



New South Wales

Motor Accidents Amendment Act 1997 No 3

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Motor Accidents Amendment Act 1997 No 3

Act No 3, 1997

An Act to amend the *Motor Accidents Act 1988* to make further provision with respect to motor accidents involving trailers, unregistered vehicle permits, transitional provisions, amendments to the Industry Deed, and structured settlements; and for other purposes. [Assented to 23 April 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Motor Accidents Amendment Act 1997*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) The amendments made by this Act to sections 43A (6) and 52 of the *Motor Accidents Act 1988* are taken to have commenced on 1 January 1996.
- (3) The amendments made by this Act to clause 17 of Schedule 4 to the *Motor Accidents Act 1988* are taken to have commenced at midnight on 26 September 1995.

3 Amendment of Motor Accidents Act 1988 No 102

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

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in section 3 (1) in alphabetical order:

Ministerial Corporation means the NSW Insurance Ministerial Corporation constituted under Part 5 of the *Government Insurance Office (Privatisation) Act 1991*.

[2] Section 3 (1), definition of “motor vehicle”

Omit “but does not include a trailer or”.

Insert instead “and includes a trailer, but does not include”.

[3] Section 3 (1), definition of “trader’s plate”

Omit the definition. Insert instead:

trader’s plate means a trader’s plate issued under the *Motor Traffic Regulations 1935*.

[4] Section 3A Execution etc of certain agreement

Insert after section 3A (4):

- (5) The agreement may be amended from time to time by agreement in writing between the parties to it, and the agreement as so amended becomes the agreement in force for the purposes of this section.

[5] Sections 3B and 3C

Insert after section 3A:

3B Special provision for trailers

A reference in this Act to the use or operation of a motor vehicle extends, in the case of a motor vehicle that is not a trailer, to include the use or operation of a trailer attached to the motor vehicle and a trailer running out of control having become detached from the motor vehicle towing it.

Note. The purpose of this section is to extend a motor vehicle's third-party insurance policy so that it will cover a trailer being towed by the vehicle or a trailer that has run out of control while being towed.

3C Special provision for tow trucks

A reference in this Act to the use or operation of a motor vehicle extends, in the case of a motor vehicle that is a tow truck, to the use or operation of an uninsured motor vehicle that is being towed or carried by the tow truck.

[6] Section 8 Offence of using etc uninsured motor vehicle on public street

Insert at the end of section 8 (3) (b):

, or

(c) the motor vehicle is a trailer.

[7] Section 9 Third-party policies

Omit “on a public street in New South Wales” from section 9 (a) (ii).

Insert instead “on a public street in any part of the Commonwealth”.

[8] Section 9

Insert at the end of section 9:

Note. As a result of sections 3B and 3C, a third-party policy for a motor vehicle extends to cover:

- (a) a trailer attached to the motor vehicle or that runs out of control having become detached from the motor vehicle, and
- (b) if the motor vehicle is a tow truck—anuninsured motor vehicle being towed or carried by the tow truck.

[9] Section 11 Evidence of insurance in respect of motor vehicle

Insert at the end of section 11:

- (2) This section does not apply to a trailer.

[10] Section 27 Claim against Nominal Defendant where vehicle not insured

Insert at the end of section 27 (4) (b):

, or

- (c) if there is a right of action under section 28A in respect of the death or injury.

[11] Section 27 (5)

Omit “or a trailer”.

[12] Section 31 Recovery from owner or driver

Omit “, or a trailer,” from section 31 (3).

[13] Section 43 Time for and notice of making of claims

Omit section 43 (2). Insert instead:

- (2) A claim must be made within 6 months after the relevant date for the claim. The relevant date is the date of the motor accident to which the claim relates unless the claim is made in respect of the death of a person, in which case the relevant date is the date of the person’s death.

[14] Section 43A Late making of claims

Omit “the date determined under section 43” wherever occurring. Insert instead “the relevant date for the claim under section 43”.

[15] Section 43A (6)

Omit “This subsection applies if the person against whom the late claim is made is insured by a third-party insurer.”.

Insert instead “This subsection applies if the late claim is made against the Nominal Defendant or a person who is insured by a third-party insurer. A reference in this subsection to an insurer includes a reference to the Nominal Defendant.”.

[16] Section 43A

Insert at the end of the section:

Note. The combined effect of sections 43 and 43A is as follows:

A claim generally must be made within 6 months after the date of the accident or the date of death.

If, however, a claim is made between 6 months and 12 months after the date of the accident or death, a full and satisfactory explanation for the delay in making the claim must be provided.

A claim cannot be made after 12 months unless a full and satisfactory explanation for the delay is provided AND the damages of all kinds that would be awarded were the claim to succeed are at least 10% of the maximum damages that could be awarded for non-economic loss (see sections 79 and 79A) as at the date of the accident.

[17] Section 52 Time limitations on commencement of court proceedings

Omit “making the claim” from section 52 (1) (b) (i).
Insert instead “commencing the proceedings”.

[18] Section 52 (2) (c)

Insert “or rejects the claim on the ground that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are less than 10% of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident” after “the claim”.

[19] Sections 66A (7) (a), 67 (3), 140 (1) (a), 141 (1) (b), 142, 144 (1), Table to 145A (2), 145B (1), 146A (1), 147A and 149

Omit “GIO” wherever occurring.
Insert instead “Ministerial Corporation”.

[20] Section 72 Maximum amount of damages for provision of certain home care services

Omit “that are above and beyond those rendered by family or household members” from section 72 (1) (a).

[21] Section 81 Structured settlements

Insert “An order cannot be made to vary or terminate the arrangements if those arrangements involve, for the purpose of giving effect to all or part of the original order, an investment that cannot readily be varied or terminated by the parties to the investment (for example, an annuity).” at the end of section 81 (7).

[22] Section 101 Applications for licences

Omit section 101 (1) (b).

[23] Section 116 Power of Supreme Court to deal with insurers unable to meet liabilities

Omit section 116 (10).

[24] Section 139 Continuation of the TAC Fund

Omit section 139 (2) and (3). Insert instead:

- (2) The TAC Fund is to be administered by the Ministerial Corporation.

[25] Section 147B Administration of claims under previous schemes

Omit section 147B (1). Insert instead:

- (1) The Ministerial Corporation is to determine and administer claims relating to intermediate transport accidents and claims under section 14 or 14A of the *Motor Vehicles (Third Party Insurance) Act 1942*.

[26] Schedule 1 Third-party policy

Omit “on a public street in New South Wales” from clause 1 (b).
Insert instead “on a public street in any part of the Commonwealth”.

[27] Schedule 1, clause 2

Omit the clause. Insert instead:

2 In this policy, words and expressions have the same meaning as in the *Motor Accidents Act 1988*.

Note. As a result of sections 3B and 3C of the Act, a third-party policy for a motor vehicle extends to cover.

- (a) a trailer attached to the motor vehicle or that runs out of control having become detached from the motor vehicle, and
- (b) if the motor vehicle is a tow truck—an uninsured motor vehicle being towed or carried by the tow truck.

[28] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

the Motor Accidents Amendment Act 1997

[29] Schedule 4, Part 7, clause 17 (1)

Omit “43A (1),” and “52 (1),”.

[30] Schedule 4, Part 7, clause 17 (2)

Insert “[15],” after “[13],”.

[31] Schedule 4, Part 7, clause 17 (2)

Insert “[23],” after “[20],”.

[32] Schedule 4, Part 7, clause 17 (6)

Omit the subclause.

[33] Schedule 4, Part 7, clause 17 (7A)

Insert after clause 17 (7):

- (7A) Section 70A extends to a claim arising out of a motor accident that occurred after midnight on 26 September 1995, but not so as to affect any award of damages made before the commencement of this subclause.

[34] Schedule 4, Part 8

Insert after Part 7:

**Part 8 Provisions arising from the enactment of
the Motor Accidents Amendment Act 1997**

18 Meaning of “1997 amending Act”

In this Part:

1997 amending Act means the *Motor Accidents Amendment Act 1997*.

19 Trailer amendments

An amendment made by the 1997 amending Act with respect to trailers (that is, an amendment made by Schedule 1 [2], [5], [6], [8], [9], [10], [11], [12] or [27] to that Act) extends to motor accidents occurring on or after 1 January 1996.

20 Structured settlement amendments

The amendment made to section 81 by the 1997 amending Act extends to arrangements determined or approved under that section before the commencement of the amendment, but not so as to affect any order of a court made before that commencement.

21 Amendment of agreement

Section 3A (5) (as inserted by the 1997 amending Act) extends to any amendment to the agreement referred to in that section made or purporting to have been made before the commencement of that subsection, with the effect that any amendment made or purporting to have been made to that agreement before the commencement of that subsection that could have been validly made after that commencement is validated and takes effect from the date on which it purported to take effect.

22 Unregistered vehicle permits

The amendments made to section 9 (a) (ii) and clause 1 (b) of Schedule 1 by the 1997 amending Act extend to liability arising in respect of the use or operation of a motor vehicle on or after 1 January 1996.

[Minister's second reading speech made in—
Legislative Council on 20 November 1996
Legislative Assembly on 8 April 1997]