

2005

WORKERS COMPENSATION AMENDMENT REGULATION 2005 (No 1)

SUBORDINATE LEGISLATION No SL2005-43

EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Industrial Relations
Ms Katy Gallagher MLA**

WORKERS COMPENSATION AMENDMENT REGULATION 2005 (No 1)

Outline

The *Workers Compensation Act 1951* (the Act) establishes a scheme to provide compensation for workers for injuries arising out of or in the course of their employment. Under the Act employers are generally required to take out a compulsory insurance policy with an approved insurer.

Under section 145 of the Act the Minister may approve an insurer, in accordance with the regulations.

Section 69 of the Workers Compensation Regulation 2002 (the Regulation) provides that the Minister may only approve an insurer if satisfied that:

- (a) the insurer is financially and prudentially sound; and
- (b) the insurer, if approved, will—
 - (i) be able to meet the insurer's current and expected liabilities under the Act; and
 - (ii) be able to meet the insurer's obligations under the Act in relation to injury management programs and personal injury plans; and
 - (iii) comply with the conditions on the approval.

Section 68 of the Regulation provides that an application for approval as an insurer must contain or be accompanied by a number of specified documents and statements. Paragraph 68(1)(d) requires an application to be accompanied by evidence that the insurer has unlimited reinsurance for a single event to cover the insurers future liability.

Unlimited reinsurance is a product that appears to be difficult, if not impossible, to obtain in the current insurance market. The requirement for unlimited reinsurance could exclude insurers that have been authorised by the Australian Prudential and Regulatory Authority to conduct insurance business in Australia, and are regarded as financially and prudentially sound.

The amendment proposed in the Workers Compensation Amendment Regulation 2005 (No 1) (the Amendment Regulation) will replace the requirement to provide evidence of unlimited reinsurance, with a requirement to provide adequate reinsurance or other arrangements to cover the insurer's future liability.

The Amendment Regulation also ensures that applications made prior to the amendments can still be considered. In considering these applications the Minister need not take into consideration a matter that was required to be included in an application prior to the amendments, but is not required following the amendments.

The Amending Regulations come into effect on the day after notification on the Legislation Register.

Notes on Clauses

Clause 1 - Name of regulation

This is a formal provision stating that the name of the Regulation is the Workers Compensation Amendment Regulation 2005 (No 1).

Clause 2 – Commencement

This clause provides that the Amending Regulation will commence on the day after notification on the Legislation Register.

Clause 3 – Legislation Amended

This is a formal provision stating that the name of the Regulation being amended is the Workers Compensation Regulation 2002.

Clause 4 – Section 68(1)(d)

Section 68 of the Regulation provides that an application for approval as an insurer must contain or be accompanied by a number of specified documents and statements. Paragraph 68(1)(d) currently requires an application to be accompanied by evidence that the insurer has unlimited reinsurance for a single event to cover the insurer's future liability.

This clause removes paragraph 68(1)(d) and replaces it with a paragraph that refers to evidence that the insurer has adequate reinsurance, or other arrangements in place, to cover the insurer's future liability under the Act.

Clause 5 – New Section 68A

This clause inserts a transitional provision.

The provision ensures that applications made prior to the amendments can still be considered. In considering these applications the Minister need not take into consideration a matter that was required to be included in an application prior to the amendments, but is not required following the amendments.

The section expires one month after the day it commences.