

MOTOR ACCIDENTS (AMENDMENT) ACT 1998 No. 90

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

MOTOR ACCIDENTS (AMENDMENT) ACT 1990 No. 90

NEW SOUTH WALES



Act No. 90, 1990

An Act to amend the Motor Accidents Act 1988 to make further provision concerning compulsory insurance against liability for the death of or injury to persons as a consequence of motor accidents; and to amend the Motor Accidents (Amendment) Act 1989. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Accidents (Amendment) Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Section 4 commences: on the date of assent.

(3) Schedule 1 (2), (3) and (6) commence on 1 July 1991.

(4) Schedule 1 (8), (9), (18) and (19) are taken to have commenced on 1 July 1989.

Amendment of Motor Accidents Act 1988 No. 102

3. The Motor Accidents Act 1988 is amended as set out in Schedule 1.

Amendment of Motor Accidents (Amendment) Act 1989 No. 47

4. The Motor Accidents (Amendment) Act 1989 is amended by omitting Schedule 2 (2), (3) and (4).

Validation

5. Clause 4 of the Motor Accidents Regulation 1989 is taken to have commenced on 1 July 1989.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Interpretation**):

- (a) From the definition of "motor vehicle" in section 3 (1), omit "and includes a trailer, but does not include", insert instead "but does not include a trailer or".

SCHEDULE 1—AMENDMENTS—*continued*

(b) Insert in section 3 (1) in alphabetical order:

"trailer" means any vehicle without motive power capable of being drawn by a motor vehicle attached to it.

(2) Part 3, Division 2:

Omit the Division, insert instead:

Division 2—Method of effecting and duration of third-party insurance

Issue of certificate of insurance

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

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

(3) A licensed insurer who issues such a certificate is taken to have issued a third-party policy for the motor vehicle or motor vehicles to which the certificate relates.

Evidence of insurance in respect of motor vehicle

11. The Roads and Traffic Authority must not register or renew the registration of a motor vehicle or issue a trader's plate unless:

- (a) the applicant produces a certificate of insurance issued under section 10 in relation to the motor vehicle or trader's plate; or
- (b) the Roads and Traffic Authority is satisfied that there is evidence, of a type approved by the Motor Accidents Authority, of the existence of a third-party policy in relation to the motor vehicle or trader's plate.

SCHEDULE 1—AMENDMENTS—*continued*

Duration of third-party policy

12. (1) A third-party policy taken to have been issued for a motor vehicle (other than a third-party policy taken to have been issued for motor vehicles to which a trader's plate is or is to be fixed) takes effect:

- (a) on the date of registration of the motor vehicle; or
- (b) on the date the renewal of the registration of the motor vehicle takes effect if the renewal fee is paid on or before the date for renewal; or
- (c) on the date on which the renewal of the registration of the motor vehicle is effected if the renewal is effected after the date for renewal.

(2) Such a policy terminates on the date on which the registration of the motor vehicle expires or the date on which the policy is cancelled under section 13.

(3) A third-party policy relating to motor vehicles to which a trader's plate is or is to be fixed takes effect on the date of commencement of the period for which the trader's plate is issued and terminates on the date of expiration of that period.

(4) Despite subsections (2) and (3), if the renewal of the third-party policy in respect of a motor vehicle, or motor vehicles to which a trader's plate is or is to be fixed, is effected:

- (a) within 15 days after the termination of the previous third-party policy in respect of the motor vehicle or motor vehicles; or
- (b) during the named month in which that previous third-party policy terminates,

the previous third-party policy is taken not to have terminated but to have continued in force until the renewal.

Cancellation of third-party policies

13. (1) A licensed insurer has no power to cancel a third-party policy.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A third-party policy may only be cancelled in accordance with this section.

(3) A third-party policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except where the registration is cancelled under section 18C of the Traffic Act 1909.

(4) If the whole or any part of the premium payable in respect of a third-party policy is paid by cheque and the cheque is not met on due presentation, the licensed insurer may request the Roads and Traffic Authority to cancel the registration of the motor vehicle to which the policy relates.

(5) Before requesting the Roads and Traffic Authority to cancel the registration of the motor vehicle, the licensed insurer must notify the owner of the motor vehicle that the registration and third-party insurance policy will be cancelled if the amount outstanding is not paid.

(6) If the licensed insurer certifies to the Roads and Traffic Authority that the relevant premium remains unpaid and that the licensed insurer has complied with subsection (5), the Roads and Traffic Authority must cancel the registration of the motor vehicle within 14 days of receipt of the certificate from the licensed insurer, and on such cancellation the third-party policy taken to have been issued for the motor vehicle is also cancelled.

(7) If the registration of a motor vehicle is cancelled, other than under section 18C of the Traffic Act 1909 or subsection (6), but restored before the date for renewal of the registration, the third-party policy cancelled is taken to have remained in force during the period of cancellation.

(3) Section 14 (**Determination by Minister of insurance premiums**):

Omit the section.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 14A:

Before section 15, insert

Authority guidelines for the determination of premiums

14A. (1) The Authority may prepare and issue to licensed insurers guidelines for the determination of insurance premiums for third-party policies.

(2) The Authority may revoke, substitute or amend the guidelines.

(3) A guideline, or the revocation, substitution or amendment of a guideline, has no effect until it has been approved by the Board of Directors of the Authority.

(4) It is a condition of a licence granted under Division 1 of Part 8 that the licensed insurer must comply with the guidelines in force under this section.

(5) A guideline issued before 1 July 1993 must be substantially in conformity with the Motor Accidents Authority 1991/92 and 1992/93 Premium Filing Guidelines for Insurers, dated 16 October 1990.

(5) Section 15B (**Rejection of premiums by the Authority**):

At the end of section 15B (1) (b), insert:

; or

(c) the premium does not conform to the Authority's guidelines in force under section 14A.

(6) Sections 20 (**Effect of late renewal of registration of motor vehicle**), 21 (**Cancellation of third-party policy**):

Omit the sections.

(7) Section 27 (**Claim against Nominal Defendant where vehicle not insured**):

After section 27 (4), insert

(5) In this section, "**motor vehicle**" includes a trailer, not being:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) a trailer which is attached to a motor vehicle; or
 - (b) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.

- (8) Section 31 (**Recovery from owner or driver**):
 - After section 31 (2), insert:
 - (3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of:
 - (a) a motor vehicle which was lawfully used or operated on a public street; or
 - (b) a trailer, not being:
 - (i) a trailer which is attached to a motor vehicle; or
 - (ii) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.

- (9) Section 37 (**Provision of rehabilitation services**):
 - In section 37 (5), after “injured person”, insert “whose claim has been settled or”.

- (10) Section 42 (**Accident must be reported within 28 days**):
 - (a) From section 42 (1), omit “as soon as is reasonably practicable after the accident”, insert instead “within 28 days after the date of the accident”.
 - (b) Omit section 42 (2).
 - (c) Omit section 42 (4), insert instead:
 - (4) If a person commences proceedings in respect of a claim without having complied with the duty under this section, the person must provide a full and satisfactory explanation to the court for the non-compliance.
 - (5) If the court is satisfied that sufficient cause existed to justify the delay in making the report and that a report of the accident was made within such period as the court

SCHEDULE 1—AMENDMENTS—*continued*

considers reasonable, having regard to the duty under this section, the court may allow the proceedings to continue.

(11) Section 43 (**Time for and notice of making of claims**):

Omit section 43 (4), insert instead:

(4) A claim is made by giving notice of the claim to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.

(12) Section 44:

Omit the section, insert instead

Form of notice of claim

44. (1) A notice of a claim under section 43 (4) 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.

(2) The Authority may approve different forms according to the persons to whom the notice is to be given.

(3) A notice of a claim given to a third-party insurer must be verified by statutory declaration.

(13) Section 45 (**Duty of insurer to try to resolve claim etc.**):

After section 45 (3), insert:

(4) Payments made under this section are taken to form part of any damages payable to the claimant,

(14) Section 67 (**Claims register**):

From section 67 (1), omit "30 days after receiving notice of a claim", insert instead "such period after receiving notice of a claim as the Authority may reasonably require".

(15) Section 110 (**Business plans of licensed insurers**):

From section 110 (1), omit "granted a licence", insert instead "requested to do so by the Authority".

SCHEDULE 1 - AMENDMENTS - *continued*

(16) Section 132A (**Certificate evidence**):

From section 132A (1), omit "conclusive".

(17) Section 138 (**Definitions**):

Omit the definition of "intermediate transport accident", insert instead:

"intermediate transport accident" means a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before 1 July 1989, being the date of commencement of Part 2:

- (a) in relation to which a person is entitled to benefits under the 1987 Act; or
- (b) 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;

(18) Sections 145A, 145B:

After section 145, insert

Claims in respect of certain intermediate transport accidents

145A. (1) This section applies to an intermediate transport accident in respect of which a claim had not been made under the 1987 Act before 1 July 1989.

(2) A claim relating to an intermediate transport accident to which this section applies and any proceedings brought to enforce the claim may, in respect of a form of transportation or conveyance described in Column 1 of the Table to this subsection, be made or taken against the person (or, as the case may be, one or more of the persons) specified in Column 2 of that Table opposite that form of transportation or conveyance as if a person specified in Column 3 of that Table opposite that form of transportation or conveyance were the insurer under a third-party policy of the owner and driver of that form of transportation or conveyance.

SCHEDULE 1 - AMENDMENTS - *continued*

Column 1	Column 2	Column 3
New South Wales registered motor vehicle	Owner, driver	GIO
Unidentified motor vehicle	GIO	GIO
Uninsured motor vehicle	GIO	GIO
Motor vehicle registered in Australia elsewhere than in New South Wales	Owner, driver, GIO	The insurer of, or compensation authority in respect of, the vehicle, GIO
A form of transportation or conveyance, not being a motor vehicle	Owner, driver, operator	GIO

(3) This section is taken to have commenced on July 1989.

Contribution from other insurers in respect of intermediate transport accident claims

145B. (1) For the purposes of assessing and apportioning any liability for contribution between the GIO as manager of the TAC Fund and an insurer of a person at fault in respect of an intermediate transport accident, the GIO is taken to be the insurer of the person under a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) This section is taken to have commenced on 1 July 1989.
- (19) Section 146 (**Provisions applicable to claims concerning intermediate transport accidents**):
- (a) From section 146 (1), omit "Part 5 (Claims and court proceedings to enforce claims) applies", insert instead "Parts 4, 4A, 5, 6, 9 and 10 apply".
 - (b) From section 146 (1), omit "it applies", insert instead "they apply".
 - (c) From section 146 (1), omit "that Part", insert instead "Part 5".
- (20) Schedule 1 (**Third-party policy**):
- (a) Omit clause 2 (a), insert instead:
 - (a) a trailer attached to the motor vehicle and a trailer running out of control because it has become accidentally detached from the towing motor vehicle; and
 - (b) From clause 2 (b), omit "town truck", insert instead "tow truck".
- (21) Schedule 3 (**General Manager and Deputy General Manager of the Authority**):
- (a) In clause 3 (1), after "may", insert “, with the approval of the Board of Directors of the Authority,”.
 - (b) In clause 3 (2), omit "Minister", insert instead "Board of Directors of the Authority".

*[Minister's second reading speech made in -
Legislative Assembly on 14 November 1990
Legislative Council on 28 November 1990]*