

**WORKERS COMPENSATION LEGISLATION (AMENDMENT)
BILL 1991 (No. 2)**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to transfer responsibility for medical referees and medical panels from the WorkCover Authority to the Compensation Court; and
- (b) to ensure that the total amount to be contributed to the WorkCover Authority Fund by insurers and self-insurers each year is contributed despite any change in the estimate of the relevant premium income on which contributions are based; and
- (c) to make a minor amendment relating to criminal proceedings for false workers compensation claims; and
- (d) to make miscellaneous changes to the legislation dealing with insolvent insurers, including:
 - (i) provision for an interim distribution of surplus money held for the payment of claims involving certain of those insolvent insurers; and
 - (ii) transfer of the administration of that legislation from the GIO to the WorkCover Authority; and
 - (iii) validations to take account of developments in the liquidations involving Bishopsgate Insurance Australia Limited and AGCI.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 is a formal provision which gives effect to the Schedule of amendments to the Compensation Court Act 1984.

Clause 4 is a formal provision which gives effect to the Schedule of amendments to the Workers Compensation Act 1987.

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Clause 5 is a formal provision which gives effect to the Schedule of amendments to the Bishopsgate Insurance Australia Limited Act 1983, the Associated General Contractors Insurance Company Limited Act 1980 and certain other Acts relating to insolvent insurers.

Clause 6 enacts special provisions relating to insolvent insurers, including provisions:

- (a) authorising an interim distribution of surplus money as soon as the proposed Act receives the Royal assent; and
- (b) validating action taken with respect to any scheme of arrangement relating to Bishopsgate Insurance Australia Limited; and
- (c) validating the payment of management expenses to the GIO as part of the costs of administration of the speed funds.

SCHEDULE 1—AMENDMENT OF COMPENSATION COURT ACT 1984

Schedule 1 provides for the appointment of medical referees (including a chief medical officer) and the constitution of medical panels. The provisions are similar to the existing provisions except that:

- (a) the chief medical officer is to be an officer of the Compensation Court and not an officer of the WorkCover Authority; and
- (b) other medical referees are to be appointed by the Chief Judge; and
- (c) medical panels will continue to be constituted by medical referees nominated by the chief medical officer, but on behalf of the Court and not the WorkCover Authority.

SCHEDULE 2—AMENDMENT OF WORKERS COMPENSATION ACT 1987

Medical referees and panels

Schedule 2 (1), (3)–(5) and (9) make amendments as a consequence of the amendments made by Schedule 1.

False compensation claims

Schedule 2 (2) removes the restriction in section 92B of the Act that provides that the summary offence of making false workers compensation claims is not applicable if the claim form is verified by statutory declaration.

Insurers' Guarantee Fund

Schedule 2 (6) and (7) make minor changes to the provisions relating to insolvent insurers that are covered by the Insurers' Guarantee Fund.

Contributions to WorkCover Authority Fund

Schedule 2 (8) provides for the redetermination of contributions by insurers and self-insurers to the WorkCover Authority Fund to ensure that the appropriate total amount to be contributed to the Fund by insurers and self-insurers each year is contributed despite any change in the estimate of the relevant premium income on which the contributions are based. Under the Act, contributions are based on a common percentage of each insurer's premium income for the financial year concerned—the

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percentage being determined prior to that financial year on the basis of the estimated total amount of premium income that will be received by all insurers during the year and on the basis of the total amount required to be contributed to the Fund to meet the estimated amount of expenditure from the Fund. The WorkCover Authority's original estimate of premium income may need to be revised because of unexpected changes in economic circumstances.

**SCHEDULE 3—AMENDMENT OF BISHOPSGATE INSURANCE
AUSTRALIA LIMITED ACT 1983**

The Act establishes a fund under the management of the GIO to meet the workers compensation liabilities of the insolvent Bishopsgate Insurance Australia Limited ("the Company"). The Act requires certain licensed insurers to pay contributions to the fund to meet those liabilities. After dissolution of the Company the Act provides for remaining entitlements to be paid out of the Insurers' Contribution Fund.

Transfer of administration

Schedule 3 (1) transfers the administration of the Act from the GIO to the WorkCover Authority and provides (after the closure of the fund) for payment of liabilities from the Insurers' Guarantee Fund instead of the Insurers' Contribution Fund.

Scheme of arrangement

Schedule 3 (3) and (4) make the necessary consequential changes to take account of the changing of the Bishopsgate liquidation to a scheme of arrangement.

Distribution of surplus to contributors

The Act presently provides that if any surplus money remains in the fund once the GIO has paid out or made provision for paying out money authorised or required to be paid out by the Act, the GIO is to repay that money attributable to contributors to the contributors (with any remaining amounts being paid to either the liquidator or the Insurers' Contribution Fund).

Schedule 3 (7) amends the Act to enable the GIO to make an interim distribution of the surplus to the contributors instead of the contributors having to wait until the money has been dealt with as presently required. The interim distribution and the final distribution are to be made on the basis that all surplus money is to be paid to the insurance companies which contributed to the fund (after deduction of any amount required to meet liabilities and contingencies in respect of future claims).

Schedule 3 (8) makes a consequential amendment to the regulation-making power.

Other changes

Schedule 3 (2) makes a similar minor change to the provisions relating to the fund as is made by Schedule 2 (6).

Schedule 3 (5) and (6) provide that payments may continue to be made from the fund before it is closed to satisfy existing judgments and awards (as well as other claims) when Bishopsgate Insurance Australia Limited is dissolved. At present payments under existing judgments and awards may only be made from the Insurers' Contribution Fund.

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SCHEDULE 4—AMENDMENT OF ASSOCIATED GENERAL CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980

Transfer of administration

Schedule 4 (1) amends the Act to effect a similar transfer of administration as proposed under Schedule 3 (1) in the case of Bishopsgate Insurance.

Direct payment of claims

Schedule 4 (2) amends the Act to allow GIO to pay workers compensation claims directly to claimants of AGCI instead of through the liquidator. A similar procedure applies in the case of the Bishopsgate liquidation.

Recoveries under indemnity given by Palmdale Insurance Limited to AGCI

Schedule 4 (4) facilitates the recovery of money from the liquidator of Palmdale Insurance Limited, a company in liquidation that was associated with AGCI and gave AGCI an indemnity in respect of certain of its liabilities (including its liabilities under relevant workers compensation insurance policies).

Distribution of surplus

Schedule 4 (7)–(9) amend the Act to enable an interim or final distribution of surplus contributions to the original contributors to the insolvent insurer under the Act in the same manner as is proposed under Schedule 3 for Bishopsgate Insurance.

Other changes

Schedule 4 (3) repeals a provision relating to recoveries from re-insurers of AGCI which is of no further use.

Schedule 4 (5) and (6) provide that payments may continue to be made from the fund before it is closed to satisfy existing awards (as well as other claims) when AGCI is dissolved. At present payments under existing awards may only be made from the Insurers' Contribution Fund.

SCHEDULES 5–7—AMENDMENT OF OTHER ACTS RELATING TO INSOLVENT INSURERS

Schedules 5–7 amend Acts relating to other insolvent workers compensation insurers (including Northumberland Insurance Company; Riverina Insurance Company; and Standard Insurance Company) to effect a similar transfer of administration as proposed under Schedule 3(1) in the case of Bishopsgate Insurance.
