising its functions.
- (4) A person who is an appointed member of the SIRA Board is ineligible to be appointed

as a director of the ICNSW Board.

- (5) In exercising his or her functions as a director of the ICNSW Board, the director is to exercise the degree of care and diligence that a reasonable person in a like position would exercise in the circumstances.

## **6 Role of ICNSW Board**

- (1) All decisions relating to the functions of ICNSW are to be made by or under the authority of the ICNSW Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, ICNSW by or under the authority of the ICNSW Board is taken to have been done by ICNSW.
- (3) The ICNSW Board has the following functions—
  - (a) to give the Minister any information relating to the activities of ICNSW that the Minister requests,
  - (b) to keep the Minister informed of the general conduct of ICNSW's activities and of any significant development in ICNSW's activities,
  - (c) to determine general policies for ICNSW and to give directions to the chief executive of ICNSW in relation to the ICNSW's activities,
  - (d) such other functions as are conferred or imposed on it by or under this or any other Act or law.

## **7 Power of Minister to give directions in public interest**

- (1) The Minister may give the ICNSW Board a written direction in relation to ICNSW if the Minister is satisfied that it is necessary to do so in the public interest.
- (2) The ICNSW Board must ensure that the direction is complied with.
- (3) Before giving a direction under this section, the Minister must—
  - (a) consult with the ICNSW Board, and
  - (b) request the Board to advise the Minister whether, in its opinion, complying with the direction would not be in the best interests of ICNSW.
- (4) The Minister is required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction was given. Any such notice is to be published in the Gazette within 1 month after the direction is given.

## **8 Chief executive of ICNSW**

- (1) The ICNSW Board is, in consultation with the Minister, to employ a person as the chief

executive of ICNSW.

**Note—**

Schedule 2 contains provisions relating to the chief executive of ICNSW.

- (2) The chief executive of ICNSW is responsible for day to day management of the activities of ICNSW in accordance with the general policies and specific directions of the ICNSW Board.

## **9 Committees of ICNSW Board**

- (1) The ICNSW Board may establish committees to give advice and assistance to the ICNSW Board in connection with any particular matter or function of the ICNSW Board.
- (2) A committee of the ICNSW Board must be chaired by a director of the ICNSW Board. It does not matter that some or all of the other members of the committee are not directors of the ICNSW Board.
- (3) The procedure for the calling of meetings of a committee of the ICNSW Board and for the conduct of business at those meetings is to be as determined by the ICNSW Board or (subject to any determination of the ICNSW Board) by the committee.

## **Division 2 Functions of ICNSW**

### **10 Functions of ICNSW**

- (1) ICNSW has the following functions—
  - (a) to act for the Nominal Insurer in accordance with section 154C of the *Workers Compensation Act 1987*,
  - (b) to provide services (including staff and facilities) for any relevant authority, or for any other person or body, in relation to any insurance or compensation scheme administered or provided by the relevant authority or that other person or body,
  - (c) to enter into agreements or arrangements with any person or body for the purposes of providing services of any kind or for the purposes of exercising the functions of the Nominal Insurer,
  - (d) to monitor the performance of the insurance or compensation schemes in respect of which it provides services,
  - (e) such other functions as are conferred or imposed on it by or under this or any other Act.

**Note—**

These other functions include preparing annual reporting information under the *Government Sector Finance Act 2018*.

- (2) Each of the following is a **relevant authority** for the purposes of this section—



- (a) the Workers Compensation (Dust Diseases) Authority constituted under the *Workers' Compensation (Dust Diseases) Act 1942*,
- (b) the Lifetime Care and Support Authority of New South Wales constituted under the *Motor Accidents (Lifetime Care and Support) Act 2006*,
- (c) the Sporting Injuries Compensation Authority constituted under the *Sporting Injuries Insurance Act 1978*,
- (d) the NSW Self Insurance Corporation constituted under the *NSW Self Insurance Corporation Act 2004*,
- (e) the Building Insurers' Guarantee Corporation constituted under Part 6A of the *Home Building Act 1989*.

#### **11 ICNSW to prepare annual statement of business intent**

- (1) ICNSW is to prepare a statement of business intent and submit the statement to the Minister and the Treasurer not later than 3 months after the commencement of each financial year of ICNSW.
- (2) A statement of business intent is to set out the business plan of ICNSW over the financial year to which the statement relates and is to include the following—
  - (a) the objectives of ICNSW and its main undertakings,
  - (b) the nature and scope of the activities to be undertaken,
  - (c) the accounting policies to be applied in the financial reports of ICNSW,
  - (d) the performance targets and other measures by which the performance of ICNSW may be judged in relation to its stated objectives,
  - (e) any other matter required by the Minister.
- (3) If the Minister or the Treasurer is not satisfied with a statement submitted under this section, the Minister may direct ICNSW to amend and resubmit the statement in the manner and time specified.

#### **12 Investment strategies for scheme funds**

- (1) ICNSW is to determine investment strategies for the investment of any scheme fund.
- (2) ICNSW is to report to the Minister at least once in every period of 6 months on the investment performance of each scheme fund.
- (3) ICNSW may enter into agreements or arrangements to determine investment strategies for the investment of any other insurance or compensation fund.
- (4) Each of the following is a **scheme fund** for the purposes of this section—

- (a) the Workers Compensation Insurance Fund established under section 154D of the *Workers Compensation Act 1987*,
- (b) the Workers' Compensation (Dust Diseases) Fund constituted under the *Workers' Compensation (Dust Diseases) Act 1942*,
- (c) the Bush Fire Fighters Compensation Fund established under section 19 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (d) the Emergency and Rescue Workers Compensation Fund established under section 31 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (e) the Lifetime Care and Support Authority Fund established under section 48 of the *Motor Accidents (Lifetime Care and Support) Act 2006*,
- (f) the Sporting Injuries Fund established under section 11 of the *Sporting Injuries Insurance Act 1978*,
- (g) the Supplementary Sporting Injuries Fund established under section 11A of the *Sporting Injuries Insurance Act 1978*.

### **13 Delegation of ICNSW's functions**

- (1) ICNSW may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by ICNSW if the delegate is authorised in writing to do so by ICNSW.
- (3) In this section—

**authorised person** means any of the following—

- (a) the chief executive of ICNSW,
- (b) a director of the ICNSW Board,
- (c) a member of staff of ICNSW,
- (d) a member of a committee of the ICNSW Board,
- (e) a person or body prescribed by the regulations.

## **Division 3 Staff of ICNSW**

### **14 Employment of staff**

ICNSW is authorised to employ such staff as it requires to exercise its functions. The provisions of the *Government Sector Employment Act 2013* relating to the employment of

Public Service employees do not apply to the staff employed by ICNSW.

### **15 Salary, conditions etc of staff**

- (1) ICNSW may fix the salary, wages and conditions of employment of staff employed under this Division in so far as they are not fixed by or under any other law.
- (2) ICNSW may enter into an agreement with any association or organisation representing a group or class of members of staff of ICNSW with respect to the conditions of employment (including salaries, wages or remuneration) of that group or class in so far as they are not fixed by or under any other law.

### **16 ICNSW senior executives**

- (1) In this section—

**executive position** means a position as a member of staff of ICNSW that—

- (a) has a remuneration level greater than that for a clerk (grade 12) in the Public Service with general administrative duties, and
- (b) is designated by ICNSW as an executive position.

**senior executive** means a member of staff of ICNSW holding an executive position.

- (2) A senior executive is to be employed under a written contract of employment signed by the senior executive and the chief executive of ICNSW on behalf of ICNSW.
- (3) ICNSW may terminate the employment of a senior executive at any time, for any or no stated reason and without notice.
- (4) A senior executive whose employment is so terminated is entitled to any compensation provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment).
- (5) The employment of a senior executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (6) Parts 6, 7 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a senior executive.
- (7) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of senior executives. This subsection does not prevent the provisions of any such industrial agreement being adopted by reference in the conditions of employment of a senior executive.
- (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for

a declaration or injunction or for any other relief, lie in respect of a matter that is declared by this section not to be an industrial matter for the purposes of the *Industrial Relations Act 1996*.

- (9) In subsections (5)–(8), a reference to the **employment** of a senior executive is a reference to—
- (a) the appointment of, or failure to appoint, a person as such an executive, or
  - (b) the removal, retirement, termination of employment or other cessation of office of a senior executive, or
  - (c) any disciplinary proceedings or disciplinary action taken against a senior executive, or
  - (d) the remuneration or other conditions of employment of a senior executive.

## **Division 4 Investment management of scheme funds**

### **16A Definitions**

In this Division—

**investment management services** include (but are not limited to) the following—

- (a) managing investments for the whole or part of a scheme fund,
- (b) advising on investments and investment strategies and other related strategies for the whole or part of a scheme fund,
- (c) services in relation to the custody of the assets and securities of the whole or part of a scheme fund.

**investment manager** means a person who provides investment management services for a scheme fund or part of a scheme fund, and includes any other person engaged by that person to provide all or any of those services.

**scheme fund** means a fund referred to in section 12 (4).

**scheme fund investment strategy** means an investment strategy for a scheme fund determined by ICNSW under section 12.

### **16B Investment managers for scheme funds**

- (1) The Treasurer may, by order in writing given to the authority responsible for administering a scheme fund, require—
- (a) the investment of the whole or any part of the scheme fund to be managed by one or more investment managers approved by the Treasurer (a **mandated investment manager**), and

- (b) the responsible authority to enter into an agreement or arrangement with any such mandated investment manager with respect to investment management services for the whole or part of the scheme fund subject to the terms and conditions set out or described in the order.
- (2) Subsection (1) does not prevent the responsible authority from entering into an agreement or arrangement containing additional terms or conditions that are not inconsistent with the terms and conditions set out or described in the order or any scheme fund investment strategy.
- (3) The Treasurer must consult with the responsible authority and the proposed mandated investment manager before giving an order under this section.
- (4) The order may be given only with the approval of the Minister administering the provisions of the Act under which the scheme fund concerned is established (the **relevant Act**).
- (5) The terms and conditions must not be inconsistent with any scheme fund investment strategy for the scheme fund or the relevant Act.
- (6) A mandated investment manager (or an investment manager engaged by the mandated investment manager to provide relevant services)—
  - (a) may invest the whole or part of the scheme fund concerned only in any investment that is authorised or permitted by or under the relevant Act or any other applicable legislation, and
  - (b) must carry out the investment management services concerned subject to the applicable terms and conditions and consistently with any relevant scheme fund investment strategy.
- (7) An order under this section takes effect on the day specified in the order.

#### **16C Prudential standards or reporting and auditing requirements**

- (1) The Minister may, by order published in the Gazette, declare that prudential standards, or reporting and auditing requirements, specified or described in the order are standards or requirements that apply to an authority responsible for the administration of a scheme fund and ICNSW in the exercise of any functions in relation to that fund described in the order.
- (2) Before making an order under this section, the Minister is to consult ICNSW on the proposed standards or requirements.
- (3) An order under this section takes effect on the day specified in the order.
- (4) A responsible authority, ICNSW and any person carrying out a function on behalf of the responsible authority must comply with any standard or requirement applied

under this section to the exercise of a function in relation to a scheme fund.

## **Part 3 State Insurance Regulatory Authority**

### **Division 1 Constitution and management of SIRA**

#### **17 Constitution of State Insurance Regulatory Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the State Insurance Regulatory Authority.
- (2) SIRA is, for the purposes of any Act, a NSW Government agency.

**Note—**

See section 13A of the [Interpretation Act 1987](#).

#### **18 SIRA Board**

- (1) There is to be a Board of the State Insurance Regulatory Authority.
- (2) The SIRA Board is to consist of the following members—
  - (a) the chief executive of SIRA,
  - (b) the Secretary of the Department of Finance, Services and Innovation or a person nominated by the Secretary,
  - (c) up to 5 other members appointed by the Minister (the **appointed members**).

**Note—**

Schedule 3 contains provisions relating to the members and procedure of the SIRA Board.

- (3) The appointed members are to be persons who, in the opinion of the Minister, have skills and experience relevant to matters arising under the workers compensation and motor accidents legislation and the [Home Building Act 1989](#) and that will assist SIRA in attaining its objectives.
- (4) A person who is an appointed director of the ICNSW Board is ineligible to be appointed as a member of the SIRA Board.
- (5) The SIRA Board has the following functions—
  - (a) to determine the general policies and strategic direction of SIRA,
  - (b) to oversee the performance of the activities of SIRA,
  - (c) to give the Minister any information relating to the activities of SIRA that the Minister requests,
  - (d) to keep the Minister informed of the general conduct of SIRA's activities and of

any significant development in SIRA's activities,

- (e) such other functions as are conferred or imposed on it by or under this or any other Act or law.

## **19 Chief executive of SIRA**

- (1) The chief executive of SIRA is the person employed in the Department of Finance, Services and Innovation as the chief executive of SIRA.
- (2) The affairs of SIRA are to be managed and controlled by the chief executive in accordance with the general policies and strategic direction determined by the SIRA Board.
- (3) Any act, matter or thing done in the name of, or on behalf of, SIRA by the chief executive is taken to have been done by SIRA.

## **20 Ministerial directions**

- (1) The Minister may give SIRA a written direction with respect to the functions of SIRA if the Minister is satisfied that it is necessary to do so in the public interest.
- (2) SIRA must ensure that the direction is complied with.
- (3) SIRA must include in its annual report particulars of each direction given under this section during the year to which the report relates.
- (4) Except as provided by this section, SIRA is not, in the exercise of its functions, subject to the control and direction of the Minister.

## **21 Staff of SIRA**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable SIRA to exercise its functions.

### **Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services SIRA makes use of) may be referred to as members of staff of SIRA. Section 47A of the [Constitution Act 1902](#) precludes SIRA from employing staff.

## **22 Committees of SIRA Board**

- (1) The SIRA Board may establish committees to give advice and assistance to the SIRA Board in connection with any particular matter or function of the SIRA Board.
- (2) A committee of the SIRA Board must be chaired by a member of the SIRA Board. It does not matter that some or all of the other members of a committee are not members of the SIRA Board.
- (3) The procedure for the calling of meetings of a committee of the SIRA Board and for

the conduct of business at those meetings is to be as determined by the SIRA Board or (subject to any determination of the SIRA Board) by the committee.

## **Division 2 Objectives and functions of SIRA**

### **23 Principal objectives of SIRA**

The principal objectives of SIRA in exercising its functions are as follows—

- (a) to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the *Home Building Act 1989* and the other Acts under which SIRA exercises functions,
- (b) to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries,
- (c) to promote workplace injury prevention, effective injury management and return to work measures and programs,
- (d) to ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery,
- (e) to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation and the *Home Building Act 1989*,
- (f) to promote compliance with the workers compensation and motor accidents legislation and the *Home Building Act 1989*.

### **24 Functions of SIRA**

- (1) SIRA has such functions as are conferred or imposed on it by or under this or any other Act (including under the workers compensation and motor accidents legislation and the *Home Building Act 1989*).
- (2) The functions of SIRA also include the following—
  - (a) to collect and analyse information on prudential matters in relation to insurers under the workers compensation and motor accidents legislation and the *Home Building Act 1989*,
  - (b) to encourage and promote the carrying out of sound prudential practices by insurers under that legislation and the *Home Building Act 1989*,
  - (c) to evaluate the effectiveness and carrying out of those practices.
- (3) In this section, a reference to an **insurer** under the *Home Building Act 1989* includes a reference to the provider of an alternative indemnity product under that Act.



## 25 Investigation and report by IPART

- (1) The Independent Pricing and Regulatory Tribunal (**IPART**) may, at the request of the Minister, conduct an investigation and report to the Minister on such matters relating to the operational costs and expenses of SIRA as are determined by the Minister.
- (2) Except as provided by the regulations, Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* applies to an investigation and report by IPART under this section in the same way as it applies to an investigation or report under that Part.

## 26 Delegation

- (1) SIRA may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) The chief executive of SIRA may delegate to an authorised person any of the chief executive's functions under this Act, other than this power of delegation.
- (3) A delegate may sub-delegate to an authorised person any function delegated by SIRA or the chief executive if the delegate is authorised in writing to do so by SIRA or the chief executive.
- (4) In this section—  
**authorised person** means any of the following—
  - (a) a member of staff of SIRA,
  - (b) a member of the SIRA Board or a committee of the SIRA Board,
  - (c) a person or body prescribed by the regulations.

## Division 3 Functions concerning certain service providers

### 26A Definitions

In this Division—

**data** means facts, statistics, instructions, concepts or other information in a form capable of being communicated, analysed or processed, whether by an individual or by a computer or other automated means.

**relevant service** means a service prescribed by the regulations provided in connection with a claim under the workers compensation and motor accidents legislation.

**relevant service provider** means a person, organisation or body providing a relevant service, but does not include a person, organisation or body, or class of persons or bodies, prescribed by the regulations.

## **26B Relationship of Division with other law**

- (1) The provisions of this Division apply despite anything to the contrary in another Act or law.
- (2) Without limiting subsection (1), a relevant service provider is authorised and required to comply with a direction given under this Division despite anything to the contrary in the other Act or law.

## **26C Direction to provide data to SIRA**

- (1) SIRA may give a written direction to a relevant service provider requiring the provider to provide SIRA with specified data within a specified period concerning relevant services the provider provides.
- (2) A relevant service provider must comply with a direction given to the provider under this section.  
  
Maximum penalty—
  - (a) for a corporation—500 penalty units, or
  - (b) for another person—100 penalty units.
- (3) This section applies in relation to data that is personal information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

## **26D Directions concerning relevant services by relevant service providers**

- (1) SIRA may give 1 or more of the following written directions to a relevant service provider—
  - (a) a direction requiring the provider to take specified action, or provide specified information, concerning specified relevant services,
  - (b) a direction requiring the provider to provide specified relevant services for the purposes of the workers compensation and motor accidents legislation in a specified way,
  - (c) a direction requiring the provider not to provide specified relevant services for the purposes of the workers compensation and motor accidents legislation,
  - (d) a direction requiring the provider not to provide any relevant services for the purposes of the workers compensation and motor accidents legislation.
- (2) Without limiting subsection (1), a direction under this section may extend to all of the workers compensation and motor accidents legislation or be limited to specified Acts

or instruments, or specified provisions of Acts or instruments, forming part of the legislation.

- (3) A relevant service provider must comply with a direction given to the provider under this section.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for another person—100 penalty units.

- (4) The regulations may make provision for or concerning the following—

- (a) the giving and form of directions under this section,
- (b) the circumstances in which directions may be given under this section,
- (c) the periods during which directions under this section have effect, including providing for directions of indefinite duration,
- (d) standard provisions for directions under this section, including enabling standard provisions to be incorporated in directions by reference rather than set out in the directions,
- (e) the revocation and variation of directions given under this section,
- (f) appeal or review procedures for directions given under subsection (1)(a) or (b).

**Note—**

Section 26F allows a relevant service provider to apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a direction under subsection (1)(c) or (d).

**26E Guidelines for provision of relevant services by relevant service providers**

- (1) SIRA may issue guidelines concerning the provision of relevant services by relevant service providers.
- (2) Without limiting subsection (1)—
  - (a) the guidelines may extend to all of the workers compensation and motor accidents legislation or be limited to specified Acts or instruments, or specified provisions of Acts or instruments, forming part of the legislation, and
  - (b) the provisions of the [Interpretation Act 1987](#), section 42(2) apply to the guidelines in the same way as they apply to statutory rules.
- (3) SIRA may, wholly or partly, amend, revoke or replace the guidelines.
- (4) The guidelines may adopt the provisions of other publications, whether with or

without modification or addition and whether in force at a particular time or from time to time.

- (5) Unless the guidelines provide otherwise, the guidelines prevail to the extent of an inconsistency between them and guidelines made under the workers compensation and motor accidents legislation.

#### **26F Review of directions by NCAT**

A relevant service provider given a direction under section 26D(1)(c) or (d) may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the direction.

#### **26G Register of directed service providers**

- (1) SIRA may keep a register of relevant service providers given directions under section 26D.
- (2) The regulations may make provision for or concerning the following—
  - (a) the form of the register,
  - (b) information to be recorded on the register,
  - (c) the updating or removal of information on the register,
  - (d) the provision of access to, or the publication of information contained on, the register.
- (3) SIRA, or a person acting under the direction of SIRA, does not incur liability for anything done, or omitted to be done, in good faith in connection with keeping the register or publishing information contained on the register.
- (4) Without limiting subsection (3), a person does not incur liability for publishing in good faith—
  - (a) information contained on the register, or
  - (b) a fair report or summary of information contained on the register.
- (5) In this section—

**liability** includes liability for defamation.

### **Part 4 Miscellaneous**

#### **27 Supervision of operation of insurance and compensation schemes by Parliamentary Committee**

- (1) As soon as practicable after the commencement of this section and the

commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this section.

- (2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the operation of the insurance and compensation schemes established under the workers compensation and motor accidents legislation.
- (3) On the commencement of this section, the Parliamentary Committee designated under section 11 of the *Safety, Return to Work and Support Board Act 2012* (as in force immediately before its repeal by this Act) is taken to be the designated committee under this section.
- (4) In this section, the **workers compensation and motor accidents legislation** includes the following—
  - (a) the *Motor Accidents (Lifetime Care and Support) Act 2006*,
  - (b) the *Workers' Compensation (Dust Diseases) Act 1942*.

## **28 Exclusion of personal liability**

- (1) A matter or thing done or omitted to be done by—
  - (a) ICNSW or SIRA, or
  - (b) the ICNSW Board or the SIRA Board (or a committee of such a board), or
  - (c) a director of the ICNSW Board or a member of the SIRA Board, or
  - (d) the chief executive of ICNSW or SIRA, or
  - (e) a member of staff of ICNSW or SIRA, or
  - (f) a person acting under the direction of ICNSW, SIRA, the ICNSW Board, the SIRA Board, a director or member, or a committee, of any such board or the chief executive of ICNSW or SIRA,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act or any other Act, subject any director or member of the board or committee concerned, the chief executive, the member of staff or the person so acting personally to any action, liability, claim or demand.

- (2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confers or imposes functions on ICNSW or SIRA.

## 29 Seal of authorities and recovery of money by authorities

- (1) The seal of an authority is to be kept by the chief executive of the authority and may be affixed to a document only—
  - (a) in the presence of the chief executive of the authority or a member of staff of the authority who is authorised for the purpose by the chief executive of the authority, and
  - (b) with an attestation by the signature of the chief executive or that member of staff of the fact of the affixing of the seal.
- (2) Any charge, fee or money due to an authority, or to the Crown in respect of the activities of the authority, may be recovered by the authority as a debt in a court of competent jurisdiction if no express provision is otherwise made for its recovery.
- (3) In this section, **authority** means ICNSW or SIRA.

### 29A Nature of proceedings for offences

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

### 29B Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of other provisions of, or made under, this Act or another Act relating to proceedings that may be taken for offences.
- (6) In this section—

**authorised officer** means a person, or a person belonging to a class of persons, prescribed by the regulations to be an authorised officer.

### 30 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.
- (2) The regulations may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

### 31 (Repealed)

### 32 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 Provisions relating to directors of ICNSW Board

(Section 5)

### 1 Definitions

In this Schedule—

**appointed director** means a director of the board who is appointed by the Minister.

**board** means the ICNSW Board.

**director** means any director of the board.

### 2 Chairperson and deputy chairperson

- (1) Of the appointed directors, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as chairperson and deputy chairperson of the board, respectively.
- (2) A person may only be appointed as chairperson of the board if the Minister is satisfied that the person has skills and experience relevant to the functions of ICNSW.
- (3) The Minister may at any time remove an appointed director from the office of chairperson or deputy chairperson of the board.

- (4) A person holding the office of chairperson or deputy chairperson of the board vacates that office if the person—
- (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a director.

### **3 Term of office of appointed directors**

Subject to this Schedule, an appointed director holds office for such period (not exceeding 3 years) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration**

An appointed director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

### **5 Vacancy in office of appointed director**

- (1) The office of an appointed director becomes vacant if the director—
- (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 by the Minister under this clause or Part 6 of the [Government Sector Employment Act 2013](#), or
  - (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the board for having been absent from those meetings, or
  - (f) 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
  - (g) becomes a mentally incapacitated person, or
  - (h) 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) The Minister may at any time remove an appointed director from office.
- (3) If the office of an appointed director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Disclosure of pecuniary interests**

### (1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board, and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.

### (2) A disclosure by a director at a meeting of the board that the director—

- (a) is a member or director, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

### (3) Particulars of any disclosure made under this clause must be recorded by the board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the board.

### (4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the board otherwise determines—

- (a) be present during any deliberation of the board with respect to the matter, or
- (b) take part in any decision of the board with respect to the matter.

### (5) For the purposes of the making of a determination by the board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—

- (a) be present during any deliberation of the board for the purpose of making the determination, or

(b) take part in the making by the board of the determination.

(6) A contravention of this clause does not invalidate any decision of the board.

(7) This clause applies to a member of a committee of the board and to the committee in the same way as it applies to a director of the board and to the board.

## **7 Effect of certain other Acts**

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed director.

(2) If by or under any Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

## **8 General procedure**

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is to be as determined by the board.

## **Schedule 2 Provisions relating to chief executive of ICNSW**

(Section 8)

### **1 Term of office**

Subject to this Schedule, the chief executive of ICNSW may be employed for such period (not exceeding 5 years) as may be specified in the chief executive's contract of employment.

### **2 Conditions of employment and remuneration**

(1) The ICNSW Board is to fix the conditions of employment of the chief executive of ICNSW.

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

(3) The chief executive of ICNSW is required to enter into a performance agreement with the ICNSW Board.

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

- (1) The office of chief executive of ICNSW 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 ICNSW Board, 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 of ICNSW becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **4 Removal from office**

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

### **5 Acting chief executive**

- (1) The ICNSW Board may appoint a person to act in the office of chief executive of ICNSW during the illness or absence of the chief executive or during a vacancy in the office of chief executive of ICNSW. The person, while so acting, has all the functions of the chief executive of ICNSW and is taken to be the chief executive of ICNSW.
- (2) The ICNSW Board 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 of ICNSW is entitled to be paid such remuneration (including travelling and subsistence allowances) as the ICNSW Board may determine in respect of the person.

### **6 Status of chief executive of ICNSW**

- (1) The office of chief executive of ICNSW 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 of ICNSW.

- (2) The chief executive of ICNSW is, for the purposes of section 73 of that Act, taken to be the holder of a position in a government sector agency.

## **Schedule 3 Provisions relating to members and procedure of SIRA Board**

(Section 18)

### **1 Definitions**

In this Schedule—

**appointed member** means a member of the board who is appointed by the Minister.

**board** means the SIRA Board.

**member** means any member of the board.

### **2 Chairperson and deputy chairperson**

- (1) Of the appointed members, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as chairperson and deputy chairperson of the board, respectively.
- (2) A person may only be appointed as chairperson of the board if the Minister is satisfied that the person has skills and experience relevant to the functions of SIRA.
- (3) The Minister may at any time remove an appointed member from the office of chairperson or deputy chairperson of the board.
- (4) A person holding the office of chairperson or deputy chairperson of the board vacates that office if the person—
- (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Term of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and

subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **5 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member—
- (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 by the Minister under this clause or Part 6 of the *Government Sector Employment Act 2013*, or
  - (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the board for having been absent from those meetings, or
  - (f) 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
  - (g) becomes a mentally incapacitated person, or
  - (h) 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) The Minister may at any time remove an appointed member from office.
- (3) If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Disclosure of pecuniary interests**

- (1) If—
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

- (2) A disclosure by a member at a meeting of the board that the member—
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the board otherwise determines—
- (a) be present during any deliberation of the board with respect to the matter, or
  - (b) take part in any decision of the board with respect to the matter.
- (5) For the purposes of the making of a determination by the board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
- (a) be present during any deliberation of the board for the purpose of making the determination, or
  - (b) take part in the making by the board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the board.
- (7) This clause applies to a member of a committee of the board and to the committee in the same way as it applies to a member of the board and to the board.

## **7 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.
- (2) If by or under any Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

## **8 General procedure**

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the board.

## **9 Quorum**

The quorum for a meeting of the board is a majority of its members for the time being.

## **10 Presiding member**

- (1) The chairperson or, in the absence of the chairperson, the deputy chairperson is to preside at a meeting of the board.
- (2) In the absence of both the chairperson and the deputy chairperson at a meeting of the board, another member chosen by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at a meeting of the board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.

## **12 Transaction of business outside meetings or by telephone**

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the board made at a meeting of the board.
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),

the chairperson and each member have the same voting rights as they have at an ordinary meeting of the board.

- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

## **Schedule 4 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any 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 on the NSW legislation website, 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**

#### **Division 1 Abolition of statutory bodies and transfer of assets etc**

##### **2 Definitions**

In this Division—

**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.

**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).

### 3 Abolition of WorkCover Authority

- (1) The WorkCover Authority of New South Wales is abolished.
- (2) On its abolition, the assets, rights and liabilities of the WorkCover Authority are—
  - (a) to the extent they relate to its functions in acting for the Nominal Insurer—transferred to ICNSW, or
  - (b) to the extent they relate to its functions as the regulator under the *Work Health and Safety Act 2011*—transferred to SafeWork NSW (as referred to in clause 1 of Schedule 2 to the *Work Health and Safety Act 2011*) on behalf of the Crown, or
  - (c) to the extent they relate to its functions under the *Dangerous Goods (Road and Rail Transport) Act 2008*, the *Explosives Act 2003* or the *Rural Workers Accommodation Act 1969*—transferred to SafeWork NSW on behalf of the Crown, or
  - (d) to the extent they relate to the Sporting Injuries Fund established under section 11 of the *Sporting Injuries Insurance Act 1978*—transferred to the Sporting Injuries Compensation Authority constituted under that Act, or
  - (e) to the extent they relate to the Supplementary Sporting Injuries Fund established under section 11A of the *Sporting Injuries Insurance Act 1978*—transferred to the NSW Self Insurance Corporation constituted under the *NSW Self Insurance Corporation Act 2004* (the **Self Insurance Corporation**), or
  - (f) to the extent they relate to the Bush Fire Fighters Compensation Fund and the Emergency and Rescue Workers Compensation Fund established under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*—transferred to the Self Insurance Corporation, or
  - (g) in any other case—transferred to SIRA.
- (3) Without limiting the application of clause 6 to any such transfer, any proceedings commenced by or on behalf of the WorkCover Authority but not completed before its abolition are taken to have been commenced—
  - (a) to the extent those proceedings relate to the functions of the WorkCover Authority in acting for the Nominal Insurer—by or on behalf of ICNSW, or
  - (b) to the extent those proceedings relate to the functions of the WorkCover Authority as the regulator under the *Work Health and Safety Act 2011*—by or on behalf of SafeWork NSW, or

(c) to the extent those proceedings relate to the functions of the WorkCover Authority under the *Dangerous Goods (Road and Rail Transport) Act 2008*, the *Explosives Act 2003* or the *Rural Workers Accommodation Act 1969*—by or on behalf of SafeWork NSW, or

(d) in any other case—by or on behalf of SIRA.

(4) For the purposes of subclause (3), **proceedings** includes any prosecution, investigation or other enforcement action.

(5) Subclause (2) is subject to the regulations.

#### **4 Abolition of Motor Accidents Authority**

(1) The Motor Accidents Authority of New South Wales is abolished.

(2) Subject to the regulations, the assets, rights and liabilities of the Motor Accidents Authority are, on its abolition, transferred to SIRA.

(3) Without limiting the application of clause 6 to any such transfer, any proceedings commenced by or on behalf of the Motor Accidents Authority but not completed before its abolition are taken to have been commenced by or on behalf of SIRA.

(4) For the purposes of subclause (3), **proceedings** includes any prosecution, investigation or other enforcement action.

#### **5 Abolition of Safety, Return to Work and Support Board**

(1) The Safety, Return to Work and Support Board is abolished.

(2) Each person holding office as a member of the Safety, Return to Work and Support Board ceases to hold office as such a member on the abolition of the Board and is not entitled to any remuneration or compensation for the loss of that office.

(3) Subject to the regulations, the assets, rights and liabilities of the Safety, Return to Work and Support Board are, on its abolition, transferred to ICNSW.

#### **6 Provisions relating to transfers of assets, rights and liabilities**

(1) In this clause, the statutory body from which any assets, rights or liabilities are transferred is called the **transferor** and the body to which they are transferred is the **transferee**.

(2) When any assets, rights or liabilities are transferred pursuant to this Division, the following provisions have effect—

(a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,

- (b) the rights or liabilities of the transferor become, by virtue of this clause, the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of the transfer,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.
- (3) 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.
- (4) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities. Such a notice is conclusive evidence of that transfer.
- (5) No attornment to the transferee by a lessee from the transferor is required.
- (6) In this clause, **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.

## **Division 2 Transfer of employees to ICNSW**

### **7 Definitions**

In this Division—

**existing employee** means a person who—

- (a) immediately before the commencement of this Division, was employed in the Department of Finance, Services and Innovation, and
- (b) is designated by ICNSW, with the concurrence of the Secretary, to be a person who is required for the purposes of enabling ICNSW to exercise its functions.

**Secretary** means the Secretary of the Department of Finance, Services and Innovation.

**transfer date**, in relation to a transferred employee, means the date on which the transfer of the employee by order under this Division takes effect.

**transferred employee** means an existing employee who is transferred to the employment of ICNSW by order under this Division.

### **8 Transfer of existing employees to ICNSW**

- (1) The Secretary may, by order in writing, transfer such existing employees as are specified or referred to in the order to the employment of ICNSW.
- (2) Any such employees who are transferred to ICNSW by order under this clause are to be regarded for all purposes as having become employees of ICNSW, in accordance with the terms of the order and this Division, on the day specified in the order as being the day on which the transfer takes effect.

### **9 Continuation of existing employment arrangements for transferred employees**

- (1) The employment of a transferred employee with ICNSW is to be on the same terms and conditions (including salary) as applied in respect of the employee immediately before the transfer date.
- (2) Subclause (1) is subject to any industrial instrument made in respect the transferred employee after the transfer date.
- (3) A transferred employee—
  - (a) retains any rights to annual leave, extended or long service leave, sick leave, or other forms of leave, accrued or accruing in his or her employment as an existing employee, and
  - (b) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the

employee ceases to be in the employment from which the employee was transferred, and

(c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.

(4) Without limiting subclause (3), a transferred employee is not entitled to elect, because of that transfer, to be paid the money value of any extended or annual leave accrued by the employee in the employment from which the employee was transferred.

#### **10 Transferred senior executives**

(1) The regulations may make provision for or with respect to the employment of transferred employees who were employed as Public Service senior executives immediately before the transfer date. Any such regulations have effect despite any other provision of this Division.

(2) This clause extends to transferred employees who are transitional former senior executives within the meaning of clause 8 of Schedule 4 to the [Government Sector Employment Act 2013](#).

### **Division 3 Miscellaneous**

#### **11 Existing guidelines and licences**

(1) Any guidelines issued by the WorkCover Authority or the Motor Accidents Authority under the workers compensation and motor accidents legislation and in force immediately before the commencement of this clause are taken to have been issued by SIRA.

(2) Any licence granted by the WorkCover Authority or the Motor Accidents Authority under the workers compensation and motor accidents legislation and in force immediately before the commencement of this clause is taken to have been granted by SIRA.

#### **12 Review by Parliamentary Committee**

(1) As soon as practicable after the second anniversary of the commencement of this clause, a committee of the Legislative Council is to be designated by resolution of the Legislative Council to review this Act (including the amendments made by this Act) to determine whether the policy objectives of the Act or those amendments remain valid and whether the terms of the Act (or of the Acts so amended) remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the committee is appointed.

(3) A report on the outcome of the review is to be tabled in each House of Parliament.

## **Schedules 5-15 (Repealed)**