

MOTOR ACCIDENT INSURANCE AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

The Bill amends the *Motor Accident Insurance Act 1994* to allow the transfer of funds from the Motor Accident Insurance Fund to the Nominal Defendant Fund to assist in meeting the Nominal Defendant liabilities for compulsory third party claims arising from the insolvency of the HIH Insurance Group. The Bill also caters for restoring the current status of the two funds involved, if a dividend in the liquidation provides sufficient return.

Reasons for the Bill

FAI General Insurance Company Limited and CIC Insurance Limited which were part of the HIH Insurance Group, previously held licences to underwrite CTP insurance in Queensland. Both companies were ordered to be wound up on 27 August 2001. Liabilities for Queensland CTP claims on an undiscounted basis are estimated at \$403M. As a result of the collapse, the Nominal Defendant has taken over the insolvent insurer's rights and liabilities under CTP policies from the date of insolvency (15 March 2001). The Nominal Defendant has some funds with which to meet the immediate claim liabilities but does not have the resources to fund the longer term liabilities arising from the HIH collapse.

The Bill assists in the funding of the longer term liabilities by facilitating the transfer of funds from the Motor Accident Insurance Fund to the Nominal Defendant Fund. The *Motor Accident Insurance Act 1994* sanctions the transfer of funds in the event of a shortfall to pay Nominal Defendant claim liabilities arising under the former legislation, the *Motor Vehicles Insurance Act 1936*. The Bill amends the *Motor Accident Insurance Act 1994* to allow the funds to be used to satisfy CTP claims under policies of insurance with companies in the HIH Insurance Group.

The State Government by way of a Deed of Indemnity is also providing additional funds to assist the Nominal Defendant to meet its liabilities. However, the current legislation is not explicit in providing for the repayment of principal when funds are available, such as the receipt of an insolvency dividend.

Achievement of Objectives

The objectives of the Bill are achieved by: -

- providing a legislative basis for the transfer of funds from the Motor Accident Insurance Fund to the Nominal Defendant Fund for use in satisfying claims liabilities arising from the insolvency; and
- providing a legislative basis to allow, if circumstances permit, the Nominal Defendant Fund to make repayments of principal on monies advanced by the Treasurer and with the Treasurer's authority to return a surplus to the Motor Accident Insurance Fund in the event a dividend from the liquidator provides a sufficient return.

Alternative Ways of Achieving the Policy Objectives

Various options were considered for funding the outstanding claims liabilities, including:-

- imposition of a significantly higher Nominal Defendant levy to fully fund the liabilities;
- a consolidated revenue funded rescue package similar to that undertaken by the Federal Government.

On balance the combination of a reasonable increase of \$5.00 on the Nominal Defendant levy, the transfer of funds from the Motor Accident Insurance Fund to the Nominal Defendant Fund, and the advancement of funds from the Treasurer by way of a Deed of Indemnity, are considered the most effective means of ensuring the Nominal Defendant has sufficient funds to cover the outstanding liabilities. It is anticipated that in the longer term the liquidator will pay a dividend.

Estimated Cost for Government Implementation

The Bill will not result in any implementation costs to Government. There is \$57.818M held in the Motor Accident Insurance Fund as reserve funds should the claims under the former legislation (*Motor Vehicles Insurance Act 1936*) exceed the actuarial assessment made in 1994. Such need is now highly unlikely. There may be some opportunity cost for the CTP scheme in that past earnings from the funds have been used by the Commission to fund injury management and accident prevention initiatives with the view to reducing the incidence of, or the effects of road crashes.

The amendment to allow the repayment of principal by the Nominal Defendant will have a positive effect on State finances. It will ensure, if circumstances permit, that amounts of principal can be returned by the Fund to the State Government.

Consistency with Fundamental Legislative Principles

The proposed amendments to the legislation do not impinge on the rights and liberties of individuals and the amendments pay sufficient regard to the institution of Parliament. The Bill is consistent with fundamental legislative principles.

Consultation

The Bill addresses administrative matters related only to the Nominal Defendant Fund and no external consultation has been undertaken.

NOTES ON PROVISIONS**Clause 1 - Short title**

This provision cites the short title of the Bill.

Clause 2 – Act amended

This clause identifies the *Motor Accident Insurance Act 1994* as the legislation to be amended.

Clause 3 – Amendment of s28 (Motor Accident Insurance Fund)

The existing provision is not explicit in providing for the repayment of principal in circumstances of an advance by the Treasurer under subsection (6). The clause clarifies the position and also caters for the Motor Accident Insurance Fund to also consist of any amount recovered or received by the Nominal Defendant by way of an insolvency dividend to be transferred to the Motor Accident Insurance Fund on the authorisation of the Treasurer.

Clause 4 – Amendment of s29 (Nominal Defendant Fund)

This clause introduces a similar change in respect of the Nominal Defendant Fund. It authorises payments in relation to sums advanced to the Fund by the Treasurer, including payments of principal, interest, fees or charges that may be required in terms of the Treasurer's advance.

Clause 5 – Amendment of s33 (Nominal Defendant as the insurer)

The purpose of this clause is to require the Insurance Commissioner to transfer funds from the Motor Accident Insurance Fund to the Nominal Defendant Fund in the circumstances of an insurer becoming insolvent and there not being sufficient funds to meet the liabilities. However, the transfer of funds cannot exceed the amount which was transferred on commencement of the Act in 1994.

The clause also gives the Treasurer the discretion to return funds from the Nominal Defendant Fund to the Motor Accident Insurance Fund should circumstances give rise to a dividend paid by the liquidation or recovery from another party. Such action, if funds eventuate, will go some way to restoring the present position.

Clause 6 – Amendment of pt7, div 1, hdg

This clause amends the division heading.

Clause 7 – Amendment of s106 (Nominal Defendant)

This is a complementary amendment which again reinforces that the amount transferred from the Motor Accident Insurance Fund to the Nominal Defendant Fund cannot exceed the total amount transferred on commencement of the legislation in 1994.

Clause 8 – Amendment to omit headings following cross references

This clause alters the method of cross-referencing used in the Act to provide consistency with current legislative drafting practice.