

**THE LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Workers Compensation (Acts of Terrorism) Amendment Bill 2002

EXPLANATORY MEMORANDUM

**Circulated by authority of the
Minister for Industrial Relations**

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Overview

This Act commences on 1 July 2002. The specific purpose of the amendment Bill is to provide a solution to the reaction by the world reinsurance market to the events of September 2001.

Following 11 September 2001, the worlds reinsurers arrived at the decision not to provide reinsurance cover with respect to acts of terror effective from 1 January 2002.

The amendments contained in the Bill are of a temporary nature. They are intended to last for a period of 2 years.

Any act of terrorism within the next 2 years will be subject to a scheme. That scheme requires a pool arrangement to be brought into effect by three triggers which are spelt out in the legislation.

The approved insurers in the pool are then required to repay the fund manager by contributing to the pool over a period determined by the fund manager. The total amount to be contributed by each of the approved insurers will be determined by the proportion of the market that each insurer holds.

Consequential Amendments

Part 3 and Part 4 of the Bill deal with consequential amendments of the legislation made necessary by the introduction of the funding arrangements. The legislation contained in Chapter 14A will terminate on 1 October 2004.

Schedule 1 Additional Amendments

Consequent on the passing of the *Workers Compensation (Amendment) Act 2001* it has been considered as necessary to make additional amendments to a number of pieces of legislation affected by the passing of the Act.

A number of amendments to the *Workers Compensation (Amendment) Act 2001* were made during the debate on the Bill and have created some minor unintentional conflicts or errors within the legislation as passed.

The vast majority of amendments in *Schedule 1* involve the omission of one word or phrase and the substitution of another word or phrase to ensure a consistency of meaning throughout the amended Act.

Part 2

Workers Compensation Act 1951

Chapter 14A

Temporary provisions for acts of terrorism

30A Application of Chapter 14A to insurers

This section defines the provisions that will act as the triggers that will crystallise the formation and subsequent commencement of the pool to be established under the legislation.

The subsections of section 30A provides as follows:

30A (1) (a)

This subsection states that an approved insurer must do all that they can to ensure that if it is possible and economically efficient to do so then they should purchase reinsurance for acts of terror. However, insurers are not required to purchase reinsurance if the cost of that reinsurance would create an unnecessary economic burden on ACT businesses.

30A (1) (b)

This subsection states that for this Chapter of the Act to apply the act of terror must fall within the definition provided in the Act and have occurred prior to 1 April 2004.

30A (1) (c)

This subsection states that the insurer must have accepted the liability for the claims that have arisen as a result of the act of terror.

30A (1) (d)

This subsection requires the insurer to do all that is reasonable to demand from their reinsurer all amounts possible from their pre-existing insurance contracts.

30A (1) (e)

This subsection requires that before this chapter can be applied the insurer must have already paid out on accepted claims to injured workers an amount at least equal to the threshold amount as defined in subsection 30A (2).

30A (2)

This subsection when read with subsection 30A (3) prescribes the formula by which the temporary fund threshold amount for each insurer is calculated.

30A (3)

This subsection details the method to calculate the market share of each insurer within the ACT Workers Compensation scheme and how the size of the premium pool is to be determined. These amounts are then used in the formula described in sub section 30A (2).

30B Definitions for Chapter 14A

This section provides the definitions of a number of terms used within the new Chapter 14 A.

30C Meaning of act of terrorism for Chapter 14A

This section provides the definition of an act of terrorism. This definition is essentially drawn from the United Kingdom definition to be found in Part 1 Section 1 of the *Terrorism Act 2000 (UK)*.

30D Terrorism cover temporary reinsurance fund

This section sets out the sources and types of funding that the fund manager may have regard to when establishing the temporary reinsurance fund.

30D (1)

This subsection determines when the fund is to be established.

30D (2)

This subsection sets out the sources of funding which can be drawn upon to constitute the fund.

30D (3)

This subsection provides for the management of the fund by the Territory and ensures that monies received for the fund are managed under the provisions of the *Financial Management Act 1996*.

30E Entitlement of insurers to reimbursement from temporary fund

This section deals with an insurer's right to reimbursement with respect to uncovered liability. The entitlement will not accrue until after an insurer has made attempts to recover from any existing reinsurance contracts. They

must also have paid out, in accepted claims, the fund threshold amount that applies to the insurer.

30E (1)

This subsection requires an insurer who has accepted liability for claims that have arisen due to an act of terror to payout the fund threshold amount. After having paid out the fund threshold amount, the insurer is then entitled to be reimbursed by the temporary fund for the remaining uninsured liability.

30E (2)

This subsection states that where there is a subsequent act of terror within 12 months of the first act of terror for which the insurer has paid the fund threshold amount, the insurer is entitled to claim for the full amount of the uninsured liability which arises from subsequent acts of terror from the temporary fund.

30E (3)

This subsection states that subsection 30E (2) only applies if the insurer has done all that they can to ensure that if it is possible and economically efficient to do so to have secured reinsurance for terrorist acts. Secondly, that they have done all that is reasonable to demand from existing reinsurance contracts the maximum amount that they recover.

30E (4)

This subsection defines the term *uncovered liability* referred to in subsection 30E (1).

30F Payments out of temporary fund

This subsection details how the temporary fund may be used to pay or repay any amounts or interest due and owing under this chapter.

30G Regulations about temporary fund

This section provides for the regulation which may be made under this amending Bill.

30H Exclusion of Corporations Act

This section excludes the effects of the provisions of the *Corporations Act* (Cwth) in respect of the temporary fund.

30I Expiry of Chapter 14A

This section provides for the date of expiration of the legislation. The Chapter 14A will expire on 1 October 2004.

Part 3 Workers' Compensation Supplementation Fund Act 1980

Clauses 5, 6 & 7 provide for the amendment where necessary of the *Workers' Compensation Supplementation Fund Act 1980*.

Part 4 Additional amendments

Schedule 1 of the amending Bill amends the Acts detailed in that schedule.

Schedule 1 Additional amendments

Parts 1.1 to 1.5 deal with legislation, which has been affected by the introduction of the *Workers Compensation Amendment Act 2001*. The matters requiring attention will be picked up in subsequent legislation.

Parts 1.1 to 1.5 disconnect the relationship between the Acts cited and the *Workers Compensation Act 1951*. A new arrangement for these issues will be addressed in regulations made under the *Workers Compensation Act 1951*.

Part 1.6 Workers Compensation Act 1951

Part 1.6 deals with a number of sections which following the introduction of the *Workers Compensation Amendment Act 2001*, it has been noted that words or phrases have needed to be changed or otherwise dealt with, in order to make clear the intention of the legislation and to ensure consistency of terminology.

[1.8]

This amends one of the examples in the Act which was incorrectly worded. It is an example which was intended to demonstrate the opposite meaning to another example within the section. The amendment changes the word irregular to regular.

[1.9]

This section is amended to include a further subsection which was unintentionally deleted in the drafting process. The subsection allows for the addition and subtraction of conditions to which the test of substantial contribution must apply before they can be compensated under the scheme.

[1.10]

This subsection is amended to update the medical terminology used within the Act and is provided to ensure consistency of terminology throughout the Act.

[1.11]

This subsection is amended to update the medical terminology used within the Act and is provided to ensure consistency of terminology throughout the Act.

[1.12]

This subsection is amended to update the medical terminology used within the Act and is provided to ensure consistency of terminology throughout the Act.

[1.13]

This subsection is amended to take into consideration different statutory interpretation of *may* and *must* as a result of the introduction of the *Legislation Act 2001*.

[1.14]

This subsection is amended to update the medical terminology used within the Act and is provided to ensure consistency of terminology throughout the Act.

[1.15]

This amendment updates the heading of the section to better reflect the meaning of the section.

[1.16]

This amendment clarifies who the parties to an action are and who may commence proceedings before the court.

[1.17]

This amendment clarifies who is responsible for rejecting a claim for compensation and who must be informed when a claim has been rejected.

[1.18]

The subsection is amended to correct an incorrect use of a specific legal term. The act had incorrectly required evidence to be provided in the form of an affidavit when it should have been in the form of a statutory declaration.

[1.19]

The subsection is amended by the addition of a note to explain the correct legal term used as a result of the amendment at [1.18].

[1.20]

This amendment inserts a new subsection 12G(4) the purpose of the amendment is to ensure that the liability of self insurers is not affected by subsection 12G(3).

[1.21]

This subsection is amended to ensure that the Act provides sufficient regulatory powers to ensure that the approval of rehabilitation providers allowed for in the Act can be made under the regulations.

[1.22]

This subsection is amended to correct a grammatical error, the word *incomes* was used when it should have been *income* in section 18H(4)(a).

[1.23]

This amendment changes the title of the chapter to more accurately reflect the content of the chapter.

[1.24]

This section is amended to allow for the regulations to prescribe that matters can be settled by either conciliation or arbitration rather than solely by arbitration.

[1.25]

This amendment changes the title of the chapter to more accurately reflect the content of the chapter.

[1.26]

This subsection is amended to correct a grammatical error, the word *incomes* was used when it should have been *income* in section 27D(3)(a).

[1.27]

This subsection is amended to update the medical terminology used within the Act and is provided to ensure consistency of terminology throughout the Act.

[1.28]

This subsection is amended to ensure that there is an effective model of progressive penalties to aid compliance with the Act.

[1.29]

This amendment inserts into the dictionary a definition of the word *given* specifically as it relates to section 12(2).

[1.30]

The dictionary is amended to ensure that the reference in the dictionary is properly connected with the appropriate section in the Act.

[1.31]

The dictionary is amended to ensure that the reference in the dictionary is properly connected with the appropriate section in the Act.

Part 1.7 Workers' Compensation Supplementation Fund Act 1980

Part 1.7 deals with amendments to the *Workers' Compensation Supplementation Fund Act 1980*. The amendments bring this legislation into line with the amended *Workers Compensation Act 1951*. The provisions essentially deal with terminology and updating of specific provisions.

Section [1.33] removes the apostrophe after the word *workers*, sections [1.34] to [1.40] update and modernise the terminology used in the *Workers' Compensation Supplementation Fund Act* to ensure consistency with the *Workers Compensation Act 1951* after the passing of the *Workers Compensation (Amendment) Act 2001*.

Part 2

Workers Compensation Supplementation Fund

[1.41] [1.42] [1.43]

The sections update the name of the *Workers Compensation Supplementation Act 1980* sans apostrophe.

Division 4.1

Surcharge on Compulsory insurance policies

[1.44] [1.45]

These sections are amended to introduce the term *compulsory insurance* which has replaced the term *employer policy* in the *Workers Compensation Act 1951*.

[1.46]

This amendment omits a redundant clause.

[1.47]

This amendment modernises the existing section to provided increased clarity in relation to the meaning of the section. The rewording makes clear that the Minister may determine the rate of the surcharge to be less than 10% but must do so by notifiable instrument.

[1.48]

Omits subsections made redundant by the new section at [1.47]

[1.49]

This amendment allows for the renumbering of the Act when it is next republished.

[1.50]

This amendment corrects an incorrect reference to the *Workers Compensation Act 1951*.

[1.51] [1.52] [1.53] [1.54] [1.55] [1.56] [1.57] [1.58] [1.59]

The amendments under these sections update and modernise the terminology used in the *Workers Compensation Supplementation Fund Act 1980* to ensure consistency with the *Workers Compensation Act 1951* after the passing of the *Workers Compensation (Amendment) Act 2001*.