

DRAFT BILL

**PROPOSED AMENDMENTS TO
ICWA ACT 1986**

KEY –
~~Deletion~~
Insertion
Final Amended

**PROPOSED AMENDMENTS
BILL CLAUSE 1, 2 & 3**

Western Australia
LEGISLATIVE ASSEMBLY/COUNCIL
INSURANCE COMMISSION OF WESTERN AUSTRALIA
AMENDMENT BILL 2002

A Bill for

An Act to amend the *Insurance Commission of Western Australia Act 1986*.

The Parliament of Western Australia enacts as follows:

This is formal clause titling the Bill

BILL CLAUSE 1

Short Title

- 1 This Act may be cited as the *Insurance Commission of Western Australia Amendment Bill 2002*.

Bill Clause 2 states when the Act comes into operation. The urgency arises from the fact that there are existing arrangements for community organisations within RiskCover.

BILL CLAUSE 2

Commencement

- 2 This Act comes into operation on the day on which it receives the royal assent.

This Bill Clause specifies the amendments in the Bill apply to the Insurance Commission of Western Australia Act 1986.

BILL CLAUSE 3

The Act amended

- 3 The amendments in this Act are to the *Insurance Commission of Western Australia Act 1986*.

**PROPOSED AMENDMENT
BILL CLAUSE 4**

SECTION 3 – DEFINITIONS

DEFINITIONS

Section 3 is amended by inserting the following definitions in their appropriate alphabetical positions.

The definition of "community organisations" is inserted to ensure there is a limited class of not-for-profit organisations to be provided cover by a new Community Fund. The definition refers to specific State and Commonwealth legislation which restricts the type of organisation to be offered the facility.

The definition of "eligible community organisations" empowers the Treasurer to determine the class of "community organisations" which are eligible to participate in an insurance fund for community organisations. A multi-step process similar to the following, will be implemented to determine "eligible community organisations":

- Affected organisations approach an affiliated State Government agency, with peak or industry association comment, requesting insurance cover;
- The Agency will assess the organisation and ensure that it is unable to find relevant, affordable or any cover from the market;
- The Agency will then refer the organisation to ICWA for consideration;
- ICWA will assess each request and provide an initial quote for cover;
- ICWA will then seek Treasurer's approval of eligibility and provision of insurance; and
- Upon the Treasurer's approval, ICWA will determine a final commercial premium and on acceptance will provide insurance documentation. If the Treasurer's approval is not forthcoming, ICWA will advise the referring agency and organisation of the decision.

BILL CLAUSE 4

"commissioner" means —

- (a) a person appointed to the board of commissioners under section 5(1)(a), including the chairman and the deputy chairman of the board of commissioners; or
- (b) the managing director;

"Corporation" means the State Government Insurance Corporation established by this Act;

"debt paper" means inscribed stock, bonds, debentures, debentures with coupons annexed or any other bearer securities, or instrument evidencing indebtedness;

"director of the Corporation" means —

- (a) the managing director; or
- (b) a person appointed to the board of directors under section 29(1)(b), including the deputy chairman of the board of directors;

"Fund" means a fund established under section 16;

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"commissioner" means —

- (c) a person appointed to the board of commissioners under section 5(1)(a), including the chairman and the deputy chairman of the board of commissioners; or
- (d) the managing director;

“community organisation” means –

- (a) an association incorporated under the *Associations Incorporations Act 1987*;
- (b) a company limited by guarantee that is registered under section 150 of the *Corporations Act 2001* of the Commonwealth; or
- (c) a company holding a licence that continues in force under section 151 of the *Corporations Act 2001* of the Commonwealth;

“Corporation” means the State Government Insurance Corporation established by this Act;

“debt paper” means inscribed stock, bonds, debentures, debentures with coupons annexed or any other bearer securities, or instrument evidencing indebtedness;

“director of the Corporation” means —

- (c) the managing director; or
- (d) a person appointed to the board of directors under section 29(1)(b), including the deputy chairman of the board of directors;

“eligible community organisation” has the meaning given in section 3A;

“Fund” means a fund established under section 16;



“commissioner” means —

- (e) a person appointed to the board of commissioners under section 5(1)(a), including the chairman and the deputy chairman of the board of commissioners; or
- (f) the managing director;

“community organisation” means –

- (d) an association incorporated under the *Associations Incorporations Act 1987*;
- (e) a company limited by guarantee that is registered under section 150 of the *Corporations Act 2001* of the Commonwealth; or
- (f) a company holding a licence that continues in force under section 151 of the *Corporations Act 2001* of the Commonwealth;

“Corporation” means the State Government Insurance Corporation established by this Act;

“debt paper” means inscribed stock, bonds, debentures, debentures with coupons annexed or any other bearer securities, or instrument evidencing indebtedness;

“director of the Corporation” means —

- (e) the managing director; or
- (f) a person appointed to the board of directors under section 29(1)(b), including the deputy chairman of the board of directors;

“eligible community organisation” has the meaning given in section 3A;

“Fund” means a fund established under section 16;

After section 3 the following section is inserted in Part 1

This Bill clause empowers the Treasurer to determine the class of "community organisations" which it is prepared to underwrite and allow to participate in an insurance fund for community organisations. The State will be underwriting the Fund which will be managed by the Insurance Commission. Before the Treasurer considers the application, the Insurance Commission will provide a report and recommendation on acceptance.

BILL CLAUSE 5

3A Eligible community organisations

- (1) A community organisation is an eligible community organisation for the purposes of this Act if the Treasurer has made a determination under subsection (2) in respect of the organisation or a class of organisations of which it is a member.
- (2) The Treasurer may determine that an organisation, or all organisations of a particular class, is or are eligible to participate in an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.

**PROPOSED AMENDMENT
BILL CLAUSE 6(1), 6(2)**

SECTION 6 - FUNCTIONS

FUNCTIONS

After section 6(c) the following paragraph is inserted to enable the Insurance Commission to manage and administer insurance and risk management arrangements for "eligible community organisations". The Act currently limits the Insurance Commission to managing and administering insurance and risk management arrangements for "public authorities" only. This will expand the functions of the Insurance Commission to enable it to manage a community fund, however, it will not be mandatory.

BILL CLAUSE 6(1)

6. (c) to manage and administer insurance and risk management arrangements on behalf of public authorities;
- (ca) to manage and administer insurance and risk management arrangements on behalf of eligible community organisations;
- (d) to provide services, facilities and advice to public authorities in respect of the management of claims against them or against funds maintained or administered by them under any written law;

Amendment to section 6(e). This extends the Insurance Commission's functions to conduct research and to promote, educate and raise public awareness in respect of prevention of personal injury.

BILL CLAUSE 6(2)

6. (e) to initiate, or participate in, and promote programmes and schemes for —
- (i) research into the treatment of industrial diseases and personal injury; and
- (ii) research into, education for, and promotion of public awareness relating to, the prevention of industrial diseases, personal injury and accidental death, being programmes and schemes relevant to risks in respect of which the Commission is to provide insurance under paragraphs (a), and (b):
6. (e) to initiate, or participate in, and promote programmes and schemes for —
- (iii) research into the treatment of industrial diseases and personal injury; and
- (iv) research into, education for, and promotion of public awareness relating to, the prevention of industrial diseases, personal injury and accidental death, being programmes and schemes relevant to risks in respect of which the Commission is to provide insurance under ~~paragraphs (a), and (b)~~ paragraph (a), (b) or (c);

6. (e) to initiate, or participate in, and promote programmes and schemes for —
- (i) research into the treatment of industrial diseases and personal injury; and
 - (ii) research into, education for, and promotion of public awareness relating to, the prevention of industrial diseases, personal injury and accidental death,
- being programmes and schemes relevant to risks in respect of which the Commission is to provide insurance under paragraph (a), (b) or (c);

**PROPOSED AMENDMENT
BILL CLAUSE 7(a), 7(b), 7(c)**

SECTION 7 - POWERS

POWERS

Bill clauses 7(a), (b) and (c) amend Section 7(4) of the principal Act to extend the Insurance Commission's current powers in respect of establishing and maintaining funds, managing insurance and risk management, and arranging insurance of risks for "public authorities", to "eligible community organisations".

BILL CLAUSE 7(a)

- 7. (4) Without limiting subsection (1) or (2), the Commission has power to arrange reinsurance of risks and, in relation to its functions under section 6(c) has power –
- 7. (4) Without limiting subsection (1) or (2), the Commission has power to arrange reinsurance of risks and, in relation to its functions under section 6(c) or (ca) has power –
- 7. (4) Without limiting subsection (1) or (2), the Commission has power to arrange reinsurance of risks and, in relation to its functions under section 6(c) or (ca), has power –

BILL CLAUSE 7(b)

- 7. (4) (a) to establish, manage and maintain any fund or funds (in addition to the Funds) for the management of insurance arrangements of, or for risk management for, public authorities;
- 7. (4) (a) to establish, manage and maintain any fund or funds (in addition to the Funds) for the management of insurance arrangements of, or for risk management for, public authorities or eligible community organisations;
- 7. (4) (a) to establish, manage and maintain any fund or funds (in addition to the Funds) for the management of insurance arrangements of, or for risk management for, public authorities or eligible community organisations;

BILL CLAUSE 7(c)

- 7. (4) (b) to arrange insurance of risks for public authorities;
- 7. (4) (b) to arrange insurance of risks for public authorities or eligible community organisations;
- 7. (4) (b) to arrange insurance of risks for public authorities or eligible community organisations;

**PROPOSED AMENDMENTS
BILL CLAUSE 8(1), 8(2)**

**SECTION 16 - ESTABLISHMENT
AND COMPOSITION OF FUNDS**

ESTABLISHMENT AND COMPOSITION OF FUNDS

Section 16 amended – after section 16(1) the following subsection is inserted. This subsection provides the Insurance Commission with the flexibility to establish a fund under Section 16, as opposed to under Section 7(4), if assistance from government to “community organisations” to obtain insurance, becomes a long term solution.

BILL CLAUSE 8(1)

16. Establishment and composition of Funds

- (1) The Commission shall establish, maintain and administer the following funds, namely —
 - (a) a fund to be called the “Third Party Insurance Fund”;
 - (b) a fund to be called the “Compensation (Miscellaneous Risks) Insurance Fund”;
 - (c) a fund to be called the “Compensation (Industrial Diseases) Fund”;
 - (d) a fund to be called the “Government Insurance Fund”; and
 - (e) a fund to be called the “Insurance Commission General Fund”.
- (1a) The Commission may establish, maintain and administer a fund for the purposes of an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.
- (2) The Third Party Insurance Fund shall consist of —
 - (a) moneys appropriated for, or derived from or in connection with, the Commission’s functions under section 6(a) or its functions under section 6(e) in so far as they relate to personal injury and accidental death;
 - (b) other property received or acquired by the Commission in connection with the Commission’s functions referred to in paragraph (a); and

After section 16(5) the following subsection (5a) is inserted. This subsection is essentially the same as for Section 16(2), 16(3), 16(4), 16(5) and 16(6). If a fund is set up for "eligible community organisations" under Section 16(1a), subsection (5a) sets out what that fund should consist of.

BILL CLAUSE 8(2)

16. (5) The Government Insurance Fund shall consist of —

- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(c) other than moneys in a fund established under section 7(4)(a) or the subject of a trust of which the Commission is a trustee under section 7(4)(c);
- (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(c); and
- (c) moneys or other property credited, apportioned or transferred to that Fund by the Commission under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions under section 6(c) and for that purpose only.

(5a) A fund established under subsection (1a) shall consist of —

- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(ca), other than moneys that are the subject of a trust of which the Commission is a trustee under section 7(4)(c);
- (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(ca); and
- (c) moneys or other property credited, apportioned or transferred to the fund by the Commission under section 17 or 18.

(6) The Insurance Commission General Fund shall consist of —

- (a) moneys available to the Commission that are not required to be credited to any other Commission account;
- (b) other property of the Commission that does not form part of any other Commission account; and
- (c) any moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18 may be applied for the purpose of carrying out the functions of the Commission under section 6(d), (f) and (h), and for the general administration of this Act, and for those purposes only.

**PROPOSED AMENDMENT
BILL CLAUSE 9**

**SECTION 18 - TRANSFER
BETWEEN FUNDS**

TRANSFER BETWEEN FUNDS

Section 18(2) is essentially amended by including a fund established under Section 16(1a) for "eligible community organisations". If a surplus results in a fund created under Section 16(1a), the Insurance Commission, with the Treasurer's approval, may transfer the surplus or a portion of the surplus to any other funds including the Consolidated Fund.

BILL CLAUSE 9

18. (2) Where the financial statements prepared under the *Financial Administration and Audit Act 1985* in respect of the Third Party Insurance Fund, the Government Insurance Fund, or the Insurance Commission General Fund indicate that there is a surplus in that Fund the Commission, with the approval of the Treasurer, may transfer the amount, or a portion of the amount, of that surplus to —
- (a) another of the Funds;
 - (b) the Consolidated Fund; or
 - (c) any other fund or account.
18. (2) Where the financial statements prepared under the *Financial Administration and Audit Act 1985* in respect of the Third Party Insurance Fund, the Government Insurance Fund, ~~or the Insurance Commission General Fund~~ the Insurance Commission General Fund or a fund established under section 16(1a) indicate that there is a surplus in that Fund the Commission, with the approval of the Treasurer, may transfer the amount, or a portion of the amount, of that surplus to —
- (d) another of the Funds;
 - (e) the Consolidated Fund; or
 - (f) any other fund or account.
18. (2) Where the financial statements prepared under the *Financial Administration and Audit Act 1985* in respect of the Third Party Insurance Fund, the Government Insurance Fund, the Insurance Commission General Fund or a fund established under section 16(1a) indicate that there is a surplus in that Fund the Commission, with the approval of the Treasurer, may transfer the amount, or a portion of the amount, of that surplus to —
- (a) another of the Funds;
 - (b) the Consolidated Fund; or
 - (c) any other fund or account.

**PROPOSED AMENDMENT
BILL CLAUSE 10
TRANSITION AND SAVINGS**

TRANSITION AND SAVINGS

This Bill clause formalises current arrangements whereby some not-for-profit organisations affiliated with government have already been provided with cover within the RiskCover Fund (eg Police and Citizens Youth Clubs).

BILL CLAUSE 10

The functions conferred on the Insurance Commission of Western Australia by section 6(ca) and (e) of the *Insurance Commission of Western Australia Act 1986* as amended by this Act are taken always to have been functions of the Commission.