

**SECOND READING SPEECH APPROVAL**

**COVER PAGE**

**TITLE OF BILL**

**EMPLOYERS' INDEMNITY  
SUPPLEMENTATION FUND  
AMENDMENT BILL 2001**

**MINISTER'S SIGNATURE** \_\_\_\_\_

**HON JOHN KOBELKE, MLA  
MINISTER FOR LABOUR  
RELATIONS**

**DATE** \_\_\_\_\_

**EMPLOYERS' INDEMNITY SUPPLEMENTATION FUND AMENDMENT  
BILL 2001**

**EXPLANATORY MEMORANDUM**

The purpose of the Bill is to amend the *Employers' Indemnity Supplementation Fund Act 1980* to allow the surcharge to be re-commenced whenever necessary and for both the period of the surcharge and the percentage amount to be prescribed by regulation but limited to a maximum amount equal to 5% of the amount of the premium payable in respect of an employer's workers' compensation policy.

The amendments are needed as matter of urgency to ensure the Employers' Indemnity Supplementation Fund can meet claims by injured workers whose employers were insured by HIH Insurance.

The amendments will mean that all employers, including self-insurers, will be required to pay a surcharge of up to a maximum amount equal to 5% of the amount of the premium payable in respect of an employer's workers' compensation policy. A levy appropriate to the demand on the Fund will need to continue until all claims have been met.

The amendments will mean that employers will be liable to contribute up to an additional \$93Million. This money can be raised, over the next five years through the re-introduction of a surcharge, of up to a maximum 5%, on all employers. These funds are essential for the Employers' Indemnity Supplementation Fund to cover the expected debt from the collapse of HIH Insurance.

**Clause 1. Short title**

This Act may be cited as the *Employers' Indemnity Supplementation Fund Amendment Act 2001*.

**Clause 2. Commencement**

This Act comes into operation on the day on which it receives Royal Assent.

**Clause 3. The Act amended**

This clause provides amendments are made to the *Employers' Indemnity Supplementation Fund Act 1980*.

**Clause 4. Section 3 amended**

Paragraph (a) deletes the definition of "appointed date" in section 3, which is no longer relevant as it refers to the date on which the *Employer's Indemnity Supplementation Fund Act 1980* came into operation in 1981.

Paragraph (b) creates a new definition of “**surcharge period**”. In conjunction with the amendments to section 14, this enables the surcharge to be re-commenced whenever necessary for either fixed or open-ended periods and for the period of the surcharge (ie the commencement and expiry times) to be prescribed by regulation. This will ensure the surcharge can be re-activated as necessary to cover the debts from the collapse of an approved or former approved insurer.

Paragraph (c) is a consequential amendment resulting from the proposed amendments to section 14, which will create a new definition of “the appropriate surcharge”.

#### **Clause 5. Section 14 amended**

Subclause (1) deletes a redundant reference to the “appointed date” and replaces it with a reference to a surcharge period. The new wording clarifies that the obligation to pay the surcharge applies to employers who obtain a (new or renewed) policy if the period covered by the employer’s policy (as defined) commences during a surcharge period.

Subclause (2) repeals section 14(2) &(3). Section 14(2) is repealed to exclude from the obligation to pay a surcharge any employer who takes out a policy for a period commencing before a surcharge period. The intent is to provide that in the interests of equity, a surcharge is to be prospective only. While section 14(3) is repealed as the provisions for calculating the 1% surcharge will be replaced by the new definition of “the appropriate surcharge” and provisions which allow the surcharge period and percentage of the surcharge to be set by regulation.

Subclause (2) also provides for the insertion of a new subsections (2), (3) and (3a). The proposed subsection (2) will define “**the appropriate surcharge**” by providing how it should be calculated ie by applying a prescribed percentage to whatever amount of premium is payable for the period of the policy which falls within a surcharge period. The prescribed percentage is the percentage in effect at the time the policy was obtained. While the proposed subsection (3) limits the percentage of the appropriate surcharge which may be prescribed by regulation to a maximum of 5%. The proposed subsection (3a) allows for the percentage of the surcharge to be prescribed and adjusted during the surcharge period and clarifies that only one percentage could apply at any one time for a given employer.

Subclause (3) clarifies that the surcharge should be paid at the same time the premium is paid.

Subclause (4) repeals sections 14(5) and (6). These are consequential amendments to reflect the removal of section 14(2). Sections 14(5) and (6) provided a mechanism to apportion surcharge, which is no longer necessary given the amendments proposed.

**Clause 6. Section 16 amended**

Subclause (1) deletes a redundant reference to the “appointed date” and replaces it with a reference to a surcharge period. This will mean that an employer who becomes a self-insurer during a surcharge period shall pay the surcharge to the Workers' Compensation and Rehabilitation Commission within one month after the commencement of the surcharge period.

Subclause (2) deletes a redundant reference to the “appointed date” and replaces it with a reference to the commencement of a surcharge period. This will mean that an employer who becomes a self-insurer after the commencement of a surcharge period shall pay the surcharge to the Workers' Compensation and Rehabilitation Commission within one month after they become a self-insurer.

Subclause (3) clarifies that the obligation for a self-insurer to pay the surcharge only applies for any 12 months period after they become a self-insurer if any part of that 12 months is within a surcharge period.

**Clause 7. Section 17 repealed**

Section 17 is deleted as it provided for an employer to pay a surcharge for a defined period. The intention of the Bill is to allow sufficient funds to be levied to cover claims of HIH Insurance Ltd and any other approved or former approved insurer that may be liquidated.

The provisions in section 17 defining “the surcharge period” have been incorporated into the proposed definition of “surcharge period” in section 3.

Section 14 will be amended to provide the new provisions for the definition of “the appropriate surcharge” and setting the percentage of the surcharge as it is considered more appropriate placement in the Act.

**Clause 8. Section 18 amended**

Clause 8 provides a mechanism to allow for regulations regarding refunds should the surcharge period be shortened.

**Clause 9. Section 36 amended**

Clause 9 deletes a redundant reference to the “appointed date” and provides that the provisions in this section regarding payment into the Supplementation Fund of moneys recovered by liquidators have effect regardless of any agreement made to the contrary or whenever any such agreement might have been made.