

WORKERS' COMPENSATION AND REHABILITATION (ACTS OF TERRORISM) BILL 2001

EXPLANATORY MEMORANDUM

What the legislation will achieve

The purpose of the *Workers' Compensation and Rehabilitation (Acts of Terrorism) Bill 2001* is to enable the Workers' Compensation and Rehabilitation Commission ("the Commission") to permit approved insurers to exclude liability for acts of terrorism from their liability to insure employers, provided the insurer enters into a written agreement with the Commission. As a requirement for the approval or continuation of self-insurance, self-insurers will be required to enter into a similar agreement. The agreements will provide that in the event an act of terrorism does occur and moneys for claims arising out of that act are paid through the Employer's Indemnity Supplementation Fund ("the Fund"), established under section 5(1) of the *Employers' Indemnity Supplementation Fund Act 1980* ("the Fund Act") approved insurers and self-insurers must collectively contribute \$25 million, which will be the limit on benefits payable in the event of an act of terrorism. The legislation contains a sunset clause, which provides it will only have effect for a maximum of 12 months, or until such earlier date as fixed by the Minister by way of an order published in the *Gazette*.

Background

The legislation is designed to facilitate a one off interim measure which will be required from 1 January 2002, until such time as the enactment of Federal legislation which provides a national fund to cover acts of terrorism. It is hoped that the Federal Government will introduce such legislation in the near future, as this is a national issue.

The amendments are necessary because, as a flow on effect of the September 11 terrorist attacks, the insurance industry will, from 1 January 2002, exclude from all insurance policies cover for liability arising from acts of terrorism. This results from the announcement by the international reinsurance market, which backs insurance companies against large losses, of its intention to withdraw cover for acts of terrorism.

CLAUSE NOTES

Clause 1. Short title

Provides the short title.

Clause 2. Commencement

Provides that commencement will be on the day the Act receives Royal Assent.

Clause 3. Meanings of expressions used in this Act

Subclause (1) provides the following definitions:

Defines “**actuary**” to mean a Fellow of the Institute of Actuaries of Australia or any other person of whose actuarial knowledge and experience the Governor approves.

Defines “**final day**” to mean 31 December 2002 unless an earlier day is fixed under paragraph (b) or a day earlier than 31 December 2002 that the Minister, by order published in the Gazette, fixes as the final day.

Defines “**Insurance Commission**” to mean the Insurance Commission of Western Australia.

Defines “**liability**” to mean an employer’s liability to pay statutory compensation under the *Workers’ Compensation and Rehabilitation Act 1981* (“the Compensation Act”).

Defines “**participating employer**” to mean an employer –

(a) who has a policy that contains an exclusion under section 4; or

(b) who is entitled by agreement under section 7 to make claims under this section.

Subclause (2) provides that any other expression used in this act which is given a particular meaning in the Compensation Act has the same meaning unless otherwise explained.

Clause 4. Permitting exclusion of cover for acts of terrorism

Subclause (1) enables the Workers’ Compensation and Rehabilitation Commission (“the Commission”) to give written permission allowing an approved insurer to exclude certain liability from indemnity for employers, providing the liability does not relate to an act of terrorism occurring after the final day.

Subclause (2) provides that the Commission cannot permit such exclusion unless the Commission is satisfied it would be reasonable to characterize the liability as being attributable to an act of terrorism.

Subclause (3) provides that the permission to exclude liability only extends to that liability mentioned in this section.

Clause 5. Condition that insurer agrees to contribute

This clause provides that the Commission may only give permission if the approved insurer agrees with the Commission in writing that the insurer must make contributions to the Fund in relation to payments from the Fund in relation to claims made by employers under section 9.

Clause 6. Employer's obligation to insure

Provides that an employer is exempted from having to comply with the requirements of section 160 of the Compensation Act, which requires an employer to keep current a policy of insurance with an approved insurer for the full extent of their liability under that Act, if the policy contains an exclusion for acts of terrorism as permitted under section 4. The employer is only exempted to the extent of the liability permitted to be excluded under section 4.

Clause 7. Self-insurer to agree to contribute

Subclause (1) provides that a self-insurer's exemption under section 164 of the Compensation Act is conditional upon their entering into a written agreement with the Commission. This agreement is only required if it is requested by the Commission – this reflects the interim nature of the legislation, in that the agreement will only be required by the Commission until Federal legislation is enacted, or for a maximum of 12 months.

Paragraph (a) provides that the agreement will enable the self-insurer to make claims on the Fund as provided for in section 9.

Paragraph (b) provides that the agreement will require the self-insurer to make contributions to the Fund in relation to payments from the Fund relating to claims made by employers under section 9; and

Subclause (2) provides that if a self-insurer contravenes this condition, it will be deemed to have contravened a requirement under the Compensation Act.

Clause 8 Employer's liability to worker may be reduced.

(1) This relates to limiting the total workers' compensation exposure in the case of a terrorist attack. In order to set the parameter for timelines for claims the Act provides for the Minister to determine the date an act of terrorism has occurred. The provision provides that notwithstanding the requirements in the Compensation Act a claim in the

case of terrorism must be made within a timeframe of 90 days of the act occurring.

- (2) This clause limits the date on which an act of terrorism can be declared to within the time period declared for the operation of the Act.
- (3) This clause provides the mechanism for establishing an employer's liability and the means for apportioning entitlement in the event the total cost exceeds the agreed limit.
- (4) This clause provides for the actuarial determination of the factor which will be applied in the circumstances determined in subsection (3) in the event the limit of contributions is exceeded.

Clause 9 Indemnity for liability attributable to terrorism

Subclause (1) entitles a participating employer to make a claim (on the Fund) where the liability to the worker is attributable to an act of terrorism that occurs during the period commencing on 1 January 2002.

Under subclause (2), such a claim should normally be treated in the same way as a claim under the Fund Act.

Subclause (3) provides that for the purposes of this section –

- (a) if the employer holds a policy of insurance and an exclusion of liability is permitted under section 4, the employer's liability attributable to an act of terrorism is deemed to be limited to the extent of that exclusion.
- (b) for self-insurers, the extent to which their liability is attributable to an act of terrorism is to be decided by the Commission along the same lines as the Commission decides whether or not to give permission for an exclusion under section 4.