

MOTOR ACCIDENTS (AMENDMENT) ACT 1989 No. 47

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Accidents Act 1988 No. 102
4. Amendment of other Acts

SCHEDULE 1—GENERAL AMENDMENTS

SCHEDULE 2—AMENDMENTS TO COMMENCE ON 1 JULY 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS

MOTOR ACCIDENTS (AMENDMENT) ACT 1989 No. 47

NEW SOUTH WALES



Act No. 47, 1989

An Act to amend the Motor Accidents Act 1988 to make further provision for the implementation of the motor accidents scheme under that Act and the licensing and control of insurers; to make amendments to other Acts; and for other purposes. [Assented to 16 May 1989]

Motor Accidents (Amendment) 1989

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Motor Accidents (Amendment) Act 1989.

Commencement

2. (1) This Act commences on the date of assent, except as provided by this section.

(2) Schedule 1 (75) commences on a day to be appointed by proclamation.

(3) Schedule 2 commences on 1 July 1991.

(4) Section 3 in its application to a provision of Schedule 1 or 2 commences on the day on which the provision commences.

Amendment of Motor Accidents Act 1988 No. 102

3. The Motor Accidents Act 1988 is amended as set out in Schedules 1 and 2.

Amendment of other Acts

4. Each Act specified in Schedule 3 is amended as set out in that Schedule.

SCHEDULE 1—GENERAL AMENDMENTS

(Sec. 3)

(1) Section 3 (Interpretation)—**(a) Section 3 (1), definition of “injury”—**

(i) After “personal”, insert “or bodily”.

(ii) Omit paragraph (b).

(b) Section 3 (1), definition of “Industry Deed”—

After the definition of “GIO”, insert:

“Industry Deed” means the agreement, as in force for the time being, executed under section 3A;

(c) Section 3 (1), definition of “market share”—

After the definition of “licensed insurer”, insert:

“market share”, in relation to an insurer, means the proportion of third-party policies determined for the time being in relation to the insurer under section 103;

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(2) Section 3A—

After section 3, insert:

Execution etc. of certain agreement

3A. (1) The execution by the Attorney General, for and on behalf of Her Majesty in right of the State of New South Wales, and by the Authority, of an agreement substantially in accordance with the form contained in Schedule 5 is authorised by this section.

(2) The Attorney General and the Authority may exercise the functions conferred on them, respectively, under the agreement.

(3) In exercising any function under this Act, the Attorney General (or the Minister, if the Minister is not the Attorney General) and the Authority shall have regard to and shall comply with the provisions of the agreement.

(4) The provisions of the agreement, any arrangements entered into in accordance with the provisions of the agreement and the giving of effect to the provisions of the agreement are approved by this Act.

(3) Sections 11, 12, 13 (1), 103, 148, 149—

Omit “Commissioner for Motor Transport” wherever occurring, insert instead “Roads and Traffic Authority”.

(4) Section 11 (**Allocation of third-party policies among licensed insurers**)—

(a) Omit section 11 (1) (a), (b) and (c), insert instead:

(a) The allocation shall, as far as practicable, be made randomly in accordance with the market share of each insurer.

(b) Section 11 (3)—

Omit “Commissioner” where secondly occurring, insert instead “Roads and Traffic Authority”.

(c) Omit section 11 (4).

(5) Section 13 (**Payment of insurance premiums to insurers**)—

(a) Section 13 (1)—

Omit “at such time or times as may be agreed on by the Commissioner”, insert instead “in accordance with an agreement made between the Roads and Traffic Authority”.

(b) Section 13 (1)—

Omit “Commissioner” where lastly occurring, insert instead “Roads and Traffic Authority”.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—***continued*

(c) Omit section 13 (2), insert instead:

(2) The agreement shall make provision for—

- (a) the amount of commission to be retained by the Roads and Traffic Authority; and
- (b) the intervals at which insurance premiums are to be paid to licensed insurers; and
- (c) if the allocation under section 11 of third-party policies is made by the Roads and Traffic Authority, the audit of the method of allocation and, following the audit, the making of any adjustment necessary to ensure that the provisions of section 11 are complied with.

(6) Section 14 (**Determination by Minister of insurance premiums**)—

After section 14 (3), insert:

(4) If—

- (a) the Minister or the licensed insurers are of the view that a significant change has occurred or is likely to occur in relation to the assumptions used to calculate the insurance premiums determined by an order under this section; or
- (b) the annual change in average weekly earnings is equal to or greater than 10 per cent,

the Minister, after consultation with the licensed insurers, may, by order published in the Gazette, vary those premiums in such respects as may be agreed on by the Minister and the licensed insurers.

(5) In this section, “average weekly earnings” means the estimate for average weekly ordinary time earnings for full-time adult males in the State of New South Wales published quarterly by the Australian Bureau of Statistics or, if that publication ceases or that estimate is not published or is prepared on a new or different basis from that used as at 1 July 1989 by the Australian Bureau of Statistics, the amount determined for any relevant period by a consulting actuary who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of that Institute at the request of the Minister or the licensed insurers.

(7) Sections 15–15B—

Omit section 15, insert instead:

Third-party premiums from 1 July 1991

15. (1) A licensed insurer shall not charge an insurance premium for a third-party policy which is to be taken to have been issued by the insurer on or after 1 July 1991, except in accordance with this Division.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(2) The licensed insurer shall file with the Authority a premium or set of premiums it proposes to charge.

(3) The licensed insurer may charge a premium which has not, within 6 weeks after it is filed, been rejected by the Authority and, except as provided by section 15B (5) and (7), shall not charge any other premium.

(4) A full set of the premiums proposed to be charged by the licensed insurer on and from 1 July 1991 shall be filed with the Authority not later than on 31 March 1991 together with such additional information, including actuarial reports, as the Authority may reasonably require.

Filing of full sets of premiums

15A. (1) A licensed insurer shall, at least once each year, file with the Authority a full set of the insurance premiums it proposes to charge for third-party policies which are to be taken to have been issued by it together with such additional information, including actuarial reports, as the Authority may reasonably require.

(2) The Authority may, by notice in writing, require a licensed insurer to file a full set of premiums with it on or before such date as is specified in the notice, being a date which is not earlier than 4 weeks after the date of the notice together with such additional information, including actuarial reports, as the Authority may reasonably require.

(3) It is a condition of a licence granted under Division 1 of Part 8 that the licensed insurer must comply with this section and any notice given to it under this section.

Rejection of premiums by the Authority

15B. (1) The Authority may only reject an insurance premium filed with it under this Division if it is of the opinion that—

(a) the premium will not fully fund the present and likely future liability under this Act of the licensed insurer concerned; or

(b) the premium is, having regard to actuarial advice, excessive.

(2) Written notice of the Authority's rejection of a premium, and the reasons for the rejection, shall be given to the licensed insurer.

(3) If the Authority rejects a premium of a licensed insurer, the licensed insurer may request the Authority to reconsider the rejection.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

(4) Pending its reconsideration, the Authority may request an actuary to determine a provisional premium.

(5) A provisional premium so determined shall, pending the Authority's reconsideration, have effect as if it were an insurance premium which may lawfully be charged by the licensed insurer concerned.

(6) If the Authority has not withdrawn its rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter shall be arbitrated under the Commercial Arbitration Act 1984 before an arbitrator who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of that Institute.

(7) The arbitrator may determine the premium that may be charged by the licensed insurer.

(8) For the purposes of this section, a premium will fully fund a liability referred to in this section if the premium is sufficient—

- (a) to pay all acquisition and policy administration expenses of the licensed insurer concerned;
- (b) to provide a sum of money that together with anticipated investment income is equal to the best estimate of the cost of claims plus claim settlement expenses (in inflated dollars) at the assumed date of settlement;
- (c) to provide a profit margin in excess of all claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken; and
- (d) to provide for such other matters as a prudent insurer should, in all the circumstances, make provision for.

(8) Section 18 (Liability of licensed insurers where correct insurance premiums not paid)—

At the end of section 18, insert:

(2) A licensed insurer to whom an incorrect insurance premium has been paid may recover any balance outstanding of the premium from the person liable to pay it as a debt in a court of competent jurisdiction.

(9) Section 19A—

After section 19, insert:

Notice of change of registered particulars relating to motor vehicles etc.

19A. (1) The Roads and Traffic Authority shall notify the licensed insurer under a third-party policy in force in relation to a motor vehicle and, if requested to do so by the Authority, the Authority, of any change in any registered particulars relating to the motor vehicle which is notified to the Roads and Traffic Authority.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(2) If, as a consequence of the change in ownership of a motor vehicle, a change in the place at which the motor vehicle is usually garaged or any other change, a higher premium would be payable in relation to the vehicle than the premium paid or payable under the third-party policy in force in relation to the vehicle before the change occurred, the licensed insurer may recover the appropriate difference from the owner as a debt in a court of competent jurisdiction.

(10) Section 21 (Cancellation of third-party policy)—

Omit section 21 (1), insert instead:

(1) A third-party policy is cancelled on whichever is the later of—

(a) the expiration of 15 days after the cancellation of the registration of the insured motor vehicle; or

(b) the end of the named month in which the registration of the insured motor vehicle expires,

unless a further third-party policy is sooner issued in relation to the motor vehicle, in which case the third-party policy is cancelled on the issue of that further third-party policy.

(11) Section 25—

Omit the section, insert instead:

Entry of judgment against licensed insurer

25. (1) If a judgment obtained in any court relating to liability in respect of the death of or injury to a person caused by the fault of the owner or driver of an insured motor vehicle in the use or operation of the vehicle is not satisfied in full within 30 days after the judgment is entered, the court shall, on the application of the judgment creditor, direct that the judgment be entered against the licensed insurer of the vehicle.

(2) If execution on the judgment is stayed pending appeal, the time during which execution is stayed shall be excluded in calculating the 30-day period.

(3) Notice of intention to make the application shall be served on the licensed insurer at least 7 days before the hearing of the application.

(4) If the court directs that the judgment be entered against the licensed insurer, the judgment may be enforced as a judgment against the licensed insurer to the extent to which it was not satisfied at the time it was so entered.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(12) Section 27 (**Claim against Nominal Defendant where vehicle not insured**)—

Section 27 (1)—

Omit “, and shall not be brought against the owner or driver of the vehicle”.

(13) Section 30—

Omit the section, insert instead:

Licensed insurers to act for Nominal Defendant

30. (1) The Nominal Defendant shall allocate claims made against it to licensed insurers in accordance with the arrangements contained in the Industry Deed or as determined by the Authority.

(2) A licensed insurer to whom a claim is allocated is authorised, on behalf of and in the name of the Nominal Defendant, to deal with the claim (and any proceedings relating to the claim) in such manner as it thinks fit.

(3) A licensed insurer may settle or compromise any such claim.

(4) A licensed insurer is authorised, on behalf of and in the name of the Nominal Defendant, to bring and prosecute proceedings under section 31 relating to any such claim and to settle or compromise those proceedings as it thinks fit.

(5) A licensed insurer shall provide to the Authority such reports as the Authority may reasonably require in relation to any thing done by the licensed insurer under the authority of this section.

(14) Section 32 (**Establishment of Nominal Defendant's Fund**)—

Section 32 (2) (a)—

Omit “contributed by licensed insurers”, insert instead “collected”.

(15) Section 33 (**Collections for Nominal Defendant's Fund**)—

Omit section 33 (2)–(6), insert instead:

(2) The Authority may determine the amount to be collected for the purposes of the Nominal Defendant's Fund in respect of each financial year.

(3) An amount to be collected for the purposes of the Nominal Defendant's Fund shall be collected from such persons, other than licensed insurers, in accordance with such arrangements as may be prescribed by the regulations.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(4) The Authority shall not determine an amount under subsection (2) in respect of a financial year if it is of the opinion that satisfactory arrangements have been made in respect of that year (pursuant to the Industry Deed or otherwise) by licensed insurers to meet claims made against the Nominal Defendant.

(16) Section 37—

Omit the section, insert instead:

Provision of rehabilitation services

37. (1) The Authority shall establish, and issue to licensed insurers, guidelines for the rehabilitation of injured persons and, in particular, for the circumstances in which rehabilitation services are required to be provided.

(2) A licensed insurer (to the extent of the insurer's liability under a third-party policy) and the Nominal Defendant shall do all such things as may, in accordance with the guidelines issued by the Authority, be reasonable and necessary for the rehabilitation of an injured person, including meeting the necessary and reasonable costs and expenses of travel and accommodation incurred by the person in order to obtain rehabilitation services.

(3) It is a condition of an insurer's licence that the insurer must comply with this section.

(4) If—

(a) a person is assessed to be suitable for rehabilitation; and

(b) the licensed insurer or Nominal Defendant agrees to provide the appropriate rehabilitation services; and

(c) the person fails to accept the provision of those services, the person's failure shall be taken into account for the purposes of section 39.

(5) A licensed insurer has no responsibility for the rehabilitation of an injured person in relation to whom a judgment has been entered except as provided by the terms of any order referred to in section 81.

(17) Section 38 (**Rehabilitation services to be provided promptly**)—

Omit section 38 (1), insert instead:

(1) In the provision of rehabilitation services, a licensed insurer and the Nominal Defendant shall, as far as practicable, ensure that those services are provided to an injured person as soon as possible after an admission of liability is made by the licensed insurer or Nominal Defendant.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—continued

(1A) If rehabilitation services are provided to an injured person before an admission of liability is made by the licensed insurer or Nominal Defendant, the provision of those services shall not be taken to be an admission of liability.

(18) Section 39 (**Mitigation of damages**)—

(a) Section 39 (1)—

After “given”, insert “to the steps taken by the injured person and”.

(b) Section 39 (1)—

After “treatment”, insert “or pursuing alternative employment opportunities”.

(19) Part 4A—

After Part 4, insert:

PART 4A—PAYMENTS TO HOSPITALS ETC.

Definitions

39A. (1) In this Part—

“ambulance vehicle” means a vehicle which is fitted or equipped or constructed for use for the conveyance of sick or injured persons and which is controlled by the Health Administration Corporation constituted by the Health Administration Act 1982;

“hospital” means a public hospital, or a private hospital licensed under the Private Health Establishments Act 1982, and includes a hospital or institution in the nature of a hospital conducted by or on behalf of the State;

“massage treatment” means massage provided by a person who carries on the profession of masseur and includes any ancillary treatment provided by the person, but does not include any massage or treatment provided—

(a) to a patient in a public hospital, unless the patient has been classified as a private or intermediate patient; or

(b) to any patient in a hospital by a person who is a paid employee of the hospital and who, in the course of that person’s employment at the hospital, normally works for at least 30 hours per week;

“masseur” means a person by whom massage treatment is provided;

“medical treatment” does not include treatment provided—

(a) to a patient in a public hospital, unless the patient has been classified as a private patient;

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(b) to any patient in a hospital by a resident medical officer of such hospital;

“nursing” includes treatment by a registered nurse;

“public hospital” means—

(a) a hospital mentioned in the Second or Fifth Schedule to the Public Hospitals Act 1929; or

(b) a separate institution mentioned in the Third Schedule to that Act; or

(c) a hospital under the control of an area health service constituted under the Area Health Services Act 1986.

(2) Where, at a public hospital, a person receives, as an out-patient, treatments of different kinds or at different places, each treatment shall, for the purposes of section 39B (1) (b), be counted as a separate treatment.

Payments in respect of certain matters

39B. (1) When the death of or injury to any person is caused by a motor accident and payment is made (whether or not with an admission of liability) by a licensed insurer or the Nominal Defendant in respect of the death or injury, then—

(a) if the person received, in respect of the injury or the injury which caused the person's death, treatment at a public hospital as an in-patient, the licensed insurer or the Nominal Defendant shall pay to the proper officer for each day or part of a day of the treatment of the person, an amount estimated by the Minister for Health and published in the Gazette, as the daily average cost to that hospital of the hospital treatment of in-patients; and

(b) if the person received, in respect of any such injury, treatment at a public hospital as an out-patient, the licensed insurer or the Nominal Defendant shall pay to the proper officer in respect of each separate treatment of the person, an amount estimated by the Minister for Health and published in the Gazette, as the average cost to the hospital, for each separate treatment, of the hospital treatment of out-patients; and

(c) if the person received, in respect of any such injury, treatment (whether as an in-patient or as an out-patient) at a hospital other than a public hospital, the licensed insurer or the Nominal Defendant shall pay to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed; and

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (d) if the person, as a consequence of any such injury, was conveyed in any ambulance vehicle, the licensed insurer shall pay to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed; and
 - (e) if the person received, in respect of any such injury, reasonably necessary medical treatment by a legally qualified medical practitioner, or reasonably necessary massage treatment by a masseur, or reasonably necessary dental treatment (otherwise than as hospital treatment) by a registered dentist, or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, the licensed insurer shall pay to the medical practitioner, masseur, dentist or nurse, as the case may be, such amount as is reasonably appropriate to the treatment or nursing provided, having regard to the customary charge made in the community for the treatment or nursing.
- (2) Any amount payable under this section by a licensed insurer or the Nominal Defendant may, on notice being given in accordance with section 39E, be recovered as a debt from it by the proper officer, medical practitioner, masseur, dentist, or nurse to whom, under the terms of this section, the amount is payable.
- (3) The estimated costs referred to in subsection (1) (a) and (b) shall, in respect of any public hospital, be based, wherever practicable, on the costs incurred by that hospital for the year which ended on 30 June next preceding any date on which it is proposed to publish the costs, pursuant to either of those paragraphs, in respect of that hospital.
- (4) The Minister shall not publish an amount estimated under subsection (1) (a) or (b) and a scale shall not be prescribed under subsection (1) (c) or (d) while a bulk billing agreement of the type referred to in the Industry Deed has been entered into and remains in force and relates to those amounts.
- (5) In this section, “proper officer” means the officer or person generally or specially authorised by law or by the person or body governing or controlling the hospital or the ambulance vehicle, as the case may be, to receive any amount payable under subsection (1) (a), (b), (c) or (d).

SCHEDULE 1—GENERAL AMENDMENTS—*continued***Right of action against insured person by hospital etc.**

39C. (1) Where liability at law is incurred in respect of the death of or injury to a person caused by a motor accident, a person referred to in section 39B (1) (a)–(e) to whom a licensed insurer or the Nominal Defendant may be required to make a payment under that section, may, in the name of the injured or dead person and on notice being given in accordance with section 39E, recover the amount of the payment by way of damages—

- (a) from the person who, at the time of the occurrence out of which the liability arose, was the owner of the motor vehicle; or
- (b) where at the time of the occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally; or
- (c) in the case of an uninsured or unidentified motor vehicle, from the Nominal Defendant.

(2) No action under this section for the recovery of any amount shall be commenced—

- (a) in any case where the licensed insurer or the Nominal Defendant has made a payment (whether or not with an admission of liability) in respect of the death or injury; or
- (b) in any case where, in respect of the death or injury, proceedings have been taken for compensation under the Workers Compensation Act 1987, or for the recovery of damages, and those proceedings have not been dismissed or discontinued; or
- (c) in any case, at least until 6 months after the occurrence out of which the death or injury arose.

(3) Where—

- (a) action has been taken under this section; and
- (b) before the action has been completed proceedings are commenced by any other person in respect of the death or injury for compensation under the Workers Compensation Act 1987 or for the recovery of damages,

the action shall be stayed pending completion of the proceedings.

(4) If—

- (a) as a result of the proceedings compensation is paid; or
- (b) payment is made under section 39B,

the action shall abate.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

(5) Any payment by a licensed insurer or the Nominal Defendant in settlement of any claim made or in satisfaction of any judgment recovered under this section shall be made direct to the claimant.

Payments by licensed insurer or Nominal Defendant

39D. Any payment by a licensed insurer or the Nominal Defendant in accordance with this Part in respect of treatment, conveyance or nursing shall, to the extent of the payment, but subject to section 31, be a discharge of the liability of any person in respect of the treatment, conveyance or nursing.

Notice of claims

39E. Notice of a claim under this Part shall be given in writing—

- (a) in the case of a notice given to a licensed insurer, as soon as practicable after the person entitled to make the claim becomes aware of the identity of the licensed insurer, but not in any case later than 30 days after the person giving the notice could, with reasonable diligence, have ascertained the identity; and
- (b) in the case of a notice given to the Nominal Defendant, as soon as practicable after the person entitled to make the claim becomes aware of the fact that the motor vehicle was an uninsured vehicle or that the identity of the vehicle could not be established, but not in any case later than 30 days after the person giving the notice could, with reasonable diligence, have ascertained that fact.

(20) Section 40 (Definitions)—**(a) Definition of “claim”—**

Before “vehicle” where firstly occurring, insert “motor”.

(b) Definition of “insurer”—

After “policy”, insert “, and includes (except in section 43) the Nominal Defendant and, where a claim is handled on behalf of an insurer by another insurer, the other insurer”.

(21) Section 43—

Omit the section, insert instead:

Time for and notice of making of claims

43. (1) A claim must be made within 6 months after—

- (a) except as provided by paragraph (b), the date of the motor accident to which the claim relates; or

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(b) if the claim is made in respect of the death of a person, the date of death.

(2) If a claim is made more than 6 months after the date determined under this section, the claimant shall provide a full and satisfactory explanation for the delay in making the claim.

(3) Evidence as to any delay in the onset of symptoms relating to the injury suffered by the injured person as a result of the motor accident may be given in any such explanation.

(4) Notice of a claim is required to be given to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.

(5) The requirement under subsection (4) (only in so far as it is a requirement to give notice of a claim to the person against whom the claim is made and without affecting the requirement to give notice to the insurer) does not apply if—

(a) that person is dead; or

(b) that person cannot be given notice.

(22) Section 45 (**Duty of insurer to try to resolve claim etc.**)—

Omit section 45 (2), insert instead:

(2) Once liability has been admitted (wholly or in part), it is the duty of an insurer to make payments to or on behalf of the claimant in respect of—

(a) hospital, medical and pharmaceutical expenses; and

(b) rehabilitation expenses, subject to Part 4,

as incurred.

(2A) The duty of an insurer under subsection (2) to make payments applies only to the extent to which those payments—

(a) are reasonable and necessary; and

(b) are properly verified; and

(c) relate to the injury caused by the fault of the owner or driver of the motor vehicle to which the third-party policy taken to have been issued by the insurer relates.

(23) Section 46 (**Insured not to admit liability etc.**)—

Omit section 46 (3).

(24) Section 48 (**Duty of claimant to co-operate with other party**)—

(a) Section 48 (1)—

After “made”, insert “and the person's insurer”.

*Motor Accidents (Amendment) 1989*SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(b) Section 48 (2)—

After “other party”, insert “or the other party’s insurer”.

(25) Section 49 (**Medical etc. examination of claimant**)—

(a) Section 49 (1)—

After “made”, insert “or the person’s insurer”.

(b) Section 49 (1) (a), (b)—

After “that person” wherever occurring, insert “or insurer”.

(c) At the end of section 49 (1) (b), insert:

; or

(c) to undergo a rehabilitation assessment in accordance with the guidelines referred to in section 37 (1).

(26) Section 50—

Omit the section, insert instead:

Duty of owner and driver to co-operate with insurer

50. (1) A person who at the time of the motor accident to which a claim relates was the owner or driver of the motor vehicle concerned shall co-operate fully with the vehicle owner’s insurer in respect of the claim.

(2) In particular, the owner or driver of any vehicle involved in a motor accident shall—

(a) within 28 days after the accident, give written notice of the accident to the vehicle owner’s insurer, unless the owner or driver had no reason to suspect that the accident could have given rise to a claim against the owner or driver; and

(b) within 28 days after the receipt of—

(i) any claim made against the owner or driver; or

(ii) any written notice received from any claimant that the claimant intends to make a claim against the owner or driver,

give notice of the claim or intention to make the claim to the vehicle owner’s insurer.

(3) The owner or driver of a vehicle at the time of the motor accident to which a claim relates shall furnish such information as the insurer may reasonably request in connection with the claim.

Maximum penalty: 20 penalty units.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(27) Section 52—

Omit the section, insert instead:

Time limitations on commencement of court proceedings

52. (1) A claimant is not entitled to commence court proceedings against another person in respect of a claim until 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer.

(2) If notice is given to the other person's insurer (being a third-party insurer) then despite subsection (1) the claimant is entitled to commence court proceedings if either of the following occurs:

- (a) the insurer denies all liability in respect of the claim;
- (b) the insurer admits partial liability in respect of the claim but the claimant is dissatisfied with the extent to which liability is admitted.

(3) If a claimant commences proceedings in respect of a claim more than 12 months after the date on which the claim must be made in accordance with section 43, the claimant must provide a full and satisfactory explanation to the court for the delay.

(4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after the date on which the claim must be made in accordance with section 43 except with the leave of the court in which the proceedings are to be taken.

(5) The Limitation Act 1969 does not apply to or in respect of proceedings in respect of a claim.

(28) Section 56 (Costs penalty where settlement offer rejected)—

Omit the section.

(29) Section 64A—

Before section 65, insert:

Licensed insurers to deter fraudulent claims

64A. A licensed insurer shall take all such steps as may be reasonable to deter and prevent the making of fraudulent claims.

(30) Section 65 (False claims)—

Omit section 65 (c), insert instead:

- (c) when otherwise furnishing information to any person concerning a motor accident or any claim relating to a motor accident,

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(31) Section 66 (**Remedy available where claim fraudulent**)—

Omit section 66 (1), insert instead:

(1) This section applies to a claimant if it is established that, for the purpose of obtaining a financial benefit, the claimant did or omitted to do any thing (including the making of a statement) concerning a motor accident or any claim relating to a motor accident with knowledge that the doing of the thing or the omission to do the thing was false or misleading.

(32) Section 66A—

After section 66, insert—

Joinder of insurer where false claim alleged

66A. (1) Where—

- (a) court proceedings have been commenced against a person in respect of a claim; and
- (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,

the insurer may apply to the court to be joined as a party to the proceedings.

(2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim, including a person who was, at the time of the occurrence, the owner or the driver of the vehicle.

(3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to—

- (a) any other claim in which the witness was involved either as a claimant, a witness or an owner or driver of the motor vehicle; and
- (b) the credibility of the witness.

(4) If the court gives leave to do so, the insurer may—

- (a) cross-examine the witness; and
- (b) lead other evidence to refute the evidence given by the witness,

as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(5) Any right to examine or cross-examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.

(6) This section applies despite section 53 of the Evidence Act 1898.

(7) Subsections (3)–(6) apply to—

(a) the GIO as defendant in relation to claims referred to in section 147B; and

(b) a licensed insurer as defendant in relation to any claim, in the same way as those subsections apply to a licensed insurer who is granted leave to be joined as a party.

(8) This section applies to court proceedings commenced before or after the date of commencement of this section.

(33) Section 67 (Claims register)—

(a) After section 67 (1), insert:

(1A) An insurer shall provide such additional details to the Authority for inclusion in the register under this section as the Authority may reasonably require from time to time.

(b) Section 67 (4)—

Omit “a register of personal injury claims”, insert instead “a claims register”.

(c) At the end of section 67 (4) (c), insert:

; and

(d) such additional details as the Authority considers appropriate for inclusion in the register.

(d) Omit section 67 (5), insert instead:

(5) The register shall be open to inspection only by a licensed insurer and such other persons or bodies as may be approved by the General Manager of the Authority or the Board of Directors of the Authority.

(6) Licensed insurers are authorised to exchange information concerning claims notified by them under this Act.

(34) Section 71 (Discount rate applicable to certain awards of damages)—

After section 71 (1) (b), insert:

(b1) the value of future services of a domestic nature or services relating to nursing and attendance; or

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(35) Section 73 (**Payment of interest**)—

Omit section 73 (2) (c), insert instead:

(c) if—

- (i) the defendant has made an offer of settlement; and
- (ii) the amount awarded by the court (without the addition of interest) is more than 20 per cent higher than the highest amount offered in settlement by the defendant; and
- (iii) the court is satisfied that the highest amount offered by the defendant was not reasonable having regard to the information available to the defendant at the time the offer was made.

(36) Section 75 (**Contributory negligence—claims under the Compensation to Relatives Act 1897**)—

Omit “to or”, insert instead “so as to prevent the reduction of damages by the contributory negligence of a deceased person”.

(37) Section 78 (**Determination of economic loss**)—

Omit section 78 (a).

(38) Section 79 (**Determination of non-economic loss**)—

Section 79 (3)—

Omit “(or the maximum amount declared for the time being under section 80)”.

(39) Section 80—

Omit the section, insert instead:

Indexation of amounts relating to non-economic loss

80. (1) The Minister shall, on or before 1 October 1990 and on or before 1 October in each succeeding year, declare, by order published in the Gazette, the amounts which are to apply, as from the date specified in the order, for the purposes of section 79.

(2) The amounts declared shall be each of the amounts applicable under section 79 (or those amounts as last adjusted under this section) adjusted by the percentage change in the amounts estimated by the Australian Statistician of the average weekly total earnings of full-time adults in New South Wales over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available.

(3) An amount declared for the time being under this section shall apply to the exclusion of the corresponding amount under section 79.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(4) If the Australian Statistician fails or ceases to estimate the amounts referred to in subsection (2), the amounts declared shall be the amounts determined in accordance with the regulations.

(40) Section 81—

Omit the section, insert instead:

Structured settlements

81. (1) This section applies to an award of damages if the plaintiff and the defendant's insurer or, as the case may be, the Nominal Defendant have agreed that it will apply.

(2) If this section applies to an award of damages, the court may—

- (a) separately determine the amount of damages for non-economic loss, the amount of damages for future economic loss and the amount of damages for past economic loss; and
- (b) order that any damages determined by the court for future economic loss (other than damages for impairment of earning capacity), including—
 - (i) reasonable hospital, medical, pharmaceutical and rehabilitation expenses; and
 - (ii) any compensation payable under section 72,
 shall be paid in accordance with such arrangements as the court determines or approves; and
- (c) order that any damages determined by the court for impairment of earning capacity shall be paid in accordance with such arrangements as the court determines or approves.

(3) In making an order under this section, the court shall have regard to—

- (a) the ability of the plaintiff to manage and invest any lump sum award of damages;
- (b) the need to ensure that expenses incurred by the plaintiff which are required to be met by the defendant—
 - (i) are not unreasonable having regard to the circumstances of the plaintiff;
 - (ii) are properly verified; and
 - (iii) relate to the injury caused by the fault of the defendant;

*Motor Accidents (Amendment) 1989*SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (c) the principle that costs and expenses are only recoverable by the plaintiff from the defendant in relation to hospital, medical, pharmaceutical and rehabilitation services, services of a domestic nature and services relating to nursing and attendance if the provision of those services is likely to, or is reasonably likely to, advantage the plaintiff;
- (d) the views of the insurer or the Nominal Defendant in relation to the proposed order; and
- (e) such other matters as the court thinks fit.

(4) In making an order under subsection (2) (c) relating to damages for impairment of earning capacity, the court may order that the damages be used to purchase an annuity for the plaintiff on such terms as the court thinks fit.

(5) The court shall not make an order under subsection (2) (c) unless the court considers there is good cause for making the order.

(6) Arrangements determined or approved under subsection (2) (c) may include provision that payments of damages for impairment of earning capacity shall be made at intervals of not more than 12 months.

(7) A party to any arrangements determined or approved under this section may apply to the court at any time for an order varying or terminating the arrangements.

(8) The court may, on an application under subsection (7), make such order as it thinks fit having regard to the provisions of this section.

(9) The regulations may make provision for and with respect to any matter dealt with in this section and, in particular, may impose conditions or limitations on the orders that may be made under this section or otherwise regulate the making of those orders.

(10) Any such regulations shall not be made unless recommended by the Authority.

(41) Section 81A—

After section 81, insert:

Exemplary or punitive damages

81A. A court shall not award exemplary or punitive damages to a person in respect of a motor accident.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(42) Section 82A—

After section 82, insert:

Costs

82A. (1) Subject to the rules of court, if a court awards costs to a plaintiff by reference to the amount recovered by the plaintiff, that amount shall be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with this Part.

(2) The rules of court may make provision for or with respect to the determination and payment of costs otherwise than by taxation.

(43) Section 84 (**Constitution of Board of Directors**)—

(a) Section 84 (2) (b)—

Omit “5”, insert instead “7”.

(b) After section 84 (2), insert:

(2A) Of the 7 part-time directors, 2 shall be persons nominated or approved by licensed insurers and 1 shall be a person nominated by the National Roads and Motorists' Association.

(c) Section 84 (3)—

After “legal,” insert “medical, insurance,”.

(44) Section 85 (**Board to determine policies of Authority**)—

Section 85 (3)—

Omit “in accordance with any direction of the Minister”.

(45) Section 88—

Omit the section, insert instead:

Ministerial control

88. (1) The Board of Directors of the Authority and the General Manager of the Authority are not, in the exercise of their respective functions, subject to the control and direction of the Minister, except as provided by this section or as otherwise expressly provided by this Act.

(2) Where the Minister is satisfied that it is desirable in the public interest to do so, the Minister may, by notice in writing to the Board of Directors of the Authority or the General Manager of the Authority, give directions to the Board or General Manager with respect to the exercise of their respective functions.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

(3) The Board of Directors of the Authority and the General Manager of the Authority shall comply with any direction given under this section by the Minister to the Board or General Manager, as the case requires.

(4) The Minister shall cause a statement setting out the particulars of a direction given under this section to be published in the Gazette as soon as practicable after the direction is given.

(5) The Authority shall include in its annual report particulars of each direction given under this section during the year to which the report relates.

- (46) Section 91 (**Special investigation and report on deregulation of insurance arrangements**)—

Omit the section.

- (47) Section 94 (**Assessment by Authority of amount to be contributed to Fund**)—

At the end of section 94, insert:

(2) The Authority shall provide a copy of the estimates, provisions and amounts referred to in subsection (1) (e) to each licensed insurer not later than 21 days before the commencement of the financial year to which they relate.

(3) The total amount referred to in subsection (1) (d) to be contributed by licensed insurers in respect of a financial year occurring before 1 July 1991 shall not exceed 2 per cent of the total of insurance premiums estimated to be received by all licensed insurers during the financial year in relation to third-party policies.

- (48) Section 96 (**Delegation**)—

- (a) Section 96 (1)—

After “may”, insert “, with the approval of the Board of Directors of the Authority,”.

- (b) Section 96 (1)—

After “other than”, insert “its functions under section 90 (1) (a), (c) or (e) and”.

- (49) Section 100 (**Offence—unlicensed insurers**)—

Section 100 (1)—

After “third-party policy”, insert “in so far as the liability applies to the use or operation of a motor vehicle on a public street”.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*(50) Section 101 (**Applications for licences**)—

(a) Omit section 101 (1) (b), insert instead:

(b) by the GIO or an affiliate (within the meaning of the Government Insurance Act 1927) of the GIO.

(b) After section 101 (1), insert:

(1A) A corporation is not competent to make an application unless it is a party to the Industry Deed.

(51) Section 102 (**Determination of application for licence**)—

(a) Omit section 102 (4).

(b) After section 102 (5), insert:

(6) The Authority shall not grant a licence before 1 July 1991 to a corporation unless—

(a) the corporation accepts the allocation proposed to be made by the Authority under clause 5 of Schedule 4; or

(b) the corporation accepts the assignment of all or part of the portfolio of third-party policies of a licensed insurer or licensed insurers and the market share of the corporation is determined to be equal to the market share represented by the portfolio of third-party policies which is to be assigned to the corporation.

(7) Where, after 1 July 1991, the Authority proposes to grant a licence to a corporation, it shall give 14 days' notice of the proposal to all licensed insurers specifying the name of the corporation.

(52) Section 103—

Omit the section, insert instead:

Determination of market share of each insurer

103. (1) Prior to 1 July 1989, the Minister shall, in relation to all third-party policies that are (or are to be) taken to be issued under this Act, determine the proportion of those policies that are (or are to be) taken to be issued by each licensed insurer.

(2) The Minister shall not redetermine the market share of a licensed insurer prior to 1 July 1991 unless the Authority has suspended or cancelled the licence of the licensed insurer or has issued a new licence in accordance with the provisions of this Act and the Industry Deed.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

(3) If the Authority has cancelled or suspended the licence of a licensed insurer, the redetermination of market share shall be limited to the allocation of the market share of the licensed insurer whose licence has been suspended or cancelled to other licensed insurers, including a corporation to whom it is proposed to grant a licence in accordance with the provisions of this Act and the Industry Deed.

(4) A licensed insurer who has received any additional market share following a redetermination under this section may, within 6 months after the redetermination, and after having given 14 days' notice of the proposed assignment to the Authority, assign all or any part of the additional market share to any other licensed insurer.

(5) The Minister shall, immediately after an allocation or assignment becomes effective under this section, redetermine the proportion referred to in subsection (1) in relation to each licensed insurer to take account of the allocation or assignment.

(53) Section 104—

Omit the section, insert instead:

Duration of licences

104. A licence granted under this Division continues in force until it is cancelled under this Division.

(54) Section 105 (**Conditions of licences**)—

(a) After section 105 (1), insert:

(1A) A condition shall not be prescribed or imposed or varied by the Authority if it gives or is likely to give a competitive advantage to the licensed insurer over other licensed insurers.

(b) Omit section 105 (5).

(55) Section 106 (**Matters that may be regulated by conditions of licences**)—

(a) Section 106 (c)—

Omit “generally; or”, insert instead “generally.”.

(b) Omit section 106 (d).

(56) Sections 106A, 106B—

After section 106, insert:

Assignment of licences

106A. (1) A licensed insurer may, with the approval of the Authority, assign its licence to another licensed insurer or to a corporation to whom the Authority proposes to grant a licence.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(2) The Authority shall not approve the assignment of a licence unless the Authority is satisfied that the proposed assignee is able to meet the past, present and future liabilities of the assignor—

- (a) under any third-party policy in respect of which the assignor is the insurer; and
- (b) to the Motor Accidents Authority Fund; and
- (c) to any other licensed insurer.

Suspension of licences

106B. (1) The Authority may, by notice served on a licensed insurer, suspend the insurer's licence and the insurer is thereby prohibited from issuing any third-party policies after such date as is specified in the notice for the purpose.

(2) A licensed insurer who contravenes the terms of any such notice is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A suspension may be effected only if—

- (a) subject to subsection (4), a licensed insurer has contravened its licence or this Act or the regulations or the Industry Deed;
- (b) the insurer ceases to be an insurer authorised to carry on business under the Insurance Act 1973 of the Commonwealth;
- (c) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the insurer;
- (d) the insurer is given a direction under section 51 or 62, or an inspector is appointed to investigate the affairs of the insurer under Part V, of the Insurance Act 1973 of the Commonwealth;
- (e) after receiving a report under section 114, the Authority is of the opinion that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under third-party policies taken to have been issued by it;
- (f) there is any default by the insurer in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the insurer (except where the default occurs because the insurer genuinely disputes its liability to make the payment);

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (g) the insurer enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms which have been approved by the Authority);
 - (h) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the insurer or a resolution is passed for the winding up or dissolution of the insurer (except for the purposes of a reconstruction or amalgamation, on terms which have been approved by the Authority);
 - (i) there is a change in the effective control of the insurer or the insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence;
 - (j) the Authority is of the opinion that the insurer has failed to comply at any time with a condition imposed on its authority to carry on insurance business under the Insurance Act 1973 of the Commonwealth;
 - (k) a person claiming to be a creditor by assignment or otherwise of the insurer for a sum exceeding \$100,000 then due has served on the insurer, by leaving at its registered office, a demand requiring the insurer to pay the sum so claimed to be due, and the insurer has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor;
 - (l) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the insurer and the amount unsatisfied exceeds \$100,000; or
 - (m) the insurer has agreed to the suspension.
- (4) If the contravention by a licensed insurer of its licence or this Act or the regulations or the Industry Deed is capable, in the opinion of the Authority, of being remedied within 21 days after the contravention occurred (or such longer period as the Authority, having regard to the nature of the contravention and the need to protect the interests of policy holders and other persons, may reasonably allow), the Authority shall not suspend the licence during that period.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(5) The Authority may, by notice served on the licensed insurer, terminate the suspension of the insurer's licence if the Authority is satisfied that the licensed insurer is able to comply with the requirements that would be imposed on the licensed insurer if it were then to be granted a licence for the first time.

(57) Section 107 (**Cancellation of licences**)—

(a) Omit “or suspend” wherever occurring.

(b) Omit section 107 (5).

(c) Section 107 (6)—

Omit “, but any such approval shall not (unless the Minister otherwise determines) be given within 6 months after the licence is surrendered”.

(d) After section 107 (6), insert:

(7) The Authority shall not cancel a licence unless the Authority is satisfied that the licensed insurer has discharged all of its past, present and future liabilities—

(a) under any third-party policy in respect of which it is the insurer; and

(b) to the Motor Accidents Authority Fund; and

(c) to any other licensed insurer,

or that the insurer has provided security or entered into other arrangements satisfactory to the Authority in respect of those liabilities.

(58) Section 108 (**Assignment of policies following cancellation of licence etc.**)—

Section 108 (2) (b)—

Omit “as determined under section 103”.

(59) Section 109 (**Records and evidence relating to licences**)—

Omit section 109 (1) (a), insert instead:

(a) the granting, refusal, conditions and cancellation of licences, the assignment of licences and notices served under section 106B; and

(60) Section 110 (**Business plans of licensed insurers**)—

Section 110 (2) (b)—

Omit “regular intervals”, insert instead “intervals of not less than 12 months”.

*Motor Accidents (Amendment) 1989*SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(61) Section 111—

Omit the section, insert instead:

Re-insurance arrangements of licensed insurers

111. (1) It is a condition of a licence granted under Division 1 that the licensed insurer shall notify the Authority of—

- (a) particulars of arrangements made or proposed to be made for re-insurance in respect of liabilities under third-party policies issued by the licensed insurer; and
- (b) the terms of any approval of the Insurance and Superannuation Commissioner under the Insurance Act 1973 of the Commonwealth in respect of any such re-insurance.

(2) A licensed insurer shall not, without the prior written consent of the Authority, effect any form of re-insurance if the aggregate premium payable for the re-insurance exceeds 15 per cent of the gross direct premium written by the insurer.

(62) Section 112 (**Investment of funds of licensed insurer**)—

Omit section 112 (1) and (2), insert instead:

(1) It is a condition of a licence granted under Division 1 that the licensed insurer, if required to do so by the Authority, shall provide the Authority with details of the way in which its third-party funds and other funds are invested.

(63) Section 114 (**Audit of accounting records relating to insurers' funds**)—

(a) Section 114 (1)—

Before “Authority” wherever occurring, insert “Board of Directors of the”.

(b) Section 114 (1)—

After “licensed insurer”, insert “, including the manner in which its third-party funds and other funds are invested”.

(c) Section 114 (2)—

Omit “by the Authority”.

(64) Section 116 (**Power of Supreme Court to deal with insurers or former insurers unable to meet liabilities etc.**)—

Section 116 (5)—

Omit “or any other person”.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(65) Section 117—

Omit the section, insert instead:

Notification to Authority of certain defaults in relation to insurers

117. (1) A licensed insurer and a former licensed insurer shall notify the Authority in writing of the occurrence of any of the events or things referred to in section 106B (3) (paragraphs (a), (e), (j) and (m) excepted) within 21 days after the event or thing happens (whether within or outside the State).

(2) A licensed insurer shall notify the Authority in writing of—

(a) a decrease or proposed decrease in the issued capital of the insurer within 21 days after the decrease or proposal to effect the decrease; and

(b) the receipt by the insurer of any Part A, B, C or D statement as defined for the purposes of the Companies (Acquisition of Shares) (New South Wales) Code.

Maximum penalty: 100 penalty units.

(66) Section 118 (**Powers of entry and inspection by authorised officers of Authority**)—

Section 118 (1), definition of “authorised officer”—

Omit the definition, insert instead:

“authorised officer” means an officer of the Authority, or other person, in either case authorised by the Board of Directors of the Authority for the purposes of a specified investigation under this section;

(67) Section 118A—

After section 118, insert:

Proceedings for failure to comply with licence

118A. No proceedings may be taken against a licensed insurer for failure to comply with the terms of the licensed insurer’s licence or this Act or the regulations, except by the Authority.

(68) Section 127A—

After section 127, insert:

Borrowings for the purposes of the Nominal Defendant’s Fund

127A. The Nominal Defendant may from time to time borrow such amounts as the Nominal Defendant considers are necessary to satisfy claims and judgments arising from or pertaining to third-party policies issued by an insolvent insurer which would otherwise be unable to be met from the money in the Nominal Defendant’s Fund.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued*****(69) Section 132A—**

After section 132, insert:

Certificate evidence

132A. (1) A certificate issued by the Authority or a person authorised by the Authority as to the name of a licensed insurer by whom a third-party policy has been issued for a particular period for—

(a) a particular motor vehicle; or

(b) motor vehicles to which a particular trader's plate is fixed,

is admissible in any proceedings and is conclusive evidence of the matters certified by the certificate.

(2) A certificate issued by the Authority or a person authorised by the Authority stating that a third-party policy was not in force on a particular date or during a particular period in relation to—

(a) a particular motor vehicle; or

(b) motor vehicles to which a particular trader's plate was fixed,

is admissible in any proceedings and is evidence of the matters certified by the certificate.

(70) Section 133 (Service of documents)—

Section 133 (1) (b) (ii)—

After "registered office", insert "in the State".

(71) Section 146 (Provisions applicable to claims concerning intermediate transport accidents)—

(a) After section 146 (2), insert:

(2A) Notice of a claim to which subsection (2) applies shall, for the purposes of section 52 (1) (as inserted by the Motor Accidents (Amendment) Act 1989) be taken to have been given when the claim was made under the 1987 Act.

(b) Omit section 146 (3), insert instead:

(3) For the purposes of the application of section 52 (Time limitations on commencement of court proceedings), a reference to the date on which the claim must be made shall be construed as a reference to the date on which Part 2 commences.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(72) Section 146A—

After section 146, insert:

Privileged information and records

146A. (1) A person who has made a claim under the 1987 Act in respect of an intermediate transport accident is not entitled to have access to or to make copies of or take extracts from any information obtained or record made concerning the accident which is in the possession or under the control of the GIO.

(2) This section does not apply to—

- (a) a document signed by or on behalf of the person concerned; or
- (b) a medical report furnished by or on behalf of the person; or
- (c) information furnished by an employer of the person; or
- (d) prescribed information or prescribed documents.

(73) Sections 147A, 147B—

After section 147, insert:

Right of recovery from certain persons

147A. Nothing in this Act prevents or restricts any right or entitlement of the GIO to recover any damages or compensation from a person—

- (a) whose fault in the use or operation of a motor vehicle or other form of transportation or conveyance caused the death of or injury to a person in an intermediate transport accident; and
- (b) who has not paid a contribution into the TAC Fund in relation to the motor vehicle or other form of transportation or conveyance concerned,

and the GIO is entitled to recover any such damages and compensation.

Control and direction of insurance funds administration business division of the GIO

147B. (1) The insurance funds administration business division of the GIO shall determine and administer claims relating to intermediate transport accidents and claims under section 14 or 14A of the Motor Vehicles (Third Party Insurance) Act 1942 and, notwithstanding the Government Insurance Act 1927, in exercising those functions, that division shall be subject to the control and direction of the Board of Directors of the Authority.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

(2) Any cost or expense incurred under this section by the Authority shall be paid out of the TAC Fund.

(74) Section 149 (Payment of short-fall levies to GIO)—**(a) Section 149 (1)—**

Omit “Commissioner” where secondly and thirdly occurring, insert instead “Roads and Traffic Authority”.

(b) Section 149 (2)—

Omit “Commissioner” where secondly occurring, insert instead “Roads and Traffic Authority”.

(75) Schedule 3 (General Manager and Deputy General Manager of the Authority)—

Omit clause 6, insert instead:

Remuneration

6. (1) The General Manager is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be determined by the Board of Directors of the Authority and specified in the instrument of appointment or as may be afterwards determined by the Board from time to time.

(2) A determination does not operate so as to reduce the rate at which remuneration is payable during the General Manager’s current term of office.

(3) The Deputy General Manager is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Deputy General Manager.

(76) Schedule 4 (Savings, transitional and other provisions)—**(a) After the heading to Schedule 4, insert:****Part 1—Preliminary**

(b) Renumber clauses 1, 2 and 3 as clauses 2, 3 and 1, respectively.

(c) At the end of clause 3 (1) (renumbered as clause 1 (1)), insert:
the Motor Accidents (Amendment) Act 1989.

(d) Before clause 1 (renumbered as clause 2), insert:

Part 2—Provisions arising from the enactment of this Act and the Miscellaneous Acts (Motor Accidents) Amendment Act 1988

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

(e) At the end of clause 1 (renumbered as clause 2), insert:

(2) Any such contribution may be increased by the amount of any additional liability imposed as a consequence of the enactment of this Act.

(f) After clause 2 (renumbered as clause 3), insert:

Part 3—Provisions arising from the enactment of the Motor Accidents (Amendment) Act 1989

Constitution of Board of Directors

4. (1) The amendments to section 84 made by the Motor Accidents (Amendment) Act 1989 do not affect the appointment or term of office of a person who held office as a part-time director of the Board of Directors of the Authority immediately before the amendments took effect.

(2) For the purposes of section 84 (2A), as inserted by the Motor Accidents (Amendment) Act 1989—

- (a) Robert Avison Scott shall be taken to be a person who, at the time of his appointment, was nominated or approved by licensed insurers; and
- (b) Raymond Bruce Willing shall be taken to be a person who, at the time of his appointment, was nominated by the National Roads and Motorists' Association.

Transitional insurance arrangements

5. (1) In this clause and clause 6—

“registered motor vehicle” means a registered motor vehicle within the meaning of this Act, the registration of which expires after the date on which Part 2 of this Act commences and in relation to which a contribution has been paid under the 1987 Act to the TAC Fund;

“the 1987 Act” means the Transport Accidents Compensation Act 1987;

“the TAC Fund” means the Transport Accidents Compensation Fund established under section 15 of the 1987 Act.

(2) On or before the date on which Part 2 of this Act commences, the Authority shall allocate registered motor vehicles among licensed insurers in accordance with the following provisions:

- (a) Registered motor vehicles shall be allocated among licensed insurers on such basis as may be determined by the Authority.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (b) The allocation shall, as far as practicable, be made in accordance with the market share of each insurer.
- (c) Registered motor vehicles shall be allocated so that, as far as practicable, an equitable distribution is made of registered motor vehicles in each category for which a different amount of contribution has been paid under the 1987 Act to the TAC Fund.

(3) On the date on which Part 2 of this Act commences, a licensed insurer to which a registered motor vehicle has been allocated shall be taken to have issued a third-party policy in respect of the vehicle for the balance of the period for which the vehicle is registered.

(4) The Authority shall, on request by any person, inform the person of the name and business address of the licensed insurer to which a registered motor vehicle has been allocated.

(5) This clause applies, with any necessary modifications, to the allocation of a trader's plate current on the date on which Part 2 of this Act commences in the same way as it applies to the allocation of a registered motor vehicle and applies so as to cause a third-party policy to be taken to have issued in respect of motor vehicles to which the trader's plate is to be fixed before the termination of the period for which the trader's plate is issued.

Funding of transitional insurance arrangements

6. (1) Each licensed insurer shall, on the date on which Part 2 of this Act commences, be paid out of the TAC Fund such sum as the Minister determines towards meeting claims that are likely to arise under third-party policies taken to have been issued under clause 5 by the insurer.

(2) Before making a determination under this clause in relation to a licensed insurer, the Minister shall obtain the advice of an actuary as to the sum to be paid and shall consult with the insurer.

(77) Schedule 5—

After Schedule 4, insert:

*Motor Accidents (Amendment) 1989*SCHEDULE 1—GENERAL AMENDMENTS—*continued*

SCHEDULE 5—INDUSTRY DEED

(Sec. 3A)

THIS DEED is made the _____ day of _____ 1989.

BETWEEN: THE HONOURABLE JOHN ROBERT ARTHUR DOWD, the Attorney General of the State of New South Wales for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES (the "Crown") of the first part;

AND: THE MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES a corporation constituted by the Motor Accidents Act 1988 (the "Authority") of the second part;

AND: The Persons specified in Schedule 1 and all other persons who agree to become parties to this Deed in accordance with its terms (the "Insurance Parties") of the third part

RECITALS

- A. The Motor Accidents Act 1988 (the "1988 Act") relates to the recovery of damages, and compulsory insurance against liability, for the death of or injury to persons as a consequence of motor accidents and to other matters.
- B. The Insurance Parties have applied to the Authority for licences under the 1988 Act.
- C. The Crown and the Authority have agreed to exercise their powers and authority under the 1988 Act, in the manner set out in this Deed and the parties have agreed on various matters relating to the licences, the conduct of compulsory third-party insurance business in New South Wales and other matters arising under the Act in the terms set out in this Deed.

NOW THIS DEED WITNESSES:1. DEFINITIONS AND INTERPRETATION1.1 Definitions

In this Deed, unless the contrary intention appears—

"Act" means the Motor Accidents Act 1988, and includes any regulations, orders or proclamations made under it;

"accession deed" means the accession deed referred to in clause 2;

"accident year" means, in relation to a claim, the year commencing 1 July and ending on the next 30 June in which the motor accident giving rise to the claim occurred;

"arbitrator" means a consulting actuary who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of The Institute of Actuaries of Australia;

"business day" means a day upon which banks or a majority of them are open for normal business in Sydney and for this purpose a bank is a trading bank as defined in subsection 5 (1) of the Banking Act 1959;

"claim" means a claim for damages in respect of the death of, or injury to, a person caused by the fault of the owner or driver of a motor vehicle in the use or operation of the motor vehicle;

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

“claimant” means a person who makes, or is entitled to make, a claim;

“claim cost” means the amount paid by an insurer or the Nominal Defendant to or on behalf of a claimant in relation to a claim or the legal costs (including disbursements) of the claimant relating to the claim as the result of the final settlement or verdict in relation to a claim;

“Deed” means this Deed as amended from time to time together with any accession deed executed in accordance with clause 2;

“deregulation date” means 1 July 1991;

“facility agreement” means an agreement under which insurers will provide a financial facility to the New South Wales Treasury Corporation for the purpose of funding the TAC Fund;

“insurer” means a licensed insurer or a suspended insurer;

“licence” means a licence under Division 1 of Part 8 of the Act;

“licensed insurer”:

- (i) means a person who holds a licence which is in force and has not been suspended; and
- (ii) for the period up to 1 July 1989 includes each of the Insurance Parties;

“Minister” means the Minister of the Crown for the time being administering the Act or the relevant part of the Act;

“sharing agreement” means the agreement to share the cost of claims set forth in clause 5 of this Deed;

“suspended insurer” means a licensed insurer whose licence has been suspended under section 106B of the Act.

1.2 Further Definitions

In this Deed, unless the contrary intention appears, words defined in subsection 3 (1) of the Act which are not defined in subclause 1.1 shall have the same meaning in this Deed as they do in the Act.

1.3 Interpretation

In this Deed—

- (a) words importing one gender shall include the other gender;
- (b) words importing the singular shall include the plural and vice versa;
- (c) a reference to a clause shall be a reference to all of its subclauses, and a reference to a subclause shall be a reference to all its sub-subclauses unless the contrary intention appears;
- (d) headings and underlinings are for reference only and have no effect on the construction, interpretation or meaning of the clauses;
- (e) the Schedules referred to in this Deed form part of and are subject to the terms of this Deed;
- (f) where the last day of any period prescribed or allowed by this Deed for the doing of anything falls on a day that is not a business day, the thing may be done on the first business day following that day;
- (g) all sums of money and all payments made under this Deed shall be in Australian dollars.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued***1.4 Operative Date**

This Deed shall commence on the date it is executed by the Crown, the Authority and an Insurance Party.

1.5 Ceasing to be a Party—Licence Applicants

Any of the Insurance Parties or any person who executes an accession deed shall cease to be a party to this Deed if:

- (a) that person fails to apply for a licence within 3 months of becoming a party; or
- (b) that person is not granted a licence within 6 months of becoming a party.

1.6 Ceasing to be a Party—Insurers

An insurer shall cease to be a party to this Deed on the date the licence of that insurer is cancelled under the Act by the Authority.

2. ACCESSION**2.1 Execution of Deed of Accession**

A person who intends to become a licensed insurer may become a party to this Deed by executing an accession deed in the form of Schedule 2 or in such other form as the parties may approve.

2.2 Date of Accession

An accession deed shall operate from the date of its execution or such other date specified in the accession deed being a date approved by the parties and not later than the date on which the person executing the accession deed becomes a licensed insurer.

2.3 No Other Consent Necessary

The consent or agreement of any other party is not required for a person executing an accession deed to become a party to this Deed.

3. ACTING AS AGENT OF NOMINAL DEFENDANT**3.1 General Principle of Allocation**

Subject to subclauses 3.2 and 3.3, as the Nominal Defendant receives notice of claims against the Nominal Defendant, it shall randomly allocate those claims to licensed insurers in proportion to the market share of insurers for the accident year of the claim or if the market share for the accident year of the claim has not been determined then in accordance with the Nominal Defendant's estimate of market share of insurers in that accident year based on the last determination of market share by the Authority.

3.2 Conflicts of Interest

Subject to subclause 3.3, the Nominal Defendant shall not allocate a claim under subclause 3.1 involving an unidentified motor vehicle to a licensed insurer if the licensed insurer is or is likely to receive a claim relating to the same motor accident as the motor accident out of which the claim against the Nominal Defendant arises.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

3.3 All Licensed Insurers have a Conflict

If all licensed insurers receive or are likely to receive a claim relating to the same motor accident as a claim against the Nominal Defendant in respect of an unidentified motor vehicle then the Nominal Defendant shall allocate the claim involving the unidentified motor vehicle to which clause 3.2 applies to a licensed insurer who pursuant to the sharing agreement is not or is not likely to be an insurer handling claims arising from that motor accident.

3.4 Duty to Notify Nominal Defendant of Other Claims

If an insurer is or has been allocated a claim by the Nominal Defendant involving an unidentified motor vehicle and that insurer has or is likely to receive a claim arising out of the same motor accident as the claim against the Nominal Defendant, then it shall promptly advise the Nominal Defendant of that fact.

3.5 Re-allocation of Nominal Defendant Claims

The Nominal Defendant may re-allocate any claims previously allocated to an insurer:

- (a) whose licence is suspended, cancelled or assigned; or
- (b) where the claim relates to an unidentified motor vehicle, if the insurer handling the claim receives another claim in respect of the same motor accident.

3.6 No Refusal of Allocation

A licensed insurer shall not refuse the allocation of a claim to it under this clause unless permitted or required to do so by subclause 3.2.

3.7 Insurers to Meet Nominal Defendant's Claims

Each insurer shall meet and pay any claim against the Nominal Defendant allocated to it under this clause in accordance with the provisions of this clause and the provisions of the sharing agreement.

3.8 Claims Handling Cost

Each insurer who handles a claim against the Nominal Defendant which has been allocated to it is not entitled to recover any amount incurred or paid by it in handling the claim other than the claim cost but the insurer may retain any legal or other costs recovered from the claimant in relation to the claim.

3.9 Claims Adjustment Between Insurers

After the application of the sharing agreement, the insurers shall share the claim cost of all claims against the Nominal Defendant which arose in an accident year in proportion to the market share of the insurers in that accident year.

3.10 Settlement of Claims

Insurers will notify the claim costs in relation to the Nominal Defendant claims and recoveries handled by them in the same manner as is provided in subclauses 5.15, 5.16 and 5.17 and shall provide such details and supporting information as is required by the clearing house established under those subclauses.

3.11 Recovery Actions

An insurer who brings a recovery, action under section 31 of the Act shall do so at its own cost but, if it makes any recovery, seventy five per cent of the claim cost recovered shall be credited against the amount sought to be recovered by it under subclause 3.8 in respect of the relevant accident year in which the claim arose.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

3.12 Termination of Liability to Meet Nominal Defendant Claims

If all licensed insurers agree, they may give not less than 12 months' notice to the Authority that they do not intend to meet and pay claims in accordance with subclause 3.7 and in relation to all motor accidents occurring after the expiry date of that notice the insurers shall cease to be bound by the provisions of subclauses 3.1, 3.8, 3.9 and 3.10 of this Deed.

4. OBLIGATIONS OF AUTHORITY**4.1 Allocation of Policies**

At the request and cost of the insurers, the Authority shall, pursuant to the agreement under section 13 of the Act, arrange for the audit of the method of allocating policies and the Authority shall make such adjustments to the allocation of policies as may be recommended by the auditors and agreed by the insurers.

4.2 Agreement with Roads and Traffic Authority

The Authority shall not enter any agreement with the Roads and Traffic Authority under section 13 of the Act which provides that the aggregate commission received by the Roads and Traffic Authority shall be greater than 1.5 per cent of the insurance premiums collected by the Roads and Traffic Authority or that the frequency of payments to insurers shall be less than weekly.

5. SHARING AGREEMENT**5.1 Interpretation**

In this clause, unless the contrary intention appears:

- (a) "**collision**" means the physical contact of:
 - (i) one motor vehicle with another or other motor vehicles;
 - (ii) a person or thing in or on one motor vehicle with another motor vehicle or other motor vehicles;
 - (iii) a person or thing in or on one motor vehicle with the passengers or goods in or on another motor vehicle or other motor vehicles;
 - (iv) one motor vehicle and another motor vehicle or other motor vehicles and a pedestrian; or
 - (v) a pedestrian with one motor vehicle or other motor vehicles notwithstanding that there has been no contact between the motor vehicles,and includes consecutive contacts between the same where collisions, although not contemporaneous, are so closely related in time as to constitute one event or occurrence;
- (b) a reference to an insurer includes a reference to the Authority in its capacity as the Nominal Defendant or an insurer appointed as the agent of the Nominal Defendant in respect of any claim against the Nominal Defendant but does not include a reference to the Authority in that capacity or its agent in respect of a claim brought under section 28 of the Act in relation to an unidentified motor vehicle;

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (c) where one motor vehicle is being towed by another motor vehicle or is attached to another motor vehicle for towing, then if one of those motor vehicles is involved in a collision both motor vehicles shall be deemed to be involved in the collision.

5.2 Sharing

If in respect of a claim the owner or driver of more than one motor vehicle has caused or contributed to the claim, then each insurer of any motor vehicle that has caused or contributed to the claim shall share the claim cost in accordance with this clause.

5.3 Deemed Sharing if Motor Vehicle Involved in a Collision

The owner or driver of a motor vehicle shall be deemed to have caused or contributed to a claim if that motor vehicle is involved in the collision out of which the claim arises.

5.4 Deemed Sharing if so Determined by Referee

If a motor vehicle is not involved in the collision out of which the claim arises, then the owner or driver of that motor vehicle shall be deemed to have caused or contributed to the claim if the insurer of that motor vehicle agrees or on application by any other insurer the referee determines that the owner or driver of that motor vehicle caused or contributed to the claim.

5.5 Claim by Driver

If the claim is made by the driver of a motor vehicle, the insurers sharing the claim cost under this clause shall not include the insurer of that motor vehicle or any motor vehicle towed by or attached to the motor vehicle driven by that person unless the owner of that motor vehicle or the motor vehicle towed by or attached to the motor vehicle driven by that person has caused or contributed to the claim of the driver and in relation to which the owner is indemnified by the insurer of that motor vehicle or the motor vehicle towed by or attached to the motor vehicle driven by that person.

5.6 Method of Sharing

An insurer who is liable to share the claim cost of a claim under this clause shall share that claim cost in the proportion that the number of motor vehicles insured by that insurer which are liable to share the claim cost bears to the total number of motor vehicles insured by all insurers who are liable to share the claim cost.

5.7 Other Arrangements

Subclause 5.6 is not to be read so as to prohibit the insurers sharing a particular claim from agreeing as between themselves to share that claim in a different proportion from that provided in subclause 5.6.

5.8 Disputes

If there is any dispute or difference as to any matter arising under this clause, that dispute or difference may be referred to the referee and after considering the dispute or difference the referee may give a direction to the parties to the dispute or difference and that direction shall be final and binding upon all parties to the dispute or difference.

5.9 Referee

The referee under this clause shall be a person or one of a panel of persons approved by the insurers for that purpose and in determining a dispute or difference under this clause the referee shall act as the referee sees fit with a view to expeditiously and with as little formality as possible resolving the dispute or difference.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

5.10 Costs of the Referee

The costs of the referee shall be borne by the parties to the dispute in such proportion as the referee determines.

5.11 Insurers to Co-operate

Each of the insurers shall co-operate in the handling and settlement of all claims to which this clause applies and shall provide to any other insurer who is or is likely to share the claim cost information in respect of the claim or to the referee all information required by the referee in relation to a matter referred to the referee.

5.12 Conduct of Claim

Unless otherwise agreed by the insurers sharing a claim, the insurer of the motor vehicle sharing the claim cost of a claim which principally caused or contributed to the claim or a series of claims shall handle that claim or those series of claims for and on behalf of each other insurer and the insurer handling the claim shall be authorised to settle and compromise that claim or series of claims and otherwise deal with the claims or series of claims as it sees fit.

5.13 Determination of Principal Responsibility

As between the insurers liable to share a claim under this clause, the determination of which insurer is principally responsible shall be made as early as possible by reference to the police reports relating to the event giving rise to the claim and statements of witnesses which may be available but if there is any dispute or difference, that dispute or difference shall be resolved by the referee pursuant to subclause 5.8.

5.14 Notification to Other Insurers

Where an insurer becomes aware that a claim may be subject to the sharing agreement it shall notify the other insurers who it believes are liable to share the claim cost as soon as it becomes aware of those facts and it shall provide to those insurers reasonable particulars of the claim.

5.15 Insurers to Establish a Clearing House

The insurers shall establish a claims settlement arrangement which shall operate as a clearing house and maintain records and accounts in relation to each insurer in relation to claims shared under this clause and under clauses 3 and 8 and after receiving the periodic reports of each insurer under subclause 5.16 the clearing house shall promptly notify each insurer of the net amounts owed to or payable by it and those insurers obliged to make payments shall immediately pay those amounts to the clearing house and the clearing house shall after receipt of those payments remit amounts owed to insurers.

5.16 Claims to be Notified and Paid

In relation to claims shared under this clause and clauses 3 and 8, insurers shall notify to the clearing house within 14 days at the end of each six month period ending in December and June or at such other times as the insurers may agree the amount of claim costs incurred by them in that period and the details and supporting information of the claims to which they relate in the form required by the clearing house.

5.17 Special Claims

Notwithstanding the provisions in subclauses 5.15 and 5.16:

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—*continued***

- (a) if an insurer incurs or becomes liable to incur a claim cost in relation to any one claim of an amount greater than \$500,000, then it may immediately notify that to the clearing house and advise the proportion payable by other insurers and the clearing house will immediately advise each of the other insurers of the amount payable by them and those insurers shall immediately pay that amount to the insurer paying the claim cost; or
- (b) notwithstanding that a claim has not been settled or determined by a court, if an insurer has paid in respect of any one claim an amount greater than \$50,000 pursuant to section 45 of the Act, then the insurer may include that amount (being an amount greater than \$50,000) in its claim costs notified under subclause 5.16 in a particular period.

5.18 Variation

If the licensed insurers agree, they may vary the terms of the sharing agreement with the approval of the Authority which approval shall not be unreasonably withheld.

6. BULK BILLING**6.1 Insurers to be Party to any Bulk Billing Agreement**

If the licensed insurers agree to enter into a bulk billing agreement then unless that agreement has expired or has been terminated any person who is granted a licence and becomes a party to this Deed shall thereby be deemed to be a party to the bulk billing agreement on and from the date the licence is granted to that person and that person shall execute a counterpart of the bulk billing agreement or do such other act or thing that may be necessary or convenient to give effect to this clause.

6.2 Crown not to enter Separate Agreements with Insurers

During any period in which an agreement under this clause operates the Crown shall ensure that the Minister for Health does not enter into any separate agreement with any insurer in relation to the matters the subject of that agreement.

7. OTHER OBLIGATIONS OF INSURERS**7.1 Insurers to Enter into Facility Agreement**

If at the time at which a corporation becomes an insurer there is a facility agreement in force, the insurer shall enter into the facility agreement and perform the obligations of that agreement.

7.2 Exchange Information

An insurer shall provide to any other insurer on request any information in respect of a claim in which the insurers have a mutual interest or where the claimants are in any way related to each other or other parties involved in the claims.

8. DEREGULATION**8.1 Offer Renewals in Year Beginning 1 July 1991**

In the year commencing 1 July 1991 the insurer shall offer to renew a policy issued by it prior to that date and in force immediately prior to the renewal date at the premium applicable to the policyholder. The offer for renewal shall be made at least 28 days prior to the renewal date by sending the offer to the address of the insured last known to the insurer.

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

8.2 Assigned Risks Pool

Prior to the deregulation date and at least once every 12 months thereafter, authorised representatives of insurers shall meet to agree on:

- (a) the detailed operation of the assigned risks pool which shall include motor vehicles which the insurers would not be ordinarily prepared to insure themselves;
- (b) the risks to be allocated to the assigned risks pool;
- (c) the premiums to be charged in relation to risks allocated to the assigned risks pool.

and after agreement is reached in accordance with clause 10 the insurers shall submit the premiums to the Authority in accordance with sections 15–15B of the Act.

8.3 Insurers to Insure Assigned Risks Pool

A licensed insurer shall insure any motor vehicle which falls into the assigned risks pool at the premium payable in respect of the vehicle unless the insurer is prepared to insure that motor vehicle at the insurer's own risk.

8.4 Notification of Assigned Risks

An insurer shall on the issue by it of a third party policy designate that policy in a manner specified by the insurers under subclause 8.2 as being an assigned risk or not and shall promptly notify the clearing house established under clause 5 of all policies issued by it in respect of the assigned risks pool.

8.5 Insurers to Meet Assigned Risk Claims

Each insurer shall meet and pay any claim in respect of a policy issued by it and designated as included in the assigned risks pool ("assigned risk policies") and after application of the sharing agreement the insurers shall share the claim cost of all claims in an accident year payable under assigned risk policies in proportion to the market share of insurers in that accident year.

8.6 Premium Adjustment

At the end of each accident year the insurers shall adjust premiums received by each of them in respect of assigned risk policies so that each insurer receives a proportion of the aggregate of such premiums equal to the market share of that insurer in the accident year.

8.7 Settlement of Claims

Insurers shall notify the claim costs in relation to claims under assigned risk policies handled by them in the same manner as provided in subclauses 5.15, 5.16 and 5.17 and shall provide such details and supporting information as is required by the clearing house established under those clauses.

9. ADVERSE ACTION BY THE CROWN OR THE AUTHORITY**9.1 Right to Immediately Surrender Licence 1 July 1989 to 1 July 1995**

The Crown agrees with the insurers that if during the period of 1 July 1989 to 1 July 1995 any of the following events should occur:

- (a) legislation is passed by the Parliament of the State of New South Wales which varies or replaces the Motor Accidents Act 1988 and which materially adversely affects insurers or any one of them;

*Motor Accidents (Amendment) 1989*SCHEDULE 1—GENERAL AMENDMENTS—*continued*

- (b) regulations are gazetted and not disallowed by the Parliament of the State of New South Wales under the Motor Accidents Act 1988 or any Act replacing or amending that Act on or after 1 July 1989 which materially adversely affects insurers or any one of them;
- (c) legislation is passed by the Parliament of the State of New South Wales which increases or is likely to increase the claim cost of claims and which materially affects insurers or any one of them; or
- (d) there is a material adverse failure to observe or perform any provision of this Deed by the Crown or the Authority and if that failure is capable of remedy and is not remedied within 20 business days of a notice by any insurer to the Crown or Authority, as the case may be, specifying the failure and requiring it to be remedied,

then an insurer adversely affected by an event specified in this clause may by notice to the Authority given within 3 months of the event surrender its licence and the Authority shall immediately suspend that licence.

9.2 Compensation

If an event specified in subclause 9.1 occurs prior to 1 July 1995, then the Crown in addition to any amount that may be payable under subclause 9.6 shall, within 28 days after they have been assessed, pay to each insurer who has surrendered its licence under subclause 9.1 by way of liquidated damages:

- (a) if the event occurred prior to 1 July 1992, the sum calculated by the formula—

$$5\% \times P$$

- (b) if the event occurred on or after 1 July 1992 but prior to 1 July 1994, the sum calculated by the formula—

$$3\% \times P$$

- (c) if the event occurred on or after 1 July 1994 but prior to 1 July 1995, the sum calculated by the formula—

$$1\% \times P$$

where—

P is the aggregate premium income of the licensed insurer for the last 12 complete months immediately prior to the date the licensed insurer gives notice to the Authority surrendering its licence under subclause 9.1.

9.3 No Adverse Affect

An insurer shall not be adversely affected by an event specified in subclause 9.1 if:

- (a) the event will or is reasonably likely to reduce the amount payable in respect of most claims;
- (b) the event is one specified in paragraph (a) or (b) of subclause 9.1 and it occurs after the deregulation date and it only operates in respect of motor accidents occurring 12 months after the date on which the variation is made;
- (c) there is a variation of the Act or the regulations to which the insurers agree; or
- (d) the event makes significant changes to reporting and procedural requirements prior to 1 July 1991 and the premium rates are increased to adequately compensate for the increased cost of those requirements in future years.

SCHEDULE 1—GENERAL AMENDMENTS—*continued***9.4 Deemed Adverse Affect**

Without limiting the generality of subclause 9.1, an event specified in paragraph (a) or (b) shall be deemed to materially adversely affect a licensed insurer if—

- (a) a reasonable insurer in the circumstances of the licensed insurer would not have applied for a licence if the event relied on under paragraph (a) or (b) of subclause 9.1 had occurred prior to the application for a licence by that licensed insurer;
- (b) the event occurs prior to the deregulation date and it increases or is likely to increase the amount payable in respect of claims;
- (c) the event occurs after the deregulation date that increases or is likely to increase the amount payable in respect of claims and it operates in respect of claims arising from motor accidents occurring less than 12 months after the date of the event; or
- (d) unless the insurers agree, a regulation reducing the discount rate specified in subsection 71 (1) (e) of the Act is prescribed.

9.5 Compensation to Suspended Insurers

If the Act is varied to require or the Authority requires suspended insurers to incur additional costs by reason of changes in reporting, audit and related requirements, then the cost of those additional requirements shall be paid by the Crown.

9.6 Retrospective Changes to Amounts Payable Under Claims

If at any time an event of a type specified in subclause 9.1 occurs whereby the amount payable in respect of a claim is increased in respect of claims arising from motor accidents occurring prior to a date 12 months after the date of the event, then the Crown, in addition to any damages payable under subclause 9.2, shall pay damages to each insurer of an amount sufficient to fully fund the increased liability of that insurer in respect of any additional amounts payable by that insurer by reason of that event in respect of those claims.

9.7 Dispute Resolution

If there is any dispute or difference between the Crown and any insurer in respect of the amount payable under subclause 9.6 then that amount shall be determined by the arbitrator.

9.8 Extent of the Crown's Liability

The liability of the Crown for damages for an event specified in subclause 9.1 shall be determined exclusively in accordance with this clause and that liability shall not exceed the liability so determined.

9.9 Clause does not Affect other Rights

Subject to subclause 9.8, this clause is not to be construed so as to limit or restrict any other right or entitlement that an insurer may have if there is any breach of the Act or this Deed.

10. AGREEMENT BY INSURERS**10.1 Approval Requirements**

In relation to any matter requiring the consent, agreement or approval of all licensed insurers or insurers under the Act or this Deed, then if 75% of those licensed insurers or insurers representing at least 65% of the market share of all licensed insurers so agree then all licensed insurers or insurers, as the case may be, shall be deemed to have given their consent, agreement or approval.

Motor Accidents (Amendment) 1989

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

10.2 Method of Obtaining Approval

A consent, agreement or approval under subclause 10.1 may be evidenced by a document or series of documents setting out the matter consented to, agreed or approved and executed by the required majority of licensed insurers or insurers.

10.3 Insurers May Appoint Agent

For the purpose of entering into or negotiating any agreement supplementary to this Deed or relating to the third party business of insurers or for any other matter, the insurers may pursuant to this clause appoint a person or persons as the agent or representative of all the insurers for that purpose.

10.4 Other Agreements

If the insurers or licensed insurers agree in writing on any matter relating to the operation of this Deed or the Act in accordance with subclause 10.1, then all insurers or a licensed insurer as the case may be shall be deemed to have given their agreement to that matter.

11. APPLICABLE LAW

This Deed shall be governed by and construed in accordance with the law for the time being in force in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

12. NOTICES

12.1 Any notice, approval, request, consent or other communication given or made to a party under this Deed must be in writing and delivered in person or sent by post, telex or facsimile transmission to the party at the following address, telex number or facsimile number:

in the case of the Crown:

Address: The Attorney General of the State of New South Wales

Facsimile No:

Telex No:

in the case of the Authority:

Address:

Facsimile No:

Telex No:

in the case of the Insurance Parties:

at the address, facsimile or telex number set forth in Schedule 1 or in the accession deed executed by the particular Insurance Party;

or such other address, facsimile or telex number as a party from time to time may notify to the other parties for the purpose of this clause.

12.2 Any notice, approval, request, consent or other communication given or made pursuant to this clause shall be deemed to be duly given or made:

- (a) in the case of delivery in person when delivered to the recipient at such number or address; or
- (b) in the case of telex on receipt by the sending of the answerback code of the recipient at the end of the transmission,

SCHEDULE 1—GENERAL AMENDMENTS—*continued*

but if such delivery or receipt is later than 5.00 p.m. (local time) on a business day it shall be deemed to have been duly given at the commencement of business on the next business day.

13. WAIVER**13.1 Delay in Exercise of Rights**

No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default by any other party under this Deed shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed to be a waiver of any other breach or default.

13.2 Waivers

Any waiver agreement, consent or approval of any kind or character on the part of any party of any breach or default by any other party or any waiver on the part of any party of any provisional condition of the Deed must be in writing and shall be effective only to the extent specifically set forth in such writing.

13.3 Remedies Cumulative

All remedies available to the parties under this Deed shall be cumulative.

14. ENTIRE AGREEMENT

The terms and conditions of this Deed together with any written amendments which are confirmed by the parties as amendments to this Agreement shall constitute the complete deed between the parties and it is expressly agreed and declared that no further or other covenants or provisions in respect of this Deed or otherwise shall be deemed to be implied in this Agreement or to exist between the parties by way of collateral or other deed by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Deed and the existence of any such implicational collateral or other agreement is hereby negated.

15. AMENDMENTS OR VARIATION

No amendment or variation of this Deed by any other party shall be of any force or effect unless the amendment or variation is conferred in writing and signed by all parties.

16. ASSIGNMENT

The deed may not be assigned in whole or in part by any party without the prior written consent of all other parties.

17. COSTS

The parties shall each bear their own legal and other costs incidental to the preparation, execution and implementation of this Deed.

18. ARBITRATION

If any dispute or difference is referred to the arbitrator under this Deed, then unless otherwise agreed by the parties to the referral the arbitrator shall determine the dispute or difference in accordance with and subject to the Institute of Arbitrators Australia Rules for the conduct of Commercial Arbitrations.

*Motor Accidents (Amendment) 1989***SCHEDULE 1—GENERAL AMENDMENTS—continued**SCHEDULE 1

<u>Name of Insurer</u>	<u>Address</u>	<u>Facsimile No.</u>	<u>Telex No.</u>
1.			
2.			
3.			
4.			

SCHEDULE 2Accession Deed

THIS DEED POLL is made the _____ day of _____ 19
BY: [_____] of [_____] (the "Acceding Party")

RECITALS

- A. The Acceding Party proposes to apply to become a licensed insurer under the Motor Accidents Act 1988.
- B. It is a condition of the grant of licence under that Act that the licensed insurer become a party to the Industry Deed between the Crown, the Motor Accidents Authority and various insurers and dated [_____] 1989 (the "Industry Deed").
- C. By clause 2 of the Industry Deed a person may become a party to the Industry Deed by executing an accession deed in the form of this Deed.

NOW THIS DEED WITNESSES:

The Acceding Party agrees to become bound by and to become a party to the Industry Deed on and from the date on which a licence under Division 1 of Part 8 of the Motor Accidents Act 1988 is granted to the Acceding Party.

For the purposes of clause 12 of the Industry Deed the address, telex number and facsimile number of the Acceding Party is as follows:

Address:

Facsimile No:

Telex No:

IN WITNESS WHEREOF the Parties have executed this Deed on the day and year first hereinbefore written.

THE COMMON SEAL of

affixed in accordance with its Articles of Association }
 in the presence of: } Director

.....
 Secretary/Director

SCHEDULE 2—AMENDMENTS TO COMMENCE ON 1 JULY 1991

(Sec. 3)

(1) Section 3 (Interpretation)—

Section 3 (1)—

Omit the definition of “market share”, insert instead:

“market share”, in relation to an insurer, means, at any particular time, the proportion determined under section 115A by the Authority in relation to the insurer and applicable at that time;

(2) Part 3, Division 2—

Omit the Division, insert instead:

Division 2—Method of effecting third-party insurance**Issue of certificate of insurance**

10. (1) If a licensed insurer accepts a premium for the insurance under a third-party policy of a motor vehicle, the licensed insurer shall immediately issue a certificate of insurance to the owner of the vehicle.

(2) If a licensed insurer accepts a premium for the insurance under a third-party policy of motor vehicles to which a trader's plate is fixed, the licensed insurer shall immediately issue a certificate of insurance to the trader.

(3) A licensed insurer who issues such a certificate shall be taken to have issued a third-party policy in conformity with the certificate.

Production of certificate on registration etc. of motor vehicle

11. (1) A person who applies for the registration or renewal of registration of a motor vehicle shall, at the time the application is made, produce a certificate issued under section 10 (1) which evidences the existence of a third-party policy in relation to the motor vehicle and which commences not later than the date of commencement of the registration or renewal and terminates not earlier than the date of expiration of the registration or renewal.

(2) A person who applies for the issue of a trader's plate shall, at the time the application is made, produce a certificate issued under section 10 (1) which evidences the existence of a third-party policy in relation to motor vehicles to which the trader's plate is to be fixed and which commences not later than the date of commencement of the period for which the trader's plate is issued and terminates not earlier than the date of expiration of that period.

Motor Accidents (Amendment) 1989

SCHEDULE 2—AMENDMENTS TO COMMENCE ON 1 JULY 1991—
continued

(3) The Roads and Traffic Authority shall not register or renew the registration of a motor vehicle or issue a trader's plate unless the applicant complies with the relevant provisions of this section.

(3) Section 20—

Omit the section, insert instead:

Delay in effecting renewal of registration and third-party insurance

20. If the renewal of the registration of a motor vehicle is effected and a third-party policy in relation to the vehicle is taken to have been issued—

(a) within 15 days after the expiration of the previous registration of the vehicle; or

(b) during the named month in which that previous registration expires,

the third-party policy taken to have been issued in relation to that previous registration continues in force until the subsequent third-party policy is taken to have been issued, despite section 10, and the subsequent third-party policy shall be taken to have been issued on that renewal, despite section 10.

(4) Section 21 (**Cancellation of third-party policy**)—

Section 21 (2)—

After “that section”, insert “, but only if the restoration of the registration occurs during the period for which the third-party policy is in force”.

(5) Section 103 (**Determination of market share of each insurer**)—

Omit the section.

(6) Section 108 (**Assignment of policies following cancellation of licence etc.**)—

Section 108 (2) (b)—

Omit “or to ensure that third-party policies are allocated to insurers in accordance with their market share”.

(7) Section 115A—

After section 115, insert:

Determination of market share of each insurer

115A. (1) A licensed insurer shall, within such time after the end of each quarter and each year as is determined by the Authority, notify the Authority of the amount of insurance premiums received by it in relation to all third-party policies taken to have been issued by it during that quarter or year.

SCHEDULE 2—AMENDMENTS TO COMMENCE ON 1 JULY 1991—
continued

(2) The Authority shall, after notifications have been received from all licensed insurers in respect of a quarter or year, determine, in relation to each insurer, the proportion that the insurance premiums for third-party policies received by the insurer for the quarter or year bears to the aggregate amount of insurance premiums for third-party policies received by all licensed insurers for the quarter or year.

(3) The Authority may round a proportion determined under this section to one-tenth of a percent.

(4) After determining the proportion for each licensed insurer, the Authority shall inform all licensed insurers of the proportions so determined.

(5) In this section—

“quarter” means a quarter ending on the last day of September, December, March and June in each year;

“year” means a year commencing on 1 July.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

(Sec. 4)

Defamation Act 1974 No. 18—

After section 17BB, insert:

Matters arising under the Motor Accidents Act 1988

17BC. There is a defence of absolute privilege—

(a) for a publication to or by—

(i) a licensed insurer (within the meaning of the Motor Accidents Act 1988); or

(ii) the Nominal Defendant,

for the purpose of any claim or any proceedings arising from any claim under the Motor Accidents Act 1988; and

(b) for a publication by any such licensed insurer or the Nominal Defendant of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination; and

(c) for a publication by the Motor Accidents Authority of New South Wales of the whole or any part of the register maintained by the Authority under section 67 of the Motor Accidents Act 1988.

Motor Accidents (Amendment) 1989

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued***Justices Act 1902 No. 27—**

Section 100(1), definition of “penalty notice”—

Insert in paragraph (a), in alphabetical order:

Motor Accidents Act 1988, section 8 (1);

Miscellaneous Acts (Motor Accidents) Amendment Act 1988 No. 103—

Omit the matter in Schedule 1 relating to the Workers Compensation Act 1987.

Motor Vehicles (Third Party Insurance) Amendment Act 1984 No. 86—

Omit clause 3 from Schedule 6.

Workers Compensation Act 1987 No. 70—

(1) Section 149 (Abolition of common law remedies against employer, fellow workers etc.)—

Omit paragraph (a) of the definition of “damages” in section 149 (4), insert instead:

- (a) damages in respect of an injury caused by or arising out of a motor accident (within the meaning of the Motor Accidents Act 1988) occurring on or after 4.00 p.m. on 30 June 1987;

(2) Section 150 (Remedies against both employer and stranger etc.)—

After section 150 (7), insert:

(7A) In the case of an injury caused by or arising out of a motor accident (within the meaning of the Motor Accidents Act 1988) occurring on or after 4.00 p.m. on 30 June 1987—

- (a) a reference in this section to damages includes a reference to damages in respect of that injury; and
- (b) this section applies as if references to a liability in some person other than the worker's employer included a reference to the worker's employer; and

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (c) the liability to a licensed insurer or self-insurer of the Government Insurance Office or a licensed insurer (within the meaning of that Act) in respect of any such injury shall not exceed the amount that would be required to be paid by the Government Insurance Office or licensed insurer (within the meaning of that Act) to the claimant in respect of the injury.
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[Minister's second reading speech made in—
Legislative Assembly on 9 May 1989
Legislative Council on 10 May 1989]