



New South Wales

# NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *NSW Self Insurance Corporation Act 2004* (the *principal Act*) to authorise the NSW Self Insurance Corporation (the *Corporation*) to—

- (a) create a special liability insurance for certain persons delivering out-of-home care and youth homelessness services to cover physical and sexual abuse claims, and
- (b) establish a Special Liability Insurance Fund for special liability insurance.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1      **Amendment of NSW Self Insurance Corporation Act 2004 No 106**

**Schedule 1[1]** inserts definitions for *out-of-home care*, *special liability insurance* and *Special Liability Insurance Fund*.

**Schedule 1[2]** inserts proposed section 8D which establishes the following functions of the Corporation—

- (a) to carry on the business of providing special liability insurance to persons who provide out-of-home care or youth homelessness services under contract with the Crown,

- (b) to manage the Special Liability Insurance Fund,
- (c) to enter into arrangements with certain persons relating to the exercise of these functions.

**Schedule 1[5]** makes it clear that the Special Liability Insurance Fund and special liability insurance are separate to the Self Insurance Fund established under the principal Act. **Schedule 1[3], [4] and [6]** make consequential amendments.

**Schedule 1[7]** inserts proposed Division 3A which provides for the establishment of the Special Liability Insurance Fund. The proposed division also sets out what money must be paid into and from the Special Liability Insurance Fund.

**Schedule 1[8]** provides that the Corporation may invest money in accordance with the *Government Sector Finance Act 2018* and the Treasurer may determine investment strategies.

**Schedule 1[9]** requires the Minister to review certain provisions of the principal Act to decide whether the policy objectives of the provisions remain valid and whether the terms of the principal Act remain appropriate for securing the policy objectives. The review is required as soon as possible after the period of 2 years from the commencement of the proposed Act and a report of the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

**Schedule 1[10]** provides that the special liability insurance does not apply to certain liabilities arising before 30 June 2007 or if the liability is covered by some other insurance issued before the commencement of proposed Division 3A.



New South Wales

# NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*



New South Wales

## **NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024**

No. \_\_\_\_\_, 2024

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### **A Bill for**

An Act to amend the *NSW Self Insurance Corporation Act 2004* to establish a scheme of insurance for certain persons providing out-of-home care services and youth homelessness services to cover liabilities arising from physical or sexual abuse of a person; and for other purposes.

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*The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.*

*Legislative Council*

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*Clerk of the Parliaments*

**Tabling copy**

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *NSW Self Insurance Corporation Amendment (Special Liability Insurance) Act 2024*.

3

4

**2 Commencement**

5

This Act commences on the date of assent to this Act.

6

<b>Schedule 1</b>	<b>Amendment of NSW Self Insurance Corporation Act 2004 No 106</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Insert in alphabetical order in section 3(1)—	4
	<i>out-of-home care</i> has the same meaning as in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	5
	<i>special liability insurance</i> means insurance against liabilities arising from physical or sexual abuse of a person—	6
	(a) in out-of-home care, or	7
	(b) receiving youth homelessness services.	8
	<i>Special Liability Insurance Fund</i> means the fund established under section 12DB.	9
		10
		11
		12
<b>[2] Section 8D</b>		13
	Insert after section 8C—	14
<b>8D Specific functions relating to special liability insurance</b>		15
(1)	The Self Insurance Corporation has the following functions—	16
(a)	to carry on the business of providing special liability insurance to persons who provide the following services under contract with the Crown—	17
(i)	the provision of out-of-home care,	18
(ii)	youth homelessness services,	19
(b)	to manage the Special Liability Insurance Fund,	20
(c)	to enter into arrangements with other persons, including re-insurers, for services relating to the exercise of the Corporation’s functions under paragraphs (a) and (b).	21
		22
		23
		24
		25
(2)	In this section—	26
	<i>arrangements</i> includes contracts and agreements.	27
	<i>under contract with the Crown</i> includes subcontracts under the contract with the Crown.	28
		29
<b>[3] Section 11 Self Insurance Fund</b>		30
	Omit “(except its functions in relation to the provision of insurance under the Home Building Compensation Fund or principal arranged construction insurance or the management of the Home Building Compensation Fund or Construction Risks Insurance Fund)” from section 11(2).	31
		32
		33
		34
	Insert instead “, other than an excluded function”.	35
<b>[4] Section 11(3)</b>		36
	Omit “(except expenditures incurred in connection with the provision of insurance under the Home Building Compensation Fund or principal arranged construction insurance or the operation of the Home Building Compensation Fund or Construction Risks Insurance Fund)”.	37
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	Insert instead “, other than expenditure incurred in connection with an excluded function,”.	41

<b>[5] Section 11(6)</b>	1
Insert after section 11(5)—	2
(6) In this section—	3
<i>excluded function</i> means a function of the Self Insurance Corporation relating to the following—	4
(a) the Home Building Compensation Fund,	5
(b) insurance under the <i>Home Building Act 1989</i> ,	6
(c) the Construction Risks Insurance Fund,	7
(d) principal arranged construction insurance,	8
(e) the Special Liability Insurance Fund,	9
(f) special liability insurance.	10
<b>[6] Sections 12B and 12D</b>	11
Omit the sections.	12
<b>[7] Part 4, Division 3A</b>	13
Insert after Division 3—	14
<b>Division 3A Special Liability Insurance Fund</b>	15
<b>12DA Definition</b>	16
In this division—	17
<i>Fund</i> —see section 12DB.	18
<b>12DB Special Liability Insurance Fund</b>	19
There must be established in the Special Deposits Account a Special Liability Insurance Fund (the <i>Fund</i> ).	20
<b>12DC Payments to Fund</b>	21
The following must be paid into the Fund—	22
(a) all money received by the Self Insurance Corporation—	23
(i) as premiums for special liability insurance, or	24
(ii) from re-insurers in connection with special liability insurance, or	25
(iii) by the exercise of any right of subrogation or other right of recovery in connection with special liability insurance, or	26
(iv) under any security, guarantee or recourse held by the Self Insurance Corporation in connection with special liability insurance,	27
(b) all money—	28
(i) advanced to the Fund by the Minister, or	29
(ii) appropriated by Parliament for the purposes of the Fund, or	30
(iii) directed or authorised to be paid into the Fund by or under this or another Act,	31
(c) the proceeds of the investment of money in the Fund.	32
<b>12DD Payments from Fund</b>	33
(1) Money may be paid from the Fund for the following—	34
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	37
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(a)	claims made under special liability insurance,	1
(b)	costs, including disbursements and commissions, of services provided in connection with the administration of the Corporation's business,	2
	<b>Example—</b> risk management, actuarial, agency, brokerage and legal services	3
(c)	costs incurred by or on behalf of a NSW Government agency in providing services in connection with the Corporation's business,	4
(d)	administrative expenses in connection with the Fund,	5
(e)	repayments to the Consolidated Fund for payments made under section 12DC(b)(i) or (ii),	6
(f)	amounts directed or authorised to be paid from the Fund by or under this or another Act.	7
(2)	A repayment under subsection (1)(e) may be made if the Treasurer—	8
(a)	considers the amount to be repaid is surplus to the requirements of the Fund, and	9
(b)	in assessing whether the amount is surplus, has applied an appropriate prudential margin.	10
(3)	In this section—	11
	<b>Corporation's business</b> means the special liability insurance business of the Self Insurance Corporation.	12
<b>[8]</b>	<b>Section 12E</b>	13
	Omit the section. Insert instead—	14
<b>12E</b>	<b>Investment of money in funds</b>	15
(1)	The Self Insurance Corporation may invest money in a fund in accordance with the <i>Government Sector Finance Act 2018</i> , Part 6.	16
(2)	The Treasurer may determine investment strategies for the investment of money in the funds.	17
(3)	In this section—	18
	<b>fund</b> means a fund established under this part.	19
<b>[9]</b>	<b>Section 18</b>	20
	Omit the section. Insert instead—	21
<b>18</b>	<b>Review of special liability insurance provisions</b>	22
(1)	The Minister must review the reviewable provisions of this Act to decide whether—	23
(a)	the policy objectives of the reviewable provisions remain valid, and	24
(b)	the terms of this Act remain appropriate for securing the policy objectives.	25
(2)	The review must be undertaken as soon as possible after the period of 2 years from the commencement of the <i>NSW Self Insurance Corporation Amendment (Special Liability Insurance) Act 2024</i> .	26
(3)	A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	27
(4)	In this section—	28



	<i>reviewable provisions</i> means the provisions of this Act about special liability insurance and the Special Liability Insurance Fund.	1 2
<b>[10]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	3
	Insert at the end of the schedule, with appropriate part and clause numbering—	4
	<b>Part Provisions consequent on enactment of NSW Self Insurance Corporation Amendment (Special Liability Insurance) Act 2024</b>	5 6 7
	<b>Special liability insurance</b>	8
	Special liability insurance does not cover a liability if—	9
	(a) the liability arises from physical or sexual abuse of a person occurring before 30 June 2007, or	10 11
	(b) the liability is covered by other insurance issued before the commencement of Part 4, Division 3A.	12 13