

MOTOR ACCIDENTS ACT 1988 No. 102

NEW SOUTH WALES



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MOTOR ACCIDENTS ACT 1988 No. 102

NEW SOUTH WALES



Act No. 102, 1988

An Act relating 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 for other purposes. [Assented to 21 December 1988]

See also Miscellaneous Acts (Motor Accidents) Amendment Act 1988.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Motor Accidents Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Interpretation

3. (1) In this Act—

“Authority” means the Motor Accidents Authority of New South Wales constituted under Part 7;

“deceased person” means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle;

“de facto partner” means—

- (a) in relation to a man—

- (i) a woman who is living with the man as his wife on a bona fide domestic basis although not married to him; or

- (ii) if the man’s death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle, a woman who, immediately before the date of the man’s death, was living with the man as his wife on a bona fide domestic basis although not married to him; and

- (b) in relation to a woman—

- (i) a man who is living with the woman as her husband on a bona fide domestic basis although not married to her; or

- (ii) if the woman’s death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle, a man who, immediately before the date of the woman’s death, was living with the woman as her husband on a bona fide domestic basis although not married to her;

“driver” means a person driving a motor vehicle, and includes—

- (a) a person riding and operating a motor cycle; and
 - (b) a person for the time being in charge of a motor vehicle;

“fault” means negligence or any other tort;

“GIO” means the Government Insurance Office of New South Wales constituted under the Government Insurance Act 1927;

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“injured person” means a person who suffers injury which is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle;

“injury” means personal injury, and includes—

- (a) pre-natal injury; and
- (b) bodily injury; and
- (c) psychological or psychiatric injury; and
- (d) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses;

“insured motor vehicle” means a motor vehicle in relation to which a third-party policy is in force;

“insured person” means a person insured under a third-party policy;

“licensed insurer” means an insurer who is the holder of a licence granted under Division 1 of Part 8 and in force;

“motor accident” means an accident caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle which causes the death of or injury to a person;

“Motor Accidents Authority Fund” means the fund by that name established under Division 3 of Part 7;

“motor vehicle” means a motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include a vehicle used on a railway or tramway;

“Nominal Defendant” means the Nominal Defendant referred to in section 26;

“Nominal Defendant’s Fund” means the fund by that name established under Division 5 of Part 3;

“owner”, in relation to a motor vehicle, means a person who is the owner of the vehicle by virtue of subsections (3)–(5);

“public street” means any street, road, lane, thoroughfare, footpath or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise;

“registration” means—

- (a) registration of a motor vehicle under the Motor Traffic Act 1909, the Transport Act 1930 or the Recreation Vehicles Act 1983; or
- (b) the issue of a permit for a motor vehicle under Regulation 53A of the Motor Traffic Regulations 1935; or
- (c) registration in New South Wales of a motor vehicle under the Interstate Road Transport Act 1985 of the Commonwealth;

“spouse” includes a de facto partner;

“third-party policy” means a policy of insurance under this Act;

“trader’s plate” means a special number plate issued to a manufacturer or repairer of or a dealer in motor vehicles in accordance with the regulations under the Motor Traffic Act 1909.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of this Act—

- (a) in the case of a motor vehicle which is registered, the owner is—
 - (i) the person in whose name the vehicle is registered, unless the person has sold or ceased to have possession of the vehicle; or
 - (ii) if the person in whose name the vehicle is registered has sold or ceased to have possession of the vehicle—any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle; or
- (b) in the case of a motor vehicle which is unregistered, the owner is any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle; or
- (c) in the case of a motor vehicle to which a trader’s plate is fixed, the owner is the trader to whom the trader’s plate is issued.

(4) For the purposes of subsection (3), a person shall be taken not to have ceased to have possession or, as the case may be, not to have acquired possession of a motor vehicle where a change of possession occurs by way of—

- (a) any hiring (not being a hiring under a hire-purchase agreement) or lending of the vehicle for a period not exceeding 3 months; or
- (b) the passing of the possession of the vehicle to a bailee for the purpose of sale or disposal or for the purpose of alteration, repair, renovation, garaging, storing or other like purpose not involving the use of the motor vehicle for the benefit of the bailee.

(5) In the application of any provision of this Act to and in respect of a motor vehicle to which a trader’s plate is fixed (whether or not with the authority of the trader), a reference in any such provision to the owner shall be read as a reference to the trader, and a reference to the third-party policy in relation to that motor vehicle shall be read as a reference to the third-party policy in relation to motor vehicles to which the trader’s plate is fixed (whether or not with the authority of the trader).

(6) In this Act, a reference to the use or operation of a motor vehicle includes a reference to the maintenance or parking of the vehicle.

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Act to bind Crown

4. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—RESTORATION OF COMMON LAW RIGHTS**Repeal of the Transport Accidents Compensation Act 1987 No. 101**

5. The Transport Accidents Compensation Act 1987 is repealed.

Restoration of common law rights

6. The law relating to a right to or a claim for damages or compensation or any other benefit (pecuniary or non-pecuniary) against any person for or in respect of the death of or bodily injury to a person caused by or arising out of a transport accident (within the meaning of the Transport Accidents Compensation Act 1987) occurring on or after 1 July 1987 shall be as if the Transport Accidents Compensation Act 1987 had not been passed and the common law and the enacted law (except that Act) shall have effect accordingly.

Application of Part 6 (Awarding of Damages) from 1 July 1987

7. On the commencement of this Part, Part 6 shall be taken to have applied, during the period from and including 1 July 1987 to that commencement, to a transport accident within the meaning of the Transport Accidents Compensation Act 1987 occurring on or after 1 July 1987.

PART 3—THIRD-PARTY INSURANCE**Division 1—Compulsory insurance****Offence of using etc. uninsured motor vehicle on public street**

8. (1) A person who uses, or who causes or permits another person to use, a motor vehicle that is not an insured motor vehicle on a public street is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) It is a defence to proceedings for an offence against this section if the defendant establishes that at the time the motor vehicle was used on the public street the defendant had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

(3) This section does not apply to a person who uses, or who causes or permits another person to use, a motor vehicle on a public street if—

(a) the motor vehicle, although not—

(i) registered under the Motor Traffic Act 1909, the Transport Act 1930 or the Recreation Vehicles Act 1983; or

- (ii) subject to a permit under Regulation 53A of the Motor Traffic Regulations 1935; or
- (iii) registered in New South Wales under the Interstate Road Transport Act 1985 of the Commonwealth,
may lawfully be used on a public street; or
- (b) the motor vehicle is a prescribed motor vehicle, or a motor vehicle of a prescribed class or description, and is used in such circumstances (if any) as may be prescribed.

Third-party policies

9. A third-party policy under this Act is a policy which—
- (a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street); and
 - (b) is in the terms of Schedule 1.

Division 2—Method of effecting third-party insurance**Issue of third-party policies on registration of motor vehicles etc.**

10. (1) On the registration or the renewal of registration of a motor vehicle, a third-party policy shall be taken to have been issued in respect of the motor vehicle by the licensed insurer to whom the policy is allocated in accordance with section 11 (being a policy for a period that corresponds to the period of registration of the vehicle).

(2) On the issue of a trader's plate, a third-party policy shall be taken to have been issued by the licensed insurer to whom the policy is allocated in accordance with section 11 in respect of any motor vehicle to which the trader's plate is fixed (being a policy that corresponds to the period that the trader's plate is on issue).

Allocation of third-party policies among licensed insurers

11. (1) Third-party policies shall be allocated among licensed insurers in accordance with the following provisions:

- (a) Policies shall be allocated among licensed insurers on such basis as may be determined by the Authority.
- (b) The allocation shall, as far as practicable, be made in accordance with the market share of each insurer as determined under section 103.
- (c) Policies shall be allocated so that, as far as practicable, an equitable distribution is made of policies for motor vehicles in each category for which a different rate of insurance premium is payable.

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- (d) An allocation on the renewal of the registration of a motor vehicle may be made having regard to the licensed insurer to whom the third-party policy for the vehicle was previously allocated.
- (e) The allocation may be made by the Authority or by the Commissioner for Motor Transport on its behalf.

(2) The Authority shall, on request by any person, inform the person of the name and business address of the licensed insurer by whom the third-party policy for a particular motor vehicle has been issued.

(3) The Authority may arrange with the Commissioner for Motor Transport for any such information to be furnished by the Commissioner.

(4) A certificate issued by the Authority or a person authorised by the Authority as to the name of the licensed insurer by whom a third-party policy for a particular motor vehicle has been issued for a particular period is admissible in any proceedings and is conclusive evidence of the matters certified by the certificate.

Payment of premium for third-party policies at time of registration of motor vehicles etc.

12. (1) A person who applies for the registration or the renewal of registration of a motor vehicle shall, at the time the application is made, pay to the Commissioner for Motor Transport the insurance premium determined under this Act for the issue of a third-party policy in respect of the motor vehicle (being a policy for a period that corresponds to the period of registration of the motor vehicle).

(2) A person who applies for the issue of a trader's plate shall, at the time the application is made, pay to the Commissioner for Motor Transport the insurance premium determined under this Act for the issue of a third-party policy in respect of motor vehicles to which the trader's plate is fixed (being a policy for a period that corresponds to the period that the trader's plate is on issue).

(3) The registration or the renewal of registration of a motor vehicle shall not be granted and a trader's plate shall not be issued by the Commissioner for Motor Transport until the insurance premium payable under subsection (1) or (2), as the case requires, has been paid.

(4) The regulations may make provision for or with respect to—

- (a) the payment of insurance premiums by instalments, including provision for the cancellation of registration for failure to pay instalments when they fall due; and
- (b) the refund of insurance premiums on the cancellation of a third-party policy or in other specified circumstances.

Payment of insurance premiums to insurers

13. (1) The Commissioner for Motor Transport shall, at such time or times as may be agreed on by the Commissioner and the Authority, pay to each licensed insurer the insurance premiums received by the Commissioner in respect of third-party policies which are to be taken to have been issued by the insurer under section 10.

(2) The Commissioner for Motor Transport may retain from any such insurance premiums such commission as may be agreed on by the Commissioner and the Authority.

Division 3—Determination of insurance premiums for third-party policies**Determination by Minister of insurance premiums**

14. (1) The Minister shall, by order published in the Gazette, determine the insurance premiums payable for the issue of third-party policies for motor vehicles of such classes as are specified in the order.

(2) The insurance premiums determined by any such order apply to third-party policies issued after the order takes effect and while the order is in force.

(3) An order under this section takes effect on such date after the publication of the order in the Gazette as is specified in the order.

Factors to be taken into account in determining insurance premiums

15. (1) In determining insurance premiums under section 14, the Minister shall have regard to the following matters:

- (a) Insurance premiums are to be determined so as to fully fund the liability of licensed insurers under this Act.
- (b) Insurance premiums are to be based on actuarial advice as to the liability of licensed insurers under this Act.
- (c) The liability of licensed insurers for which insurance premiums are determined is to include—
 - (i) the liability of an insurer under third-party policies taken to have been issued by the insurer; and
 - (ii) the liability of an insurer to contribute to the Nominal Defendant's Fund; and
 - (iii) the liability of an insurer to contribute to the Motor Accidents Authority Fund.
- (d) Any other matter the Minister considers relevant.

(2) Before making any such determination, the Minister shall have regard to such recommendations (if any) as are made by the Authority.

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Division 4—Other matters relating to third-party policies**Risks not insured under third-party policies**

16. A third-party policy shall not extend to insure the owner or driver of a motor vehicle against—

- (a) a liability to pay compensation under the Workers Compensation Act 1987 (or any corresponding law of another State or a Territory of the Commonwealth) to a worker employed by the owner or driver; or
- (b) a liability which may be incurred by the owner or driver under an agreement unless the liability is one which would have arisen in the absence of the agreement.

Indemnification of insured persons

17. A licensed insurer is, despite any other law, liable to indemnify the insured persons under a third-party policy of the insurer in respect of any liability which the policy purports to cover.

Liability of licensed insurers where correct insurance premiums not paid

18. The fact that the correct insurance premium has not been paid in respect of a third-party policy does not affect the validity or operation of the policy.

Effect of change of ownership of motor vehicle or trader's business

19. (1) While a third-party policy is in force in relation to a motor vehicle, the third-party policy enures in favour of the owner for the time being of the vehicle (and any driver of the vehicle) despite any change in the ownership of the vehicle.

(2) While a third-party policy is in force in relation to a motor vehicle to which a trader's plate issued in respect of any business is fixed, the third-party policy enures in favour of the person who for the time being is carrying on the business (and any driver of any such vehicle) despite any change in the ownership of the business.

Effect of late renewal of registration of motor vehicle

20. If the renewal of the registration of a motor vehicle is effected—

- (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 on that previous registration continues in force until the renewal, despite section 10.

Cancellation of third-party policy

21. (1) A third-party policy is cancelled—

- (a) on the expiration of 15 days after the cancellation of the registration of the insured motor vehicle; or
- (b) on the issue of a further third-party policy in relation to the motor vehicle,

whichever first occurs.

(2) A third-party policy which is cancelled under this section because of the cancellation of the registration of the motor vehicle under section 18C of the Motor Traffic Act 1909 revives on the restoration of the registration of the vehicle under that section.

(3) A third-party policy is cancelled on the surrender of the trader's plate to which the policy applies.

(4) The cancellation of a third-party policy does not affect any liability incurred in relation to an event which took place before the cancellation of the policy.

(5) A third-party policy may only be cancelled under this section.

Right of insurer against unauthorised driver of motor vehicle

22. If a person uses or operates a motor vehicle without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner and a licensed insurer pays any money or incurs any costs (under a third-party policy) in respect of a motor accident arising from that use or operation, the insurer may recover the money so paid and the costs so incurred from the person as a debt in a court of competent jurisdiction.

Recovery of an excess in certain cases

23. (1) If an insured person incurs a liability against which he or she is insured under a third-party policy and the liability arises out of a motor accident which was to the extent of more than 25 per cent the fault of the insured person, the licensed insurer may recover from the insured person as a debt in a court of competent jurisdiction—

- (a) where the money paid and costs incurred by the licensed insurer in respect of the liability do not exceed \$500—the amount of the money paid and costs incurred; and
- (b) where the money paid and costs incurred by the insurer exceed \$500—\$500.

(2) The licensed insurer is not entitled to recover an amount under this section if the licensed insurer exercises any other right of recovery against the insured person under section 22.

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Extension of indemnity to insured person's estate

24. (1) A third-party policy shall, to the extent of the insurance effected by that policy—

- (a) extend, in any case where the insured person is dead, to indemnify the insured person's estate against—
 - (i) liability arising under any cause of action which, by virtue of section 2 of the Law Reform (Miscellaneous Provisions) Act 1944, survives against the insured person's estate; and
 - (ii) liability arising by operation of section 2 (4) of that Act; and
- (b) extend to indemnify the insured person or, in any case where the insured person is dead, to indemnify the insured person's estate against—
 - (i) liability arising where the insured person or, as the case may be, the insured person's estate has in any proceedings been joined as an alternative defendant; and
 - (ii) liability arising where the insured person or, as the case may be, the insured person's estate has served or has been served with a notice in writing under section 3 (1) of the Law Reform (Miscellaneous Provisions) Act 1946; and
 - (iii) liability arising where the insured person or, as the case may be, the insured person's estate claims contribution from some other person as a joint tort-feasor or has a claim made against the insured person or the insured person's estate, as the case may be, as a joint tort-feasor.

(2) In subsection (1), "insured person" means a person who is insured or indemnified against liability 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 vehicle under—

- (a) a third-party policy; or
- (b) a policy of insurance complying with the provisions of any law in force in any part of the Commonwealth (other than this State) which requires the owner or driver of a motor vehicle to be insured against any such liability; or
- (c) the provisions of any other law in force in any part of the Commonwealth (other than this State) which indemnify the owner or driver of a motor vehicle against any such liability.

Entry of judgment against licensed insurer

25. A judgment obtained in any court in respect of 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 shall be entered against the licensed insurer of the vehicle and not against the owner or driver.

Division 5—Nominal Defendant scheme for uninsured or unidentified motor vehicles**Nominal Defendant**

26. (1) The Authority is, for the purposes of this Act, the Nominal Defendant.

(2) Any action or proceeding by or against the Nominal Defendant shall be taken in the name of the "Nominal Defendant".

Claim against Nominal Defendant where vehicle not insured

27. (1) An action for the recovery of 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 that is not an insured motor vehicle in the use or operation of the vehicle on a public street in New South Wales may be brought against the Nominal Defendant, and shall not be brought against the owner or driver of the vehicle.

(2) Any such action may be brought despite the fact that the owner or driver of the motor vehicle is dead or cannot be found or is the spouse of the person whose death or to whom injury has been caused.

(3) In respect of any such action, the Nominal Defendant shall be liable as if it were the owner or driver of the motor vehicle.

(4) There is no right of action against the Nominal Defendant under this section—

- (a) if the motor vehicle is owned by the Commonwealth or by any person or body of persons representing the Commonwealth; or
- (b) if the regulations provide that in the circumstances specified in the regulations there is no right of action against the Nominal Defendant.

Claim against Nominal Defendant where vehicle not identified

28. (1) An action for the recovery of 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 vehicle on a public street in New South Wales may, if the identity of the vehicle cannot after due inquiry and search be established, be brought against the Nominal Defendant.

(2) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

(3) In respect of any such action, the Nominal Defendant shall be liable as if it were the owner or driver of the motor vehicle.

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Payment of claims against Nominal Defendant

29. The Nominal Defendant shall not be personally liable to pay any amount payable in satisfaction of any claim made or judgment obtained under section 27 or 28 or the amount of any costs or expenses incurred by it in relation to any such claim or judgment, but every such amount shall be paid by the Nominal Defendant out of the Nominal Defendant's Fund established under this Division.

Licensed insurer may act as agent for Nominal Defendant

30. (1) The Nominal Defendant may appoint a licensed insurer as its agent for the purposes of any claim made under section 27 or 28.

(2) An agent, when acting in connection with any claim made under section 27 or 28 (including proceedings on any such claim), may act for and in the name of the Nominal Defendant.

Recovery from owner or driver

31. (1) Any amount properly paid by the Nominal Defendant in satisfaction of a claim made or judgment obtained under section 27 or 28 and the amount of any costs and expenses properly incurred by it in relation to any such claim or judgment may be recovered by the Nominal Defendant as a debt—

- (a) from the person who, at the time of the occurrence out of which the claim arose or in respect of which the judgment was obtained, was the owner of the motor vehicle; or
- (b) where at the time of such occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally.

(2) However—

- (a) it shall be a sufficient defence in any proceedings under this section against the owner (whether severally or jointly with the driver) if the owner establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without the owner's authority; and
- (b) it shall be a sufficient defence in any proceedings under this section against the driver of an uninsured motor vehicle (whether severally or jointly with the owner) if the driver establishes to the satisfaction of the court that, at the time of the occurrence, the driver was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing and did in fact believe that the driver had such authority, and that the driver had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

Establishment of Nominal Defendant's Fund

32. (1) There is established a fund, to be known as the Nominal Defendant's Fund, belonging to and vested in the Authority.

(2) There shall be paid into the Fund—

- (a) money contributed by licensed insurers under section 33; and
- (b) the interest from time to time accruing from the investment of the Fund; and
- (c) money recovered by the Nominal Defendant under this Part; and
- (d) money required to be paid into the Fund by or under this or any other Act.

(3) There shall be paid from the Fund all money—

- (a) required to be paid from the Fund under section 29; and
- (b) required to be paid from the Fund by or under this or any other Act.

(4) Any money in the Fund which is not immediately required for the purposes of the Fund may be invested by the Authority—

- (a) in any manner in which trustees are for the time being authorised to invest trust funds; or
- (b) in any other manner approved by the Treasurer.

Contributions to Nominal Defendant's Fund

33. (1) In this section—

“financial year” means—

- (a) a year commencing 1 July; or
- (b) in the case of the first period after the commencement of this section—the period from that commencement to the next 30 June (or, if that period is less than 6 months, the period from that commencement to the second 30 June after that commencement).

(2) The Authority may, in respect of each financial year, determine the amount to be contributed by licensed insurers to the Nominal Defendant's Fund in respect of that year, being an amount which the Authority considers is necessary—

- (a) to satisfy claims, judgments and expenses which may be payable from the Fund during that financial year; and
- (b) to provide for the payment of any other amount to be paid from the Fund during that financial year.

(3) When the Authority determines an amount under subsection (2) in respect of a financial year, each licensed insurer shall pay to the Authority for payment into the Nominal Defendant's Fund an appropriate contribution calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

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where—

“A” is the amount which the insurer is required by or under this Act to contribute to the Motor Accidents Authority Fund in respect of that financial year;

“B” is the total amount required by or under this Act to be contributed by all licensed insurers to the Motor Accidents Authority Fund in respect of that financial year; and

“C” is the amount determined pursuant to subsection (2) in respect of that financial year.

(4) A contribution is payable at such times and in respect of such periods as may be determined by the Authority.

(5) If a contribution is not paid within the time specified by the Authority in a notice to a licensed insurer requiring the insurer to pay the contribution—

(a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units; and

(b) the contribution may be recovered by the Authority as a debt in any court of competent jurisdiction or deducted by the Authority from insurance premiums payable to the insurer under this Act.

(6) A certificate purporting to be signed by the General Manager of the Authority as to the amount of a contribution payable under this section by a licensed insurer and the due date for payment is admissible in any proceedings under this section and is evidence of the matters specified in the certificate.

Service of documents on Nominal Defendant

34. (1) A document may be served on the Nominal Defendant by leaving it at, or by sending it by post addressed to, the Nominal Defendant at an address prescribed for the purposes of this section.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Nominal Defendant in a manner not provided for by subsection (1).

PART 4—REHABILITATION**Definitions**

35. In this Part—

“claim” and “claimant” have the same meanings as in Part 5;

“rehabilitation”, in relation to an injured person, means the process of restoring or attempting to restore the person, through the combined and co-ordinated use of medical, social, educational and vocational measures, to the maximum level of function of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living.

Functions of the Authority concerning rehabilitation

36. (1) The Authority, in relation to the provision of rehabilitation services for persons injured in motor accidents, has the following functions:

- (a) to monitor those services, and in particular, to identify and develop programs to deal with any deficiency in the provision of services and to enable the decentralisation of services;
- (b) to employ or provide funds for the employment of rehabilitation counsellors;
- (c) to provide rehabilitation services on behalf of licensed insurers under arrangements made with those insurers;
- (d) to provide funds for research and education in connection with the provision of those services.

(2) Expenditure incurred by the Authority under this section shall be paid from the Motor Accidents Authority Fund.

Provision of rehabilitation services

37. (1) A licensed insurer shall (to the extent of the insurer's liability under a third-party policy) do all such things as may be reasonably 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.

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

Rehabilitation services to be provided promptly

38. (1) In the provision of rehabilitation services, a licensed insurer shall, as far as practicable, ensure that those services are provided to an injured person as soon as possible after the date of the motor accident.

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

Mitigation of damages

39. (1) In assessing damages in respect of a claim, consideration shall be given to the reasonable steps which could have been or could be taken by the injured person to mitigate those damages by undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation plan) or undergoing medical treatment.

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(2) In any proceedings to enforce a claim, the onus of proving that all reasonable steps to mitigate damages have been taken by the injured person lies with the claimant.

(3) In any such proceedings, a written report by a person who provided medical or rehabilitation services to the injured person is admissible as evidence of any such steps taken by that person.

**PART 5—CLAIMS AND COURT PROCEEDINGS TO ENFORCE
CLAIMS**

Division 1—Preliminary

Definitions

40. In this Part—

“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 vehicle in the use or operation of the vehicle;

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

“insurer”, in relation to a person, means the insurer who insures the person against the person’s liability for damages in respect of a claim, whether or not under a third-party policy;

“third-party insurer” means an insurer under a third-party policy.

Application of Part

41. This Part applies to and in respect of a claim whether or not there is a third-party policy in respect of the claim.

Division 2—Claims and other matters preliminary to court proceedings

Accident must be reported within 28 days

42. (1) It is the duty of a person who is entitled to make a claim to ensure that a report of the motor accident concerned is made to a member of the Police Force (whether under section 8 of the Motor Traffic Act 1909 or otherwise) as soon as is reasonably practicable after the accident.

(2) Unless such a report is made (by any person) within 28 days after the date of the motor accident concerned, the claimant is not entitled to commence court proceedings in respect of the claim.

(3) If, because of injuries received in a motor accident, a person is unable to make a report of the accident within the 28-day period, the report may be made within 28 days after the date on which the person might reasonably be expected to have been able to make the report.

(4) If the court before which proceedings on the claim are to be taken is satisfied that sufficient cause existed to justify the delay in making the report, the court may allow the proceedings to be commenced if a report of the accident was made within such period as the court considers reasonable, having regard to the duty under subsection (1).

Notice of claim must be given before court proceedings can be commenced

43. (1) A claimant is not entitled to commence court proceedings against another person ("the other party") in respect of a claim until—

- (a) the person gives notice of the claim to the other party and (if the other party's insurer is a third-party insurer) to the other party's insurer; and
- (b) 6 months have elapsed since notice of the claim was given to the other party and (if required by paragraph (a)) to the other party's insurer.

(2) If notice is given to the other party's insurer (being a third-party insurer) then despite subsection (1) the claimant is entitled to commence court proceedings after any 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;
- (c) the insurer has not admitted liability (wholly or in part) within 3 months after notice is given to the insurer.

(3) The requirement under subsection (1) to give notice to the other party does not apply if—

- (a) the other party is dead; or
- (b) the other party cannot be given notice.

Form of notice of claim

44. The notice required to be given of a claim must—

- (a) be in the form approved by the Authority; and
- (b) set out such particulars and information as may be required by that form; and
- (c) be verified by statutory declaration.

Duty of insurer to try to resolve claim etc.

45. (1) It is the duty of an insurer to endeavour to resolve a claim, by settlement or otherwise, as expeditiously as possible.

(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, pharmaceutical and rehabilitation expenses; and

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(b) loss of earnings,
as incurred.

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

Insured not to admit liability etc.

46. (1) A person shall not, without the consent in writing of the person's insurer—

- (a) enter upon, or incur any expense in, any litigation; or
- (b) make any offer or promise of payment or settlement; or
- (c) make any payment or settlement; or
- (d) make any admission of liability,

in respect of a claim, but this section shall not prevent any person from truthfully answering any question reasonably asked of the person by a member of the Police Force.

(2) An offer, promise or admission made in contravention of this section is of no effect.

(3) This section applies only if the person has an insurer in respect of the claim.

Power of insurer to act for insured

47. (1) When a claim is made against a person, the person's insurer may—

- (a) conduct and control negotiations in respect of the claim; and
- (b) conduct, or take over the conduct of, any legal proceedings in respect of the claim and may conduct those proceedings in the name and on behalf of the person; and
- (c) at any stage of those negotiations or proceedings, compromise or settle the claim; and
- (d) exercise any function conferred by this Part on the person in respect of the claim.

(2) The person against whom the claim is made shall sign all such warrants, authorities and other documents as may be necessary to give effect to this section.

(3) If the person fails to do so or is absent or cannot be found, the insurer may sign the warrants, authorities or other documents on behalf of the person.

(4) Nothing said or done by an insurer under this section in connection with the settlement of a claim or the conduct of proceedings in respect of a claim shall be regarded as an admission of liability in respect of or in any way prejudice any other claim, action or proceeding arising out of the same occurrence.

Division 3—Duties of co-operation**Duty of claimant to co-operate with other party**

48. (1) A claimant must co-operate fully in respect of the claim with the person against whom the claim is made.

(2) In particular, the claimant must comply with any reasonable request by the other party—

- (a) to furnish specified information (in addition to the information furnished in the claim form) or to produce specified documents or records; or
- (b) to provide a photograph of and evidence as to the identity of the claimant.

(3) The duty under this section applies only until court proceedings are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, court proceedings cannot be commenced in respect of the claim while the failure continues.

Medical etc. examination of claimant

49. (1) A claimant must comply with any request by the person against whom the claim is made—

- (a) to undergo a medical examination by one or more medical practitioners nominated by that person (not being an examination that is unreasonable, unnecessarily repetitious or dangerous); or
- (b) to undergo an assessment to determine functional and vocational capacity by an assessor nominated by that person and approved by the Authority.

(2) If the claimant fails without reasonable excuse to comply with such a request, court proceedings cannot be commenced or continued in respect of the claim while the failure continues.

(3) An examination or assessment under this section is at the cost of the person who requests it.

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 in respect of the claim with the vehicle owner's insurer.

(2) In particular, the person shall furnish such information as the insurer may reasonably request in connection with the claim.

Maximum penalty: 20 penalty units.

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Division 4—Court proceedings on claims**Forum for court proceedings**

51. Proceedings in respect of a claim may be taken in any court of competent jurisdiction.

Time within which proceedings must be commenced

52. (1) For the purposes of this section, the relevant date for a claim is whichever of the following dates is the latest date applicable to the claim:

- (a) the date of the motor accident to which the claim relates;
- (b) if the onset of symptoms relating to the injury suffered by the claimant as a result of the accident is first observed by a medical practitioner within 3 years after the date of the accident, the date of the first such observation of the symptoms;
- (c) if the claim is made in respect of the death of a person, the date of death;
- (d) if the claimant was a minor at the date of the accident, the date on which the claimant reaches the age of 18 years.

(2) If a claimant commences proceedings in respect of a claim more than 12 months after the relevant date for the claim, the claimant must provide a full and satisfactory explanation to the court for the delay.

(3) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after the relevant date for the claim except with the leave of the court in which the proceedings are to be taken.

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

Presumption of agency

53. (1) For the purposes of—

- (a) any proceedings against the owner of a motor vehicle, whether severally or jointly with the driver of the vehicle, for the recovery of damages for liability in respect of the death of or injury to a person caused by the fault of the driver of the vehicle in the use or operation of the vehicle; and
- (b) the third-party policy, if the vehicle concerned is an insured motor vehicle,

any person (other than the owner) who was, at the time of the occurrence out of which the proceedings arose, the driver of the vehicle (whether with or without the authority of the owner) shall be taken to be the agent of the owner acting within the scope of the agent's authority in relation to the vehicle.

(2) Nothing in this section shall be taken to imply any ratification by the owner of the motor vehicle of the acts of the person driving the motor vehicle.

(3) The presumption of agency under this section is applicable not only with respect to proceedings taken against the owner of the motor vehicle, whether severally or jointly with the driver, but also—

- (a) where the owner or driver is dead, with respect to proceedings against the owner or driver's estate pursuant to Part 2 of the Law Reform (Miscellaneous Provisions) Act 1944; and
- (b) where the owner or driver is dead or cannot be served with process, with respect to—
 - (i) proceedings against the person's insurer under section 54 or the Nominal Defendant; and
 - (ii) proceedings in which the owner or driver, the owner or driver's estate, the insurer or the Nominal Defendant, as the case may be, is involved as alternative defendant or as a person on whom notice in writing has been served pursuant to Part 2 of the Law Reform (Miscellaneous Provisions) Act 1946, or as a party to proceedings for recovery of contribution by or against a joint tort-feasor pursuant to Part 3 of that Act.

Proceedings against insurer if insured dead or unable to be served

54. (1) If a person against whom a claim can be made is dead or cannot be served with process, the claimant may—

- (a) take proceedings in respect of the claim against the person's insurer; and
- (b) recover in those proceedings an amount for which the claimant could have obtained a judgment against the insured person.

(2) The fact that a person cannot be served with process shall not be regarded as having been proved unless it is established that all reasonable inquiries have been made in an effort to effect service.

Proof of inability to serve process etc.

55. The fact that a person cannot be served with process or given notice of a claim may be proved orally or by the affidavit of the person who endeavoured to effect service.

Costs penalty where settlement offer rejected

56. (1) In awarding costs in respect of proceedings on a claim, the court shall (unless satisfied that it would be unjust to do so in the particular case) have regard to the following principles:

- (a) the plaintiff is not entitled to costs for the period after an offer of settlement by the defendant if the amount of damages awarded is not larger than the amount offered in settlement;

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- (b) the plaintiff is entitled to costs on an as incurred basis for the period after an offer of settlement by the plaintiff if the amount awarded as damages is not less than the amount for which the plaintiff offered to settle.

(2) An offer of settlement is not to be regarded as an offer of settlement for the purposes of this section unless it is made in writing.

(3) Rules of court may be made for or with respect to the awarding of costs in accordance with the principles set out in this section.

Division 5—Hearsay evidence in court proceedings

Definition of “statement”

57. In this Division—

“statement” includes any representation of fact whether or not in writing.

Admission of evidence of statements (hearsay evidence)

58. (1) In any proceedings in respect of a claim, evidence of a statement made by a person shall be admissible as evidence of any fact stated in it of which direct oral evidence by the person would be admissible.

(2) If the statement was made by a person who has not given oral evidence in the proceedings, evidence of the statement is admissible only if—

- (a) the person who made the statement is not available to give direct oral evidence of the fact stated in it; or
- (b) the giving of that direct oral evidence by the person would entail undue expense or undue delay or would not be reasonably practicable,

and the party seeking its admission has given notice as required by rules of court to all other parties to the proceedings.

(3) The court may dispense with the requirement for notice to the other parties under subsection (2).

Direct evidence of the statement generally required

59. (1) If the statement was made by the person otherwise than in a document, only direct testimony by a person who heard or otherwise perceived the statement being made shall be admissible for the purpose of proving it unless—

- (a) the court otherwise orders; or
- (b) the statement was made while giving oral evidence in legal proceedings (being civil or criminal proceedings or an inquiry in which evidence is or may be given, or an arbitration) and is proved in the manner authorised by the court.

(2) In subsection (1), “direct testimony” includes oral evidence, evidence by affidavit and evidence taken before a commissioner or other person authorised to receive evidence for the purpose of the proceedings.

Statement in document proved by production of document

60. (1) If the statement is contained in a document, the statement may be proved—

- (a) by the production of the document; or
- (b) by the production, by leave of the court, of a copy of the document or of the material part of the document, authenticated in such manner as the court may approve, whether or not the document is still in existence.

(2) If a person proposes to tender or tenders evidence of a statement contained in a document, the court may require that any other document relating to the statement be produced and, if it is not, may reject the evidence or exclude it if it has been received.

Determination of admissibility

61. For the purpose of determining questions of admissibility of a statement under this Division, the court may draw any reasonable inference from the circumstances in which the statement was made or from any other circumstances including, in the case of a statement contained in a document, the form or content of the document.

Estimate of weight to be attached to hearsay evidence

62. In estimating the weight (if any) to be attached to evidence of a statement tendered for admission or admitted under this Division, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, including—

- (a) how recently any relevant matter dealt with in the statement had occurred at the time the statement was made; and
- (b) the presence or absence of any incentive for the person who made the statement to conceal or misrepresent any relevant matter in the statement.

Evidence as to credibility etc. of statement

63. (1) If evidence of a statement of a person is admitted under this Division—

- (a) evidence is admissible for the purpose of challenging or supporting the credibility of the person; and
- (b) evidence is admissible for the purpose of showing that the statement is inconsistent with another statement made at any time by the person.

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(2) No evidence of a matter is admissible under subsection (1) in relation to a statement of a person where, if the person had been called as a witness and had denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.

Division overrides hearsay rules etc.

64. (1) This Division applies—

- (a) despite the rules against hearsay; and
- (b) despite the rules against secondary evidence of the contents of a document; and
- (c) despite the fact that a statement is in such a form that it would not be admissible if given as oral testimony,

but this Division does not make admissible a statement that is otherwise inadmissible.

(2) This Division does not apply to a statement to which Part 2c of the Evidence Act 1898 applies.

Division 6—Miscellaneous**False claims**

65. A person who makes a statement knowing that it is false or misleading in a material particular—

- (a) in a report under section 42 (report of motor accident); or
- (b) in a notice of a claim given to a person or an insurer for the purposes of section 43; or
- (c) when furnishing information concerning the claim to the person against whom the claim is made or to that person's insurer,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Remedy available where claim fraudulent

66. (1) This section applies to a claimant if it is established that for the purpose of obtaining a financial benefit the claimant—

- (a) made a statement concerning the claim to the person against whom the claim is made or to that person's insurer knowing the statement to be false or misleading; or
- (b) gave evidence in court proceedings in respect of the claim concerned knowing the evidence to be false or misleading.

(2) If this section applies to a claimant—

- (a) a person who has a liability in respect of a payment, settlement, compromise or judgment relating to the claim is relieved from that liability to the extent of the financial benefit so obtained by the claimant; and
- (b) a person who has paid an amount to the claimant in connection with the claim (whether under a settlement, compromise or judgment, or otherwise) is entitled to recover from the claimant the amount of the financial benefit so obtained by the claimant and any costs incurred in connection with the claims.

Register of personal injury claims

67. (1) Within 30 days after receiving notice of a claim, an insurer shall forward to the Authority such details of the claim as the Authority requires.

(2) The Authority and the State Compensation Board are authorised to exchange information concerning claims under this Act and claims under the Workers Compensation Act 1987.

(3) The GIO is authorised to provide to the Authority any information concerning claims under the Motor Vehicles (Third Party Insurance) Act 1942 and the Transport Accidents Compensation Act 1987.

(4) The Authority shall maintain a register of personal injury claims comprising—

- (a) details of claims notified by insurers under this Act; and
- (b) details of claims made on the Nominal Defendant; and
- (c) details of claims under the Workers Compensation Act 1987, the Motor Vehicles (Third Party Insurance) Act 1942 or the Transport Accidents Compensation Act 1987 of which the Authority is informed under this section.

(5) The register shall be open to inspection by any licensed insurer and by such other persons or bodies as the Authority thinks appropriate.

PART 6—AWARDING OF DAMAGES

Definitions

68. In this Part—

“motor accident” includes a transport accident referred to in section 69 (2);

“motor vehicle” includes (except in section 69) a form of transportation or conveyance included, immediately before the date of commencement of Part 2, within section 4 of the Transport Accidents Compensation Act 1987;

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“non-economic loss” means—

- (a) pain and suffering; and
- (b) loss of amenities of life; and
- (c) loss of expectation of life; and
- (d) disfigurement.

Application

69. (1) This Part applies to and in respect of an award of damages which relates to 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 vehicle.

(2) This Part also applies to and in respect of an award of damages which relates to the death of or bodily injury to a person caused by or arising out of a transport accident (within the meaning, immediately before the date of commencement of Part 2, of the Transport Accidents Compensation Act 1987), not being an award of damages to which subsection (1) applies.

General regulation of court awards

70. A court shall not award damages to a person in respect of a motor accident contrary to this Part.

Discount rate applicable to certain awards of damages

71. (1) Where an award of damages is to include compensation, assessed as a lump sum, in respect of damage for future economic loss which is referable to—

- (a) deprivation or impairment of earning capacity; or
- (b) loss of expectation of financial support; or
- (c) a liability to incur expenditure in the future,

the present value of the future economic loss shall be qualified by adopting—

- (d) a discount rate of the percentage prescribed by the regulations; or
- (e) if no percentage is prescribed as referred to in paragraph (d), a discount rate of 5 per cent.

(2) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

Maximum amount of damages for provision of certain home care services

72. (1) An award of damages shall not include compensation for the value of services of a domestic nature or services relating to nursing and attendance which have been or are to be provided to the person in whose favour the award is made by a member of the same household or family as the person, except in accordance with this section.

(2) No compensation shall be awarded unless the services are provided, or are to be provided, for not less than 6 months and may be awarded only for services provided or to be provided after the 6-month period.

(3) No compensation shall be awarded if the services would have been provided to the person even if the person had not been injured by the motor accident.

(4) No compensation shall be awarded unless the services provided or to be provided are not less than 6 hours per week and may be awarded only for services provided or to be provided after the first 6 hours.

(5) If the services provided or to be provided are not less than 40 hours per week, the amount of the compensation shall not exceed—

(a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for—

(i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or

(ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or

(b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

(6) If the services provided or to be provided are less than 40 hours per week, the amount of the compensation shall not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (5) (a) or (b), as the case may be.

Payment of interest

73. (1) Except as provided by this section, a court shall not, in relation to an award of damages, order the payment of interest, and no interest shall be payable, on an amount of damages in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to the date of the award.

(2) A court may order the payment of interest—

(a) if the defendant has not taken such steps (if any) as may be reasonable and appropriate to assess the merits of the plaintiff's claim and liability of the defendant in respect of the claim; or

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- (b) if, where it would be appropriate to do so, the defendant has not made an offer of settlement; or
- (c) if the defendant has made an offer of settlement but 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.

(3) An offer of settlement is not to be regarded as an offer of settlement for the purposes of this section unless it is made in writing.

(4) Rules of court may be made for or with respect to ordering the payment of interest in accordance with the principles set out in this section.

(5) Except as provided by this section, nothing in this section affects any other law relating to the payment of interest on an amount of damages.

Contributory negligence—generally

74. (1) The common law and enacted law as to contributory negligence apply to claims in respect of motor accidents, except as provided by this section.

(2) A finding of contributory negligence shall be made in the following cases:

- (a) where the injured person or deceased person has been convicted of an offence in relation to the motor accident under—
 - (i) section 4E of the Motor Traffic Act 1909; or
 - (ii) section 5 (2) of the Motor Traffic Act 1909; or
 - (iii) section 9A of the General Traffic Act 1900,unless the plaintiff satisfies the court that the concentration of alcohol in the person's blood or the alcohol or other drug, as the case requires, involved in the commission of the offence did not contribute in any way to the accident;
- (b) where—
 - (i) the injured person (not being a minor) or the deceased person was, at the time of the motor accident, a voluntary passenger in or on a motor vehicle; and
 - (ii) the driver's ability to drive the motor vehicle was impaired as a consequence of the consumption of alcohol or any other drug and the injured person or the deceased person was aware, or ought to have been aware, of the impairment;
- (c) where the injured person (not being a minor) or the deceased person was, contrary to the requirements of the Motor Traffic Regulations 1935, not wearing a seat belt as required by those Regulations at the time of the motor accident;

- (d) where the injured person or the deceased person was, at the time of the motor accident, contrary to the requirements of the Motor Traffic Regulations 1935, not wearing a protective helmet.

(3) The damages recoverable in respect of the motor accident shall be reduced by such percentage as the court thinks just and equitable in the circumstances of the case.

(4) The court must state its reasons for determining the particular percentage.

(5) If, in relation to the motor accident, the injured person or deceased person is convicted of an offence under the Motor Traffic Act 1909 or the General Traffic Act 1900 of—

(a) refusing or failing to submit to breath analysis, to undergo a breath test, to submit to an assessment of sobriety or to provide samples of the person's blood and urine; or

(b) wilfully altering the concentration of alcohol in the person's blood;
or

(c) preventing a sample of the person's blood from being taken,

the person shall, for the purposes of this section, be taken to have been convicted of an offence under section 4E (1G) of the Motor Traffic Act 1909.

(6) A person shall not be regarded as a voluntary passenger in or on a motor vehicle for the purposes of subsection (2) (b) if, in the circumstances of the case, the person could not reasonably be expected to have declined to become a passenger in or on the vehicle.

(7) For the purposes of this Act, a deceased person shall be taken to have been convicted of an offence if any circumstances exist in respect of the deceased person which, but for the deceased person's death, would have resulted in the conviction of the deceased person for the offence or the proving of the offence against the deceased person.

(8) This section does not exclude any other ground on which a finding of contributory negligence may be made.

Contributory negligence—claims under the Compensation to Relatives Act 1897

75. Section 10 (4) of the Law Reform (Miscellaneous Provisions) Act 1965 does not apply to or in respect of an action for damages where the death of the deceased person was caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle.

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Defence of voluntary assumption of risk

76. The defence of volenti non fit injuria is not available in proceedings for damages arising from a motor accident but, where that defence would otherwise have been available, the amount of any damages shall be reduced to such extent as is just and equitable on the presumption that the injured person or deceased person was negligent in failing to take sufficient care for his or her own safety.

Damages for psychological or psychiatric injury

77. No damages for psychological or psychiatric injury shall be awarded in respect of a motor accident except in favour of—

- (a) a person who suffered injury in the accident and who—
 - (i) was the driver of or a passenger in or on a vehicle involved in the accident; or
 - (ii) was, when the accident occurred, present at the scene of the accident; or
- (b) a parent, spouse, brother, sister or child of the injured person or deceased person who, as a consequence of the injury to the injured person or the death of the deceased person, has suffered a demonstrable psychological or psychiatric injury and not merely a normal emotional or cultural grief reaction.

Determination of economic loss

78. A court shall reduce the amount of economic loss of an injured person or deceased person as a consequence of a motor accident by the amount of any entitlement to or payment of—

- (a) a retirement benefit or superannuation or similar benefit, but only to the extent to which the benefit is increased or accelerated because of the accident; and
- (b) compensation for expenses under the Victims Compensation Act 1987 for the injury suffered in the accident; and
- (c) an amount, payment or benefit of a class or description of amounts, payments or benefits prescribed for the purposes of this section.

Determination of non-economic loss

79. (1) No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal life is significantly impaired by the injury suffered in the accident.

(2) The amount of damages to be awarded for non-economic loss shall be a proportion, determined according to the severity of the non-economic loss, of the maximum amount which may be awarded.

(3) The maximum amount which may be awarded for non-economic loss is \$180,000 (or the maximum amount declared for the time being under section 80), but the maximum amount shall be awarded only in a most extreme case.

(4) If the amount of non-economic loss is assessed to be \$15,000 or less, no damages for non-economic loss shall be awarded.

(5) If the amount of damages to be awarded for non-economic loss in accordance with subsections (1)–(3) is more than \$15,000 but less than \$55,000, the following deductions shall be made from that amount:

- (a) if the amount of damages is less than \$40,000—the amount to be deducted is \$15,000;
- (b) if the amount of damages is not less than \$40,000—the amount to be deducted is \$15,000, or \$15,000 reduced by \$1,000 for every \$1,000 by which the amount of damages exceeds \$40,000.

Indexation of maximum amount for non-economic loss

80. (1) The Minister shall, on or before 1 April and 1 October in each year, declare, by order published in the Gazette, the maximum amount which is to apply, as from the date specified in the order, under section 79.

(2) The amount declared shall be the amount under section 79 (or that amount 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 2 quarters preceding the date of the declaration for which those estimates are, at that date, available.

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

Provision for future economic loss

81. (1) In making an award of damages in respect of a plaintiff who has suffered severe permanent disability or severe long-term disability, a court may—

- (a) determine the amount of damages for non-economic loss and the amount of damages for past economic loss; and
- (b) order that damages for future economic loss (other than damages for impairment of earning capacity), including—
 - (i) hospital, medical, pharmaceutical and rehabilitation expenses; and
 - (ii) the cost of household services and attendant care,shall be paid in accordance with such arrangements as the court determines or approves; and

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- (c) order that damages for impairment of earning capacity shall be paid in accordance with such arrangements as the court determines or approves.
- (2) The court shall not make an order under subsection (1) (c) unless it is requested to do so by the plaintiff or unless the court considers there is good cause for making such an order.
- (3) The arrangements may include provision that payment of damages for impairment of earning capacity shall be made at intervals of not more than 12 months.
- (4) A party to any such arrangements may apply to the court at any time for a variation or for the termination of the arrangements.
- (5) A court may, on an application under subsection (4), make such order as it thinks fit.

Court to apportion damages etc.

82. Where a judgment is obtained for payment of damages in respect of the death of or injury to any person caused by the fault of the owner or driver of an insured motor vehicle in the use or operation of the vehicle as well as for damages in respect of any other matter, the court shall, as part of the judgment, declare what portion of the sum awarded by the judgment is in respect of the death or injury and shall apportion any costs awarded.

PART 7—MOTOR ACCIDENTS AUTHORITY**Division 1—Constitution of Authority and Board of Directors****Constitution of Authority**

83. (1) There is constituted by this Act a corporation with the corporate name of the Motor Accidents Authority of New South Wales.

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

Constitution of Board of Directors

84. (1) There shall be a Board of Directors of the Authority.

(2) The Board shall consist of—

- (a) the General Manager of the Authority; and
- (b) 5 part-time directors, being persons appointed by the Governor on the recommendation of the Minister.

(3) The persons recommended by the Minister must have such managerial, legal, commercial, actuarial, rehabilitation or other qualifications or experience as the Minister considers necessary to enable the Board to exercise its functions.

(4) Schedule 2 has effect with respect to the constitution and procedure of the Board.

Board to determine policies of Authority

85. (1) The Board of Directors of the Authority has the function of determining the policies of the Authority.

(2) In exercising that function, the Board shall ensure that, as far as practicable, the activities of the Authority are carried out properly and efficiently.

(3) Without limiting the generality of this section, the Board must consider any application for a licence under Part 8 and the determination of the application by the Authority shall be a matter of policy to be determined by the Board in accordance with any direction of the Minister.

(4) The Board has such other functions as are conferred or imposed on it by or under this or any other Act.

General Manager and Deputy General Manager

86. (1) The Governor may appoint a General Manager and a Deputy General Manager of the Authority.

(2) Schedule 3 has effect with respect to the General Manager and Deputy General Manager.

Functions of General Manager and Deputy General Manager

87. (1) The affairs of the Authority shall be managed and controlled by the General Manager of the Authority in accordance with the policies determined by the Board of Directors of the Authority.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the General Manager of the Authority shall be taken to have been done by the Authority.

(3) The Deputy General Manager of the Authority has, subject to any relevant directions given by the Board of Directors of the Authority, such responsibilities in connection with the affairs of the Authority as the General Manager from time to time determines.

(4) The General Manager and Deputy General Manager of the Authority have such other functions as are conferred or imposed on them by or under this or any other Act.

Ministerial control

88. The Board of Directors of the Authority and the General Manager of the Authority are, in the exercise of their respective functions, subject to the control and direction of the Minister.

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Staff of Authority

89. (1) Such staff as may be necessary to enable the Authority to exercise its functions shall be employed under the Public Sector Management Act 1988.

(2) The Authority may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(3) The Authority may—

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Employment Industrial Relations Authority,

employ such casual staff as it requires to exercise its functions.

(4) The Public Sector Management Act 1988 does not apply to the employment of casual staff under subsection (3) and a person is not, as a member of that casual staff, subject to that Act.

(5) The Authority may engage persons having suitable qualifications and experience as consultants to the Authority.

(6) For the purposes of this Act, a person who is employed under subsection (1) or (3) or whose services are made use of under subsection (2) is an officer of the Authority.

Division 2—Functions of Authority**Functions of Authority**

90. (1) The Authority has the following functions:

- (a) the functions conferred under Part 3 in connection with third-party insurance and as the Nominal Defendant;
- (b) the functions conferred under Part 4 in relation to the provision of rehabilitation services for persons injured in motor accidents;
- (c) the functions conferred under Part 8 in connection with the licensing and control of insurers;
- (d) to monitor the operation of the motor accidents scheme under this Act, and in particular to conduct (or arrange for other persons to conduct) research into and to collect statistics or other information on the level of damages awarded by the courts, the handling of claims by insurers and other matters relating to that scheme;
- (e) to advise the Minister as to the administration, efficiency and effectiveness of that scheme;
- (f) to publicise and disseminate information concerning that scheme;
- (g) to provide funds for—
 - (i) measures for preventing or minimising injuries from motor accidents; and

- (ii) safety education;
 - (h) such other functions as are conferred or imposed on the Authority by or under this or any other Act.
- (2) The Authority may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions.

Special investigation and report on deregulation of insurance arrangements

91. The Authority shall, within 2 years after the commencement of this section, investigate and report to the Minister on the deregulation of the third-party insurance arrangements under this Act and, in particular, on the removal of statutory controls over the market share of insurers and the fixing and payment of insurance premiums.

Division 3—Motor Accidents Authority Fund

Definitions

92. In this Division—

“financial year” means—

- (a) a year commencing 1 July; or
- (b) in the case of the first period after the commencement of this section—the period from that commencement to the next 30 June (or, if that period is less than 6 months, the period from that commencement to the second 30 June after that commencement);

“Fund” means the Motor Accidents Authority Fund established under this Division;

“premium income”, in relation to the contribution payable for a financial year by a licensed insurer under this Division, means the total amount of the insurance premiums on third-party policies taken to have been issued by the insurer during that financial year.

Establishment of Motor Accidents Authority Fund

93. (1) There is established a fund, to be known as the Motor Accidents Authority Fund, belonging to and vested in the Authority.

(2) There shall be paid into the Fund—

- (a) money contributed by licensed insurers under this Division; and
- (b) the interest from time to time accruing from the investment of the Fund; and
- (c) money required to be paid into the Fund by or under this or any other Act; and
- (d) all other money received by the Authority and not appropriated for other purposes.

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- (3) There shall be paid from the Fund all money—
- (a) required for the remuneration, allowances, office accommodation and other associated costs of the General Manager and Deputy General Manager of the Authority, the part-time directors of the Board of Directors of the Authority and officers of the Authority; and
 - (b) required for the exercise by the Authority of its functions where money is not otherwise provided for that purpose; and
 - (c) required to be paid from the Fund by or under this or any other Act.
- (4) Any money in the Fund which is not immediately required for the purposes of the Fund may be invested by the Authority—
- (a) in any manner in which trustees are for the time being authorised to invest trust funds; or
 - (b) in any other manner approved by the Treasurer.

Assessment by Authority of amount to be contributed to Fund

94. The Authority shall, before each financial year—

- (a) make an estimate of the total of the amounts to be paid from the Fund during that financial year (including a separate estimate of its proposed expenditure under Part 4 in connection with the provision of rehabilitation services); and
- (b) determine what amounts, if any, are to be set aside as provisions to meet expenditure from the Fund in future years, and specify for what purpose each such amount is being set aside; and
- (c) make an estimate of the total amounts to be received into the Fund during that financial year otherwise than by way of contributions in respect of that financial year from licensed insurers under this Division; and
- (d) determine the total amount to be contributed to the Fund under this Division in respect of that financial year by licensed insurers after having regard to the amounts likely to be standing to the credit of the Fund at the beginning of the year, including any amounts set aside in earlier years as provisions to meet expenditure in later years, and the amounts estimated under paragraph (c) to be received into the Fund during the year; and
- (e) specify in writing the estimates, provisions and amounts to be contributed to the Fund by licensed insurers.

Contributions to Fund by licensed insurers

95. (1) Each licensed insurer shall pay the contributions prescribed by this section to the Authority for payment into the Fund.

(2) The contribution to be paid by a licensed insurer in respect of each financial year is an amount equal to the percentage (determined by the Authority in accordance with this section) of the premium income of the insurer in respect of that financial year.

(3) The percentage determined by the Authority pursuant to subsection (2)—

(a) shall be such as, in the opinion of the Authority, will be sufficient to yield the total amount to be contributed to the Fund by licensed insurers in respect of the relevant financial year as determined under this Division; and

(b) shall be the same percentage for all licensed insurers.

(4) A contribution by a licensed insurer is payable at such times and in respect of premium income received during such periods as may be determined by the Authority and notified to the insurer.

(5) If a contribution payable by a licensed insurer has not been paid within the time prescribed by or under this section—

(a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units; and

(b) the amount of that contribution together with interest calculated at the rate of 15 per cent per annum compounded quarterly (or, where another rate is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction or deducted by the Authority from insurance premiums payable to the insurer under this Act.

(6) Subject to subsection (3), more than one percentage may be determined by the Authority for different portions of a financial year for the purposes of subsection (2).

(7) A certificate purporting to be signed by the General Manager of the Authority as to the amount of a contribution payable under this section by a licensed insurer specified in the certificate and the due date for payment is admissible in proceedings under this section and is evidence of the matters specified in the certificate.

(8) The obligation of a licensed insurer to make a contribution under this section in respect of any period during which the person was a licensed insurer does not cease merely because the person subsequently ceases to be a licensed insurer.

Division 4—Miscellaneous provisions relating to Authority

Delegation

96. (1) The Authority may delegate any of its functions (other than this power of delegation) to any person.

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(2) A function so delegated may be sub-delegated by the delegate, but only if the sub-delegation is authorised in writing by the Authority.

Financial year

97. (1) The financial year of the Authority is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Service of documents on Authority

98. (1) A document may be served on the Authority by leaving it at, or by sending it by post addressed to, the Authority's office or, if it has more than one office, any of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in a manner not provided for by subsection (1).

(3) This section does not apply to the service of documents on the Authority as the Nominal Defendant.

Recovery of charges etc. by Authority

99. In any case where no express provision is made for the recovery of any charge, fee or money due to the Authority, or to the Crown in respect of any of the activities of the Authority under this or any other Act, the charge, fee or money may be recovered by the Authority as a debt in a court of competent jurisdiction.

PART 8—LICENSING AND CONTROL OF INSURERS**Division 1—Licensing of insurers****Offence—unlicensed insurers**

100. (1) A person (other than a licensed insurer) shall not issue or renew policies of insurance or indemnity in respect of a liability covered by a third-party policy.

Maximum penalty: 100 penalty units.

(2) This section does not apply to policies of insurance or indemnity relating to motor vehicles which are exempted from the operation of section 8 (Offence of using etc. uninsured motor vehicle on public street).

(3) A contravention of this section does not annul a policy of insurance or indemnity issued or renewed by an insurer or affect the liability of the insurer to the person insured under the policy.

Applications for licences

101. (1) An application for a licence under this Division may be made to the Authority—

- (a) by any corporation authorised under the Insurance Act 1973 of the Commonwealth to carry on insurance business; or
- (b) by the GIO or any other corporation authorised to carry on State insurance within or outside New South Wales.

(2) An application shall be in such form and accompanied by such documents—

- (a) as may be prescribed by the regulations; and
- (b) subject to any such regulations, as may be determined by the Authority.

(3) Without affecting the generality of subsection (2), an applicant for a licence may be required to furnish the following particulars and documents:

- (a) particulars of the shareholders, directors and other managers of the applicant;
- (b) previous returns and accounts under the Companies (New South Wales) Code and the Insurance Act 1973 of the Commonwealth;
- (c) particulars of re-insurance arrangements to which the applicant is a party;
- (d) a draft business plan under section 110.

(4) An applicant shall specify in the application the applicant's preferred market share of third-party policies taken to have been issued under this Act.

Determination of application for licence

102. (1) The Authority shall consider each application for a licence under this Division and may—

- (a) grant a licence to the applicant; or
- (b) refuse the application.

(2) The Authority may, in determining an application for a licence, take into consideration—

- (a) the suitability of the applicant; and
- (b) the paid-up share capital and reserves of the applicant; and
- (c) the memorandum and articles of association of the applicant; and
- (d) the re-insurance arrangements of the applicant; and
- (e) the appropriate maximum number of licensed insurers; and
- (f) the efficiency of the motor accidents scheme under this Act generally; and
- (g) such other matters as the Authority thinks fit.

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(3) Despite subsection (1), the Authority shall refuse an application for a licence from a corporation that does not comply with such requirements as are prescribed by the regulations for the purposes of this section.

(4) If the GIO applies for a licence under this Division, the GIO is entitled to be granted the licence if the Minister administering the Government Insurance Act 1927 approves of the application.

(5) A licence shall not be granted under this Division unless the applicant has paid (or has made arrangements acceptable to the Authority for the payment of) the fee determined by the Authority, with the approval of the Minister, for the grant of the licence and for the establishment costs of the Authority.

Determination of market share of each insurer

103. (1) In this section, “market share”, in relation to an insurer, means the proportion of all third-party policies taken to have been issued under this Act that are to be allocated to the insurer in accordance with section 11.

(2) The Minister shall determine the market share of each licensed insurer.

(3) The Minister shall re-determine the market share of each licensed insurer whenever a new licence is issued or an existing licence is cancelled or expires, and may do so at any other time.

(4) In making a determination or re-determination, the Minister shall have regard to—

- (a) the preferred market share of the licensed insurer specified in the application for a licence; and
- (b) any recommendation made by the Authority; and
- (c) the efficiency of the motor accidents scheme under this Act generally; and
- (d) such other matters as the Minister thinks fit.

(5) A determination or re-determination under this section shall be made by order published in the Gazette.

(6) An order takes effect on its publication in the Gazette or on such later date as may be specified in the order.

(7) The Minister shall cause a copy of any proposed order to be served on each licensed insurer and on the Commissioner for Motor Transport.

(8) A determination or re-determination made or purporting to be made under this section may not be challenged or called into question in any proceedings, including proceedings for an order in the nature of prohibition, certiorari or mandamus or any other order or for a declaration or injunction.

Duration of licences

104. (1) A licence granted under this Division continues in force until—

- (a) the expiration of the period (being not less than 5 years) specified in the licence during which it is to be in force; or
- (b) the licence is, pursuant to this Division, cancelled,

whichever first occurs.

(2) A licence is not in force while it is suspended pursuant to this Division.

Conditions of licences

105. (1) A licence granted under this Division is subject to—

- (a) such conditions as may be prescribed by this Act or the regulations; and
- (b) such conditions (not inconsistent with this Act or the regulations) as may be imposed by the Authority—
 - (i) on the granting of the licence; or
 - (ii) at any time during the currency of the licence.

(2) The Authority may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or vary any condition imposed on the licence by the Authority.

(3) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.

(4) A licensed insurer who contravenes any condition to which the licence is subject is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) The Authority may not impose a condition on the licence of the GIO without the concurrence of the Minister administering the Government Insurance Act 1927.

Matters that may be regulated by conditions of licences

106. Without limiting the generality of section 105, conditions may be imposed on a licence—

- (a) for the purpose of ensuring compliance with the obligations of the licensed insurer; or
- (b) for the purpose of ensuring that insurance premiums for third-party policies are available to meet claims; or
- (c) for the purpose of the efficiency of the motor accidents scheme under this Act generally; or
- (d) for any other purpose of the same or of a different kind or nature that is not inconsistent with this Act.

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Cancellation or suspension of licences

107. (1) The Authority may, by notice served on the licensed insurer, cancel or suspend a licence granted under this Division.

(2) The Authority may cancel or suspend a licence for any reason it thinks fit, but must give the reasons for its decision.

(3) Without affecting the generality of subsection (2), the Authority may cancel or suspend a licence for reasons that relate to the motor accidents scheme under this Act generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.

(4) The Authority shall, as far as practicable, give a licensed insurer whose licence it proposes to cancel or suspend an opportunity to make representations on the matter.

(5) The Authority shall not cancel or suspend the licence of the GIO without the approval of the Minister administering the Government Insurance Act 1927.

(6) A licence surrendered by a licensed insurer is not cancelled until the Authority approves of the surrender, but any such approval shall not (unless the Minister otherwise determines) be given within 6 months after the licence is surrendered.

Assignment of policies following cancellation of licence etc.

108. (1) In this section—

“insurer” means a licensed insurer, and includes a person whose licence has been cancelled or has otherwise ceased to be in force.

(2) The Authority may assign the third-party policies of an insurer to another insurer if—

- (a) the licence of the insurer is cancelled or otherwise ceases to be in force; or
- (b) the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject or to ensure that third-party policies are allocated to insurers in accordance with their market share as determined under section 103.

(3) Policies may be assigned under this section by notice served by the Authority on the insurers concerned.

(4) On the service of any such notice—

- (a) the policies of insurance to which it relates are cancelled as from the date and time specified in the notice; and
- (b) the insurer to whom those policies are assigned shall be taken (as from the time and date of cancellation) to have issued third-party policies on the same terms as, and for the balance of the periods of, those policies.

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(5) On the cancellation of a third-party policy under subsection (4) (a), the insurer whose policy is cancelled shall pay to the insurer to whom the policy is assigned—

- (a) the same proportion of the premium paid or to be paid in respect of the policy as the balance of the indemnity period of the policy bears to the whole indemnity period of the policy; and
- (b) such additional amount as the Authority directs relating to the income from investment and the management fee with respect to the premium.

(6) Any amount payable under subsection (5) to an insurer may be recovered by the insurer as a debt in a court of competent jurisdiction.

(7) The effect of the cancellation of a third-party policy under this section is to terminate the indemnity period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

Records and evidence relating to licences

109. (1) The Authority shall keep records in relation to all licences granted by the Authority under this Division, including particulars of—

- (a) the granting, refusal, duration, conditions, cancellation and suspension of licences; and
- (b) such other matters relating to licences as the Authority thinks fit.

(2) A certificate purporting to be signed by the General Manager of the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

Division 2—Supervision of licensed insurers**Business plans of licensed insurers**

110. (1) A licensed insurer shall prepare and deliver to the Authority a business plan for its third-party insurance business as soon as practicable after it is granted a licence.

(2) The licensed insurer shall revise its business plan—

- (a) whenever it departs significantly from its business plan; and
- (b) at such regular intervals as the Authority directs.

(3) The licensed insurer shall, as far as practicable, conduct its third-party insurance business in accordance with its current business plan, but if it departs significantly from that plan the insurer shall notify the Authority accordingly.

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(4) A business plan shall be prepared in accordance with such guidelines as the Authority determines from time to time and notifies to licensed insurers.

(5) A business plan shall describe the manner in which its third-party insurance business is to be conducted (including claims handling, management, expenses and systems).

(6) It is a condition of a licence granted under Division 1 that the licensed insurer must comply with this section.

(7) In this section, a reference to the third-party insurance business of a licensed insurer is a reference to any business associated with third-party policies.

Re-insurance arrangements of licensed insurers

111. (1) It is a condition of a licence granted under Division 1 that the licensed insurer will not, without the approval of the Authority, enter into a contract or an arrangement for re-insurance in respect of liabilities under third-party policies issued by the licensed insurer.

(2) The Authority may give any such approval subject to conditions.

(3) A contract or an arrangement for re-insurance is not invalid merely because it has been entered into in contravention of subsection (1).

Investment of third-party funds of licensed insurer

112. (1) It is a condition of a licence granted under Division 1 that the investment of the third-party funds of the licensed insurer is subject to any direction under this section.

(2) The Authority may direct a licensed insurer to do either or both of the following:

- (a) to invest third-party funds only in specified securities or not to invest in specified securities;
- (b) to invest a specified percentage of third-party funds in specified securities.

(3) The third-party funds of a licensed insurer are the funds of the insurer derived from the payment of insurance premiums for third-party policies and from their investment.

Accounts, returns etc. of licensed insurer

113. (1) A licensed insurer shall keep such accounting and other records in relation to the business or financial position of the insurer—

- (a) as may be prescribed by the regulations; and
- (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.

(2) The regulations may prescribe the manner in which financial transactions are to be accounted for in any such records.

(3) A licensed insurer shall lodge with the Authority returns in relation to the business or financial position of the insurer in such form, containing such particulars and accompanied by such documents—

- (a) as may be prescribed by the regulations; and
- (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.

(4) Returns shall be lodged—

- (a) subject to paragraph (b), within 6 weeks after each 31 March, 30 June, 30 September and 31 December; or
- (b) at such other times as the Authority, by notice served on the insurer, directs.

(5) The regulations may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.

(6) A licensed insurer who contravenes, whether by act or omission, any requirement imposed on the insurer by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

(7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.

(8) In this section—

“accounting records” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

Audit of accounting records relating to insurers' funds

114. (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of a licensed insurer.

(2) A person so appointed by the Authority is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the licensed insurer.

(3) A licensed insurer shall provide all reasonable assistance to enable the exercise of those functions.

(4) A person shall not wilfully obstruct or delay a person exercising a function under this section.

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(5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.

(6) A licensed insurer or another person who contravenes, whether by act or omission, any requirement imposed on the insurer or other person by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

(7) In this section, "accounting records" has the same meaning as in section 113.

Information and documents as to business etc. to be supplied to Authority by insurers and former insurers

115. (1) In this section—

"documents" includes returns and accounts furnished under the Companies (New South Wales) Code and the Insurance Act 1973 of the Commonwealth;

"insurer" means a licensed insurer or a former licensed insurer.

(2) The Authority may require an insurer—

- (a) to disclose to the Authority specified information relating to the business and financial position of the insurer or of any corporation which is a related corporation (within the meaning of the Companies (New South Wales) Code); or
- (b) to forward to the Authority, or make available for inspection, specified documents, or copies of or extracts from specified documents, kept by the insurer or by any corporation which is such a related corporation.

(3) A requirement under this section—

- (a) shall be made in writing and served on the insurer; and
- (b) shall specify the manner in which and the time within which the requirement is to be complied with.

(4) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by an accountant registered under the Public Accountants Registration Act 1945, a registered tax agent, a registered company auditor or an actuary approved by the Authority as to the correctness of any specified information or specified documents (or copies of or extracts from specified documents).

(5) Unless the insurer satisfies the court that it is not within its power to comply with the requirement, an insurer who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

Power of Supreme Court to deal with insurers or former insurers unable to meet liabilities etc.

116. (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of the holders of third-party policies taken to have been issued by a licensed insurer or a former licensed insurer.

(2) The Supreme Court may make such an order if it is satisfied that the licensed insurer or former licensed insurer—

- (a) is not able to meet the insurer's liabilities under the third-party policies or may not be able to do so; or
- (b) has acted or may act in a manner that is prejudicial to the interest of the holders of the third-party policies.

(3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:

- (a) an order regulating the administration and payment of claims under the third-party policies;
- (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or former licensed insurer;
- (c) an order requiring the licensed insurer or former licensed insurer to discharge its liabilities under the third-party policies out of its assets and the assets of any related corporation (within the meaning of the Companies (New South Wales) Code);
- (d) an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or part of the property of the licensed insurer or former licensed insurer or of any such related corporation.

(4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court shall not require the Authority or any other person, as a condition of granting an interim order, to give any undertaking as to damages.

(6) If the Supreme Court has made an order under this section, the Supreme Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the firstmentioned order.

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(7) A person who contravenes, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(8) The Supreme Court shall not exercise its powers under this section in respect of a corporation which is in the course of being wound up.

(9) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.

(10) This section does not apply to the GIO or to third-party policies taken to have been issued by it.

Notification to Authority of certain defaults in relation to insurers

117. (1) In this section—

“insurer” means a licensed insurer or a former licensed insurer.

(2) An insurer shall notify the Authority in writing of any of the following events or things within 21 days after the event or thing happens (whether within or outside the State):

- (a) any default by the insurer or a related corporation (within the meaning of the Companies (New South Wales) Code) in the payment of principal or interest under any debenture issued by the insurer or corporation;
- (b) the appointment of a liquidator, receiver or receiver and manager of the property of the insurer or any such related corporation;
- (c) the fact that the insurer or any such related corporation has resolved by special resolution that it be wound up voluntarily or by a court;
- (d) the fact that a person claiming to be a creditor by assignment or otherwise of the insurer or any such related corporation for a sum exceeding \$1,000 then due has served on the insurer or corporation by leaving at its registered office a demand requiring the insurer or corporation to pay the sum so claimed to be due, and the insurer or corporation 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;
- (e) the return unsatisfied in whole or part of execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the insurer or any such related corporation;
- (f) the receipt by the insurer or any such related corporation or the giving, or causing to be given, by the insurer or corporation, of any Part A, B, C or D statement as defined for the purposes of the Companies (Acquisition of Shares) (New South Wales) Code;

- (g) the making of an order by any court for the winding-up of the insurer or any such related corporation;
- (h) the receipt by the insurer or any such related corporation of any notice of an application for an order by any court for the winding-up of the insurer or corporation.

Maximum penalty: 100 penalty units.

Powers of entry and inspection by authorised officers of Authority

118. (1) In this section—

“authorised officer” means an officer of the Authority, or other person, authorised by the Authority for the purposes of this section;

“insurer” means a licensed insurer or a former licensed insurer, and includes any insurance broker or commission agent engaged in third-party insurance business;

“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not).

(2) An authorised officer may—

- (a) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) used, or that the authorised officer reasonably suspects to be used, by an insurer for conduct of the insurer’s business or the storage or custody of any document; and
- (b) remain in or on those premises while exercising any power conferred by this section; and
- (c) require an insurer or any other person in or on those premises to produce any such document that is in his or her possession or under his or her control and is capable of being produced; and
- (d) require an insurer or any other person having possession or control of any such document that is not written, or is not written in the English language, or is not decipherable on sight, to produce a statement, written in the English language and decipherable on sight, of the information contained in the document; and
- (e) inspect, or make copies of or take extracts from, a document produced pursuant to paragraph (c) or a statement produced pursuant to paragraph (d), or retain such a statement; and
- (f) require an insurer or any other person in or on those premises to answer questions relating to—
 - (i) the business or financial position of an insurer; or
 - (ii) the observance of this Act or the regulations.

(3) A person shall not—

- (a) refuse or fail to allow an authorised officer to enter premises under this section; or

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- (b) wilfully obstruct or delay an authorised officer when exercising any powers under this section; or
- (c) unreasonably refuse or fail to produce a document or statement to an authorised officer under this section; or
- (d) if an authorised officer informs a person that by virtue of this Act the person is obliged to answer questions relating to any matter referred to in subsection (2) (f)—
 - (i) refuse or fail to answer such a question; or
 - (ii) give an answer to such a question that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

(4) A person may not refuse to answer a question under subsection (2) on the ground that it might tend to incriminate the person, but neither the question nor the answer is admissible in any civil or criminal proceedings against the person other than proceedings for an offence under this section.

Division 3—Insolvent insurers

Interpretation

119. (1) In this Division—

“insolvent insurer” means an insurer to which an order of the Minister in force under section 120 relates;

“insurer” means a licensed insurer or a former licensed insurer, but does not include an insolvent insurer;

“third-party policy issued by an insolvent insurer” means—

- (a) a third-party policy issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer; or
- (b) a third-party policy, issued by a person other than an insolvent insurer, in respect of which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement whereby the insolvent insurer is (or would but for its dissolution be) liable to indemnify the person against liability of the person under the policy.

(2) In this Division, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.

(3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer has outside New South Wales the functions conferred or imposed on the liquidator by this Division, in addition to having those functions within New South Wales.

Insolvent insurers

120. If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Division.

Liquidator to notify Nominal Defendant of claims

121. The liquidator of an insolvent insurer shall, on receiving any claim relating to any third-party policy issued by the insolvent insurer, forward the claim to the Nominal Defendant.

Maximum penalty: 20 penalty units.

Delivery of documents etc. to Nominal Defendant

122. The liquidator of an insolvent insurer shall, whenever requested to do so by the Nominal Defendant—

- (a) deliver to the Nominal Defendant all documents relating to third-party policies issued by the insolvent insurer and all claims or judgments made in respect of any such policies in the liquidator's possession; and
- (b) supply to the Nominal Defendant all information in the liquidator's possession relating to any such policies or any such claims or judgments.

Maximum penalty: 20 penalty units.

Appointment of Nominal Defendant as agent and attorney of insured

123. (1) The Nominal Defendant is by this section appointed as the agent and attorney of the person insured under a third-party policy issued by an insolvent insurer.

(2) As agent and attorney of such a person, the Nominal Defendant may exercise the rights and discharge the obligations of the person—

- (a) for the purpose of dealing with and finalising any claim against which the person is indemnified under the third-party policy; and
- (b) for the purpose of satisfying any such claim or any judgment against which the person is indemnified under the third-party policy; and
- (c) for any other purpose prescribed by the regulations.

(3) As agent and attorney of such a person, the Nominal Defendant may exercise the rights of the person in connection with the third-party policy—

- (a) for the purpose of proving in the winding-up of the insolvent insurer and receiving any dividends or other money payable to the person in the winding-up; and

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- (b) for the purpose of recovering any money which the person is entitled under the third-party policy to recover from the person who issued the policy, being a policy referred to in paragraph (b) of the definition of “third-party policy issued by an insolvent insurer” in section 119; and
 - (c) for any other purpose prescribed by the regulations.
- (4) The Nominal Defendant may exercise rights and discharge obligations as agent in the name of the person concerned, or in its own name.
- (5) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations—
- (a) arising from or relating to a third-party policy issued by an insolvent insurer to a person; and
 - (b) which may or shall be exercised or discharged for the purpose of—
 - (i) dealing with and finalising any claim; or
 - (ii) satisfying any claim or judgment, against which the person is indemnified under the policy,
- are vested in or imposed on the person.
- (6) Subsection (5) shall not be construed so as to vest in or impose on a person, or to affect in any other way—
- (a) a right of an insurer to be indemnified by a reinsurer or an obligation of an insurer to indemnify a person; or
 - (b) any other prescribed right or obligation.
- (7) If the Nominal Defendant is, under this section, empowered to exercise any rights, or to discharge any obligations, of a person as agent and attorney, the person is not entitled, without the consent of the Nominal Defendant, to exercise those rights or discharge those obligations.
- (8) The appointment effected by this section may be revoked only by an Act.
- (9) If the Nominal Defendant is the agent and attorney of a person insured under a third-party policy issued by an insolvent insurer, the Nominal Defendant shall also be the agent and attorney for the purposes of this Division of any person who is authorised by this Act to take proceedings for damages against the insolvent insurer under the third-party policy.

Payments to insured or liquidator

124. (1) Where a person insured under a third-party policy issued by an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division) any claim or judgment in respect of which the person has not been indemnified under that policy, the Nominal Defendant may pay from the Nominal Defendant’s Fund to the person an amount equal to the whole or any part of the amount paid by the person in satisfaction of the claim or judgment.

(2) Where the liquidator of an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Division) any claim or judgment in respect of which a person is entitled to be indemnified under a third-party policy issued by the insolvent insurer, the Nominal Defendant may pay from the Nominal Defendant's Fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim or judgment.

(3) Where—

- (a) a payment is made under subsection (1) to a person in respect of a claim or judgment, the Nominal Defendant shall be deemed, to the extent of the payment, to have satisfied the claim or judgment as agent and attorney of the person; or
- (b) a payment is made under subsection (2) to the liquidator of an insolvent insurer in respect of a claim by or on behalf of any person or a judgment for the benefit of any person, the Nominal Defendant shall be deemed, to the extent of the payment, to have satisfied the claim or judgment as agent and attorney of the person in respect of whom the payment is made.

(4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Nominal Defendant and neither of those subsections operates nor the exercise of any of those powers operates so as to confer, directly or indirectly, any right on any person to whom a payment is or may be made under those subsections or on any other person.

Application of Nominal Defendant's Fund

125. (1) Out of the Nominal Defendant's Fund, the Nominal Defendant—

- (a) shall pay the amount of any claim or judgment arising from or relating to any third-party policy issued by an insolvent insurer, being a claim or judgment that it proposes to satisfy as agent and attorney of a person, and any other amounts required by this Division to be paid from that Fund; and
- (b) is entitled to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise of its functions under this Division.

(2) Where a payment is made by the Nominal Defendant as agent and attorney of a person, being a payment authorised by this Division, the Nominal Defendant shall not be entitled to recover the amount of that payment from the person.

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Recovery of amounts under contracts or arrangements for reinsurance

126. To the extent that any amounts are paid out of the Nominal Defendant's Fund in respect of a claim or judgment pursuant to section 125 the Nominal Defendant shall, where an insolvent insurer (if it had provided indemnity to that extent under a third-party policy) would have been entitled to recover any sum under a contract or arrangement for reinsurance, be entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Nominal Defendant to recover from the reinsurer and pay into the Nominal Defendant's Fund the amount due under that contract or arrangement.

Payments of compensation when insolvent insurer dissolved

127. (1) When an insolvent insurer has been dissolved, the payments under judgments relating to third-party policies issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer shall continue and be paid out of the Nominal Defendant's Fund by the Nominal Defendant.

(2) When an insolvent insurer has been dissolved, a person who would have had, but for the dissolution of the insolvent insurer, an entitlement to payment of any amount arising from or relating to any third-party policy issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) shall be entitled to payment of that amount out of the Nominal Defendant's Fund.

(3) A person referred to in subsection (2) may make a claim against the Nominal Defendant in respect of an entitlement to payment of an amount under that subsection.

(4) The Nominal Defendant is entitled to deal with and finalise a claim made under subsection (3) in relation to a third-party policy issued by an insolvent insurer to the same extent as it would have been entitled to do so if the insolvent insurer had not been dissolved.

Inspection of documents etc. by person authorised by Minister

128. The liquidator of an insolvent insurer shall, whenever requested to do so by a person authorised by the Minister, make any documents relating to third-party policies issued by the insolvent insurer and any claims or judgments made in respect of any such policies in the liquidator's possession available for inspection by that person.

Maximum penalty: 20 penalty units.

Nominal Defendant may take certain legal proceedings

129. (1) If—

- (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding-up; or

- (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Division or not, is challenged, reviewed or called into question in proceedings before any court; or
- (c) any other matter that concerns or may affect the operation of this Division is raised in proceedings before any court,

the Nominal Defendant may intervene at any stage of the proceedings before that court, by counsel, solicitor or agent, and shall thereupon become a party to, and shall have all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

(2) In any case in which the Attorney General might take proceedings on the relation or on behalf of or for the benefit of a person who is (or who would but for the dissolution of the insolvent insurer be) entitled, under a third-party policy issued by an insolvent insurer, to be indemnified against a claim or judgment arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Division, any Act or any rule of law, the Nominal Defendant shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.

(3) The Nominal Defendant is entitled to be paid, out of the Nominal Defendant's Fund, all the costs and expenses incurred by the Nominal Defendant in exercising the powers conferred by this section.

Insurers etc. may act for Nominal Defendant

130. The Nominal Defendant may appoint a licensed insurer or other person as its agent for the purposes of exercising its functions under this Division.

Regulations

131. The regulations may make provision for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act in relation to the dealing with or finalising of claims, or the satisfying of judgments, by the Nominal Defendant as agent and attorney of a person under this Division.

PART 9—MISCELLANEOUS

No contracting out of Act

132. This Act applies despite any contract to the contrary.

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Service of documents

133. (1) If by or under this Act a notice or other document is required to be, or may be, given to or served on a person other than the Authority, that notice or other document may be given to or served on—

(a) an individual—

- (i) by delivering it to the individual personally; or
- (ii) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the individual at that place of residence; or

(b) a corporation—

- (i) by delivering it to a person who is or apparently is concerned in the management of the corporation; or
- (ii) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the corporation at that registered office.

(2) A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be taken to have been given or served on its being so delivered or left or, if it is sent by post, shall, in the absence of evidence to the contrary, be *prima facie* taken to have been given or served when it would have been delivered in the ordinary course of post.

Offences by corporations

134. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceeding for offences

135. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

136. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

137. Schedule 4 has effect.

PART 10—FUNDING AND ADMINISTRATION OF PREVIOUS SCHEMES**Definitions**

138. In this Part—

“intermediate transport accident” means—

- (a) a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before the date of commencement of Part 2—
 - (i) in relation to which a person is entitled to benefits under the 1987 Act; or
 - (ii) in relation to which a person would be entitled to damages assessed in accordance with this Act if the person at fault had, on the occurrence of the accident, been an insured person; or
- (b) an accident—
 - (i) which would, but for the repeal of the 1987 Act, be a transport accident to which that Act applies; and
 - (ii) which is caused by or arises out of the use of a form of transportation or conveyance included within section 4 of that Act; and
 - (iii) which occurs on or after the date of commencement of Part 2 of this Act and during a period for which a contribution under Division 3 of Part 3 of the 1987 Act had, before that date, been paid in relation to the form of transportation or conveyance concerned;

“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.

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Continuation of the TAC Fund

139. (1) Despite the repeal of the 1987 Act, the TAC Fund shall continue in accordance with this Part.

(2) The TAC Fund shall continue to be administered by the GIO.

(3) The TAC Fund shall continue to be a fund administered within the insurance funds administration business division of the GIO.

Payments into the TAC Fund

140. (1) There shall be paid into the TAC Fund—

- (a)** amounts paid to the GIO under section 149;
- (b)** any money appropriated by Parliament for the purposes of the Fund;
- (c)** the interest from time to time accruing from the investment of the Fund; and
- (d)** such amounts, if any, as may be prescribed.

(2) There may be paid into the TAC Fund money, other than money referred to in subsection (1), which may be lawfully paid into the Fund.

Payments out of the TAC Fund

141. (1) There shall be paid out of the TAC Fund—

- (a)** amounts payable under this Part; and
- (b)** all charges, costs and expenses incurred by the GIO in the exercise of its functions under this Part.

(2) There may be paid out of the TAC Fund all other amounts required or authorised by the regulations to be paid out of the Fund.

Investment

142. Any money in the TAC Fund which is not immediately required for the purposes of the Fund may be invested by the GIO or any prescribed person—

- (a)** in any manner in which trustees are for the time being authorised to invest trust funds; or
- (b)** in any manner approved by the Treasurer.

Payment of damages out of TAC Fund

143. Damages payable—

- (a)** (without limiting section 14D of the Motor Vehicles (Third Party Insurance) Act 1942) in respect of claims made under section 14 or 14A of that Act; or
 - (b)** in respect of intermediate transport accidents,
- shall be paid out of the TAC Fund.

Reassessment of benefits under 1987 Act

144. (1) As soon as practicable after the date of commencement of Part 2, the GIO shall—

- (a) make an assessment of the entitlement to damages under this Act of a person who was, immediately before that date, receiving benefits under the 1987 Act in respect of an intermediate transport accident; and
- (b) take such steps (if any) as may be reasonable and appropriate to effect settlement of the person's entitlement.

(2) Until the assessment is made under this section in respect of a person's entitlement, the person shall continue to receive benefits determined under the 1987 Act.

Entitlement to claim under this Act of recipient of benefits under the 1987 Act

145. A person who has received benefits under the 1987 Act in respect of an intermediate transport accident is not prevented from making a claim under this Act.

Provisions applicable to claims concerning intermediate transport accidents

146. (1) Part 5 (Claims and court proceedings to enforce claims) applies to and in respect of a claim relating to an intermediate transport accident in the same way as it applies to a claim within the meaning of that Part, subject to this section.

(2) A person who has made a claim under the 1987 Act before the date of commencement of Part 2 which has not been determined before that date shall be taken to have complied with section 43.

(3) For the purposes of the application of section 52 (Time within which proceedings must be commenced), the "relevant date" for a claim relating to an intermediate transport accident is—

- (a) the relevant date determined in accordance with that section; or
- (b) the date on which Part 2 commences,

whichever is later.

Deduction of benefits provided under the 1987 Act

147. The value of any benefit provided to or on behalf of a person under the 1987 Act in relation to an intermediate transport accident shall be deducted from the amount of any damages payable to the person in accordance with this Act in relation to the accident, but no person shall, by the operation of this Part, be liable to repay any money paid to or on behalf of the person under the 1987 Act.

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Payment of short-fall levy at time of registration of motor vehicle etc.

148. (1) This section applies only if an order is made under section 150 and while the order is in force.

(2) A person who applies for the registration or the renewal of registration of a motor vehicle shall, at the time the application is made, pay to the Commissioner for Motor Transport the short-fall levy determined under this Part in respect of the motor vehicle.

(3) A person who applies for the issue of a trader's plate shall, at the time the application is made, pay to the Commissioner for Motor Transport the short-fall levy determined under this Part in respect of motor vehicles to which the trader's plate is fixed.

(4) The registration or the renewal of registration of a motor vehicle shall not be issued by the Commissioner for Motor Transport until the short-fall levy under subsection (2) or (3), as the case requires, has been paid.

(5) The regulations may make provision for or with respect to—

- (a) the payment of short-fall levies by instalments, including provision for the cancellation of registration for failure to pay instalments when they fall due; and
- (b) the refund of short-fall levies.

Payment of short-fall levies to GIO

149. (1) The Commissioner for Motor Transport shall, at such time or times as may be agreed on by the Commissioner and the GIO, pay to the GIO the short-fall levies received by the Commissioner under section 148.

(2) The Commissioner for Motor Transport may retain from any such short-fall levies such commission as may be agreed on by the Commissioner and the GIO.

(3) Payments made to the GIO under this section shall be paid into the TAC Fund.

Determination by Minister of short-fall levy

150. (1) The Minister may, by order published in the Gazette, determine the short-fall levies payable under this Part for motor vehicles of such classes as are specified in the order.

(2) The short-fall levies determined by any such order apply to registrations and renewals of registrations of motor vehicles effected, and traders' plates issued, after the order takes effect and while the order is in force.

(3) An order under this section takes effect on such date after the publication of the order in the Gazette as is specified in the order.

*Motor Accidents 1988***SCHEDULE 1—THIRD-PARTY POLICY**

(Sec. 9)

MOTOR ACCIDENTS ACT 1988**THIRD-PARTY POLICY**

1. The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street).

2. In this policy, "motor vehicle" includes—

- (a) a trailer towed by the motor vehicle, being a trailer which is not an insured motor vehicle; and
- (b) if the motor vehicle is a tow truck, a motor vehicle which is not an insured motor vehicle and which is towed or carried by the tow truck.

SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD OF DIRECTORS OF THE AUTHORITY

(Sec. 84 (4))

Definitions

1. In this Schedule—

"Board" means the Board of Directors of the Authority;

"director" means the General Manager of the Authority or a part-time director of the Board;

"part-time director" means a director of the Board other than the General Manager.

Age of part-time directors

2. A person of or above the age of 70 years is not eligible to be appointed as a part-time director or to act as a deputy of a part-time director.

Chairperson of Board

3. (1) Of the part-time directors of the Board, 2 shall (in and by their respective instruments of appointment or in and by other instruments executed by the Governor) be appointed as Chairperson and Deputy Chairperson of the Board respectively.

(2) The Governor may at any time remove a part-time director from the office of Chairperson or Deputy Chairperson.

(3) A person holding office as Chairperson or Deputy Chairperson vacates that office if the person—

- (a) is removed from that office by the Governor; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to hold office as a director.

Deputies

4. (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time director.

*Motor Accidents 1988***SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD OF DIRECTORS OF THE AUTHORITY—*continued***

- (2) In the absence of a part-time director, the director's deputy—
 - (a) shall, if available, act in the place of the absent director; and
 - (b) while so acting, has all the functions of the director (other than any functions the director has as Chairperson or Deputy Chairperson of the Board) and shall be taken to be a part-time director.
- (3) The Minister may remove a person from any deputy's position to which the person was appointed under this clause.
- (4) A person while acting in the place of a part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, a reference to a director's absence includes a reference to a vacancy in the director's office.

Terms of office of part-time directors

5. Subject to this Schedule, a part-time director shall hold office for such period (not exceeding 3 years) as may be specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

6. A part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time director.

Vacancy in office of part-time director

- 7. (1) The office of a part-time director becomes vacant if the director—
 - (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or

SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD OF
DIRECTORS OF THE AUTHORITY—*continued*

(i) reaches the age of 70 years.

(2) The Governor may remove a part-time director from office at any time.

Disclosure of pecuniary interests

8. (1) If—

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director—

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

(3) The Board shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Board from time to time.

(4) After a director has disclosed the nature of an interest in any matter, the director shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this or any other Act.

Filling of vacancy in office of part-time director

9. If the office of a part-time director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

10. (1) The Public Sector Management Act 1988 does not apply to the appointment of a part-time director and a part-time director is not, as a part-time director, subject to that Act (except Part 8).

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SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD OF DIRECTORS OF THE AUTHORITY—*continued*

(2) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

(3) The office of a part-time director is not, for the purposes of any Act, an office or place of profit under the Crown.

Liability of directors etc.

11. No matter or thing done by the Board, any director or any person acting under the direction of the Board or of a director shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a director or a person so acting personally to any action, liability, claim or demand.

General procedure

12. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board.

Quorum

13. The quorum for a meeting of the Board is 4 directors.

Presiding member

14. (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson (or in the absence of both, another part-time director elected to chair the meeting by the directors present) shall preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

15. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

16. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

Transaction of business outside meetings or by telephone etc.

17. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors for the time being, and a resolution in writing approved in writing by a majority of those directors shall be taken to be a decision of the Board.

*Motor Accidents 1988***SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD OF DIRECTORS OF THE AUTHORITY—*continued***

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which the directors (or some of them) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

(3) For the purposes of—

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the Board.

(5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Committees

18. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not directors of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Board or (subject to any determination of the Board) by the committee.

First meeting

19. The Minister shall call the first meeting of the Board in such manner as the Minister thinks fit.

SCHEDULE 3—GENERAL MANAGER AND DEPUTY GENERAL MANAGER OF THE AUTHORITY

(Sec. 86 (2))

Definition

1. In this Schedule—

“executive officer” means the General Manager or Deputy General Manager of the Authority.

Age of executive officers

2. A person of or above the age of 65 years is not eligible to be appointed as an executive officer or to act in the office of an executive officer.

Acting executive officers

3. (1) The Deputy General Manager of the Authority may act in the office of the General Manager of the Authority in the absence of the General Manager and, while so acting, has all the functions of the General Manager and shall be taken to be the General Manager.

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**SCHEDULE 3—GENERAL MANAGER AND DEPUTY GENERAL MANAGER
OF THE AUTHORITY—*continued***

(2) The Minister may, from time to time, appoint a person to act in the office of Deputy General Manager in the absence of the Deputy General Manager and the person, while so acting, has all the functions of the Deputy General Manager and shall be taken to be the Deputy General Manager.

(3) A person while acting in the office of the Deputy General Manager is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause—

- (a) a vacancy in the office of an executive officer shall be regarded as an absence from office of the executive officer; and
- (b) the Deputy General Manager shall be regarded as absent from office as Deputy General Manager during any period when he or she acts in the office of General Manager pursuant to subclause (1).

Term of office

4. Subject to this Schedule, an executive officer shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of his or her appointment, but is eligible (if otherwise qualified) for re-appointment.

Executive officer to be full-time

5. An executive officer shall devote the whole of his or her time to the duties of the office concerned, except to the extent permitted by this Act or by the Minister.

Remuneration

6. An executive officer 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 executive officer.

Casual vacancies

7. (1) The office of an executive officer becomes vacant if the executive officer—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is retired or removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

*Motor Accidents 1988***SCHEDULE 3—GENERAL MANAGER AND DEPUTY GENERAL MANAGER
OF THE AUTHORITY—*continued***

- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister; or
- (i) reaches the age of 65 years.

(2) An executive officer may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor.

(3) The Governor may remove an executive officer from office for incapacity, incompetence or misbehaviour.

Filling of vacancy in office of executive officer

8. If the office of an executive officer becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Public Sector Management Act 1988 not to apply

9. The Public Sector Management Act 1988 does not apply to or in respect of the appointment of an executive officer and an executive officer is not, as an executive officer, subject to that Act (except Part 8).

Preservation of rights of executive officer previously public servant etc.

10. (1) This clause applies to an executive officer who, immediately before being appointed as an executive officer, was—

- (a) an officer of the Public Service or a Teaching Service; or
- (b) a contributor to a superannuation scheme; or
- (c) an officer employed by a proclaimed statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) Subject to the terms of the executive officer's appointment, an executive officer—

- (a) shall retain any rights accrued or accruing to him or her as an officer, contributor or person referred to in subclause (1); and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as an executive officer; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the executive officer had continued to be such an officer, contributor or person during his or her service as an executive officer.

(3) Service as an executive officer shall be regarded as service as an officer or employee for the purposes of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

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SCHEDULE 3—GENERAL MANAGER AND DEPUTY GENERAL MANAGER
OF THE AUTHORITY—*continued*

(4) An executive officer shall be regarded as an officer or employee, and the Authority shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If an executive officer would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled upon becoming (whether upon appointment as an executive officer or at any later time while holding office as an executive officer) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Authority in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to an executive officer (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(7) An executive officer is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(8) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Executive officer entitled to re-employment in certain cases

11. (1) A person who—

- (a) ceases to be an executive officer because of the expiration of the period for which the person was appointed or because of resignation; and
- (b) was, immediately before being appointed as an executive officer—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a proclaimed statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee.

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that proclaimed statutory body, as the case may be, not lower in classification and salary than the classification and current salary for the position which the person held immediately before being appointed as an executive officer (or for a similar position).

*Motor Accidents 1988***SCHEDULE 3—GENERAL MANAGER AND DEPUTY GENERAL MANAGER
OF THE AUTHORITY—*continued***

(2) If subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as an executive officer,

the person has, in the event of ceasing to be an executive officer, such rights (if any) to appointment as such an officer or employee as are specified in his or her instrument of appointment as an executive officer or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause—

“proclaimed statutory body” means any body constituted by or under an Act that is declared by the Governor, by proclamation, to be a statutory body for the purposes of this clause.

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 137)

Recovery of certain contributions

1. The GIO may, after the date of commencement of Part 2 of this Act, recover a contribution required to be paid by any person under Part 3 of the Transport Accidents Compensation Act 1987 in relation to an intermediate transport accident within the meaning of section 138 of this Act as if the Transport Accidents Compensation Act 1987 had not been repealed.

Early assessment of claims

2. (1) The GIO may, before the date of commencement of Part 2, receive and assess claims in respect of intermediate transport accidents (within the meaning of Part 10) as if the whole of this Act had been in force at the time the claim is made.

(2) The GIO shall not, before the date of commencement of Part 2, make any payment in respect of any such claim.

Savings and transitional regulations

3. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

the Miscellaneous Acts (Motor Accidents) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person before the date of its publication;
or

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SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[*Minister's second reading speech made in—
Legislative Assembly on 29 November 1988
Legislative Council on 7 December 1988*]
