



New South Wales

Motor Accidents Amendment Act 1998 No 132

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New South Wales

Motor Accidents Amendment Act 1998 No 132

Act No 132, 1998

An Act to amend the *Motor Accidents Act 1988* in relation to the determination of premiums for third-party insurance policies, and the handling, conciliation and determination of claims for damages for death or injury arising from accidents involving motor vehicles, and in other respects; to amend the *Legal Profession Amendment (Costs Assessment) Act 1998* in relation to costs for legal services in motor vehicle accident matters; and for other purposes. [Assented to 30 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Motor Accidents Amendment Act 1998*.

2 Commencement

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

3 Amendment of Motor Accidents Act 1988 No 102

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

4 Amendment of Legal Profession Amendment (Costs Assessment) Act 1998 No 83

The *Legal Profession Amendment (Costs Assessment) Act 1998* is amended as set out in Schedule 2.

Schedule 1 Amendment of Motor Accidents Act 1988

(Section 3)

[1] Section 2A

Omit the section. Insert instead:

2A Objects of Act

- (1) The objects of this Act are as follows:
 - (a) to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,
 - (b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,
 - (c) to promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure,
 - (d) to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,
 - (e) to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities.
 - (f) to ensure that insurers charge premiums that fully fund their anticipated liability,
 - (g) to deter fraud in connection with compulsory third-party (CTP) insurance.

- (2) It must be acknowledged in the application and administration of this Act:
- (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and
 - (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and
 - (c) that:
 - (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
 - (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and
 - (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and
 - (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.

[2] Section 2B Interpretation and application of Act by reference to objects

Omit "the object" wherever occurring.
Insert instead "the objects".

[3] Section 28 (1)

Omit "that object". Insert instead "those objects".

[4] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

conciliator means a conciliator as referred to in section 99C, and includes the Principal Conciliator.

credit card includes a debit card.

Motor Accidents Claims Assessment Unit means the unit of that name referred to in Division 5 of Part 7.

Principal Conciliator means the Principal Conciliator as referred to in section 99C.

[5] Section 13 Cancellation of third-party policies

Omit "paid by cheque and the cheque is not met on due presentation" from section 13 (4).

Insert instead "paid by cheque or credit card, and the cheque is not met on due presentation or the credit card transaction is not duly honoured".

[6] Section 13 (5)

Omit "the Authority".

Insert instead "the Roads and Traffic Authority".

[7] Section 13 (8)

Insert after section 13 (7):

(8) Despite anything in the *Fines Act 1996*, the regulations may make provision for or with respect to:

- (a) the cancellation of a third-party policy in respect of a motor vehicle whose registration is cancelled under Division 3 of Part 4 of that Act, where:
 - (i) the whole or any part of the premium payable in respect of the third-party policy is paid by cheque or credit card, and
 - (ii) the cheque is not met on due presentation or the credit card transaction is not duly honoured, and
- (b) the restoration (whether prospectively or during any past period of cancellation) of any third-party policy so cancelled.

[8] Section 15B Rejection of premiums by the Authority

Insert "and to other relevant financial information available to the Authority" after "actuarial advice" in section 15B (1) (b).

[9] Section 15B (6)

Omit the subsection. Insert instead:

- (6) If the Authority has not withdrawn its rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this section. The following provisions have effect:
 - (a) The *Commercial Arbitration Act 1984* applies to an arbitration under this section, subject to this Act and the regulations. The Authority and the licensed insurer concerned may by agreement appoint a person to act as arbitrator in connection with the matter. Failing agreement within 7 days, paragraphs (b) and (c) apply.
 - (b) The Independent Pricing and Regulatory Tribunal (established by the *Independent Pricing and Regulatory Tribunal Act 1992*) may act as arbitrator to hear and determine such a matter.

- (c) Alternatively, the Tribunal may appoint a person to act as arbitrator in connection with the matter. The person is to be appointed from a panel constituted by the Minister and consisting of persons who have appropriate knowledge and understanding of economics, general insurance and the interests of consumers.
- (d) The regulations may make provision for or with respect to the arbitration of matters under this section.

[10] Section 158 (7)

Insert “, being a premium that in the arbitrator's opinion is sufficient fully to fund the present and likely future liability of the insurer under this Act” after “insurer”.

[11] Section 40 Definitions

Insert in alphabetical order in section 40 (1):

attendant care services means services that aim to provide assistance to people with everyday tasks, and includes (for example) personal assistance, nursing, home maintenance and domestic services.

rehabilitation has the same meaning as in section 35.

[12] Section 40B

Insert after section 40A:

40B Code of Practice for Claims Handling

- (1) The Authority may prepare a code of practice, to be known as the Code of Practice for Claims Handling, for the guidance of licensed insurers and others in dealing with claims.

- (2) The Authority may amend, revoke or replace the code of practice.
- (3) The code of practice may apply, adopt or incorporate, with or without modification, the provisions of any other publication, whether of the same or a different kind, and as in force from time to time.
- (4) The Authority is to ensure that the code of practice is readily available to licensed insurers and others to whom it relates.

[13] Section 44C

Insert after section 44B:

44C Notice of particulars to be given by claimant

- (1) This section applies to motor accidents that occur after the commencement of this section, and to motor accidents that occurred before that commencement and in respect of which the notice required under section 43 (4) was not given before that commencement.
- (2) Despite subsection (1), this section does not apply in respect of a motor accident if:
 - (a) the insurer denies liability (wholly or in part) under section 44H, or
 - (b) a certificate under section 44G authorising the commencement of court proceedings in relation to the claim arising from the accident is issued on the joint application of the claimant and the insurer. Any such application must specify the reason why the claimant and the insurer consider that court proceedings should be commenced.
- (3) The purpose of this section is to require the provision of information by a claimant, in respect of a claim against another person, with a view to:
 - (a) facilitating the early settlement of a claim, and
 - (b) making certain other action contingent on receipt of the information.

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- (4) It is the duty of the claimant to give the other person's insurer a written notice of particulars within the period of 12 months commencing with the day on which the motor accident occurred (or within the period of 12 months commencing with the date of commencement of this section, in the case of a motor accident that occurred before that commencement).
- (5) The notice is to set out particulars of
- (a) the injuries sustained by the claimant in the motor accident, and
 - (b) all disabilities and impairments arising from those injuries, and
 - (c) any economic losses and other losses that are being claimed as damages,
- in sufficient detail to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages.
- (6) The notice:
- (a) is to be in a form approved by the Authority, and
 - (b) is to set out or be accompanied by such additional particulars and other information as may be required by that form.
- (7) Subject to section 52 (1A) and section 52A, the claimant is not entitled to commence court proceedings against another person in respect of the claim until the claimant has given the notice to the insurer.
- (8) If the claimant fails to give the notice in accordance with this section, the claimant is taken to be in breach of this section.
- (9) Nothing in this section prevents the claim from being settled at any time.
- (10) The regulations may make provision for or with respect to the abridgement or extension of the period referred to in this section.

[14] Section 44D

Insert as section 44D:

44D Challenging claims for failure to comply with sec 44C

- (1) If, within one month after receiving a notice of particulars under section 44C, the insurer does not object to the notice on the ground of non-compliance with that section, the insurer is taken not to object to the notice and loses the right to challenge it.
- (2) If, within one month after receiving a notice of particulars under section 44C, the insurer objects to the notice on the ground of non-compliance with that section, the insurer or the claimant or both may refer the objection to the Motor Accidents Claims Assessment Unit for assessment by a conciliator.
- (3) The insurer is required to pay to the Authority the fee prescribed by the regulations in respect of a reference under this section. The Unit may decline to proceed with the reference unless the fee is paid.
- (4) The Principal Conciliator is responsible for making arrangements as to the conciliator who is to make an assessment in connection with the objection.
- (5) In making an assessment under this section, the conciliator is to make a determination:
 - (a) that the notice substantially complies with section 44C, or
 - (b) that the notice does not substantially comply with section 44C and specifying the requirements with which the notice should conform.
- (6) If the determination is that the notice substantially complies with section 44C, the insurer is taken to withdraw the objection and the notice is taken to have been duly given under that section.

- (7) If the determination is that the notice does not substantially comply with section 44C, the notice is to be disregarded and it is the duty of the claimant to give the insurer a further written notice that conforms with the requirements specified in the determination, and to reimburse the insurer in respect of the fee paid under subsection (3), within one month commencing with the date of the determination.
- (8) Such a further written notice that conforms with those requirements is taken to have been duly given under section 44C.
- (9) The regulations may make provision for or with respect to any aspect of the procedures to be followed under this section, including provision for or with respect to the abridgement or extension of the period referred to in this section.
- (10) A reference in this section to compliance with section 44C is a reference to compliance with the provisions of that section regarding sufficiency of detail.

[15] Sections 44E–44G

Insert as sections 44E, 44F and 44G:

44E Interim notice of particulars

- (1) A claimant in respect of a motor accident to which section 44C applies may give the insurer an incomplete notice (an *interim notice*) of the kind required by that section if, because the injuries (or any of them) sustained by the claimant in the motor accident concerned have not stabilised, the claimant:
 - (a) is unable to give a fully detailed notice, and
 - (b) is unable to make an offer of settlement under section 50D.
- (2) An interim notice may be given at any time after the expiry of a period of 9 months commencing with the day on which the motor accident occurred (or commencing with the date of the commencement of section 44C, in the case of a motor accident that occurred before that commencement).

- (3) An interim notice must set out the particulars required under section 44C in such detail as is available to the claimant at the time the interim notice is given. The notice must also include an estimate of the future medical condition of the claimant in respect of the injuries that have not stabilised that can be made at that time.
- (4) The giving of an interim notice does not discharge the duty imposed on the claimant by section 44C. However, if an interim notice is given, the period of 12 months allowed under section 44C (3) for discharging that duty is extended to 18 months.
- (5) If, at the expiry of that period of 18 months, the relevant injuries (or any of them) still have not stabilised, the claimant may apply to the Motor Accidents Claims Assessment Unit for a certificate under section 44G.
- (6) Any such application is to be made in a form approved by the Authority.

44F Consequence of claimant's failure to give notice under section 44C

- (1) If a claimant who is required to give notice of particulars under section 44C does not do so, the insurer may, on or after the expiry of a period of 18 months commencing with the day on which the motor accident occurred (or commencing with the date of the commencement of section 44C, in the case of a motor accident that occurred before that commencement) give the claimant a notice requiring the claimant:
 - (a) to give the notice referred to in section 44C, or
 - (b) if the claimant is unable to give that notice because the injuries (or any of them) sustained by the claimant in the motor accident concerned have not stabilised—to apply for a certificate under section 44G.
- (2) The claimant must comply with the notice within 3 months after receipt.

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- (3) If the claimant does not comply with the notice as required by this section, the claimant is taken to have withdrawn the claim.
 - (4) A claimant whose claim is taken to have been withdrawn by operation of this section may apply to a court of competent jurisdiction for reinstatement of the claim.
 - (5) The court may reinstate such a claim only if the court is satisfied that:
 - (a) there was a good reason for the claimant's failure to comply with the notice, and
 - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are equal to or greater 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.

44G Certificate authorising commencement of proceedings

- (1) The Motor Accidents Claims Assessment Unit may issue a certificate authorising a claimant to commence court proceedings in respect of his or her claim.
- (2) Such a certificate may be issued only:
 - (a) on the joint application of the claimant and the insurer under section 44C or 50C (3) (b)—if the Unit is satisfied with the reasons specified in the application, or
 - (b) on the application of the claimant under section 44E or 44F—if the Unit is satisfied that the claimant's injuries (or any of them) have not stabilised, or
 - (c) in the circumstances specified in sections 50H (3) and 50L(1).
- (3) A certificate issued under this section operates, despite the other provisions of this Act (section 52 (4) excepted), to authorise the claimant to commence court proceedings in respect of the claim concerned.

[16] Section 44H

Insert as section 44H:

44H Notice about admission or non-admission of liability to be given by insurer

- (1) It is the duty of the insurer to give a written notice to the claimant as expeditiously as possible within the period of 6 months commencing with the day on which the notice of claim is given under section 43 (4) to the insurer or (if that notice is not required to be given to the insurer) to the person against whom the claim is made.
- (2) The notice is to state whether or not the insurer admits liability (wholly or in part) against the person against whom the claim is made.
- (3) If liability is admitted in part, the notice is to give details sufficient to ascertain the extent to which liability is admitted.
- (4) If the insurer fails to comply with this section, the insurer is taken to have given a notice to the claimant wholly denying liability.
- (5) Nothing in this section prevents the insurer from admitting liability after having given a notice denying liability.
- (6) The regulations may make provision for or with respect to the abridgement or extension of the period referred to in this section.

[17] Section 45 Duty of insurer to try to resolve claim etc

Insert "expenses" after "respite care" in section 45 (2) (c).

[18] Section 45 (2)

Insert at the end of section 45 (2) (c):

and

- (d) attendant care services expenses in respect of a claimant who is seriously injured and in need of constant care over a long term (being services provided by a person with appropriate training to

provide those services, but not including services provided by a person who is related to the claimant or any services referred to in section 72 (1A)),

[19] Section 45 (2B)

Insert after section 45 (2A):

- (2B) An insurer may agree to make payments to or on behalf of the claimant in respect of attendant care services provided by a person who is related to the claimant or by a person other than a person with appropriate training to provide those services.

[20] Section 45 (5)

Insert after section 45 (4):

- (5) The Authority may from time to time issue guidelines with respect to claims for payment under this section.

[21] Section 45A

Insert after section 45:

45A Disputes about payments

- (1) If there is a dispute between an insurer and a claimant as to whether the duty of the insurer to make payments under section 45 applies because of any criterion specified in section 45 (2A), either party to the dispute may refer the matter to the Authority.
- (2) The Authority may make an evaluation of the matter and, on the basis of information available to it, make recommendations including, for example, the following recommendations:
- (a) that the criterion should or should not be regarded as having been met,
 - (b) that the insurer should make a specified payment or should not make a payment.

- (3) The Authority may refer the matter to arbitration under this section, whether or not the Authority has already made recommendations under subsection (2). The following provisions have effect:
- (a) The *Commercial Arbitration Act 1984* applies to an arbitration under this section, subject to this Act and the regulations.
 - (b) The arbitrator or arbitrators are to be selected from a panel of persons for the time being approved by the Minister for the purposes of this section.
 - (c) The arbitrator or arbitrators may make determinations regarding matters about which the Authority may make recommendations under subsection (2).
 - (d) Any such determinations are binding on the parties to the arbitration.
 - (e) The parties to the arbitration are the claimant and the insurer. The Authority is not a party to the arbitration.
 - (f) The regulations may make provision for or with respect to the arbitration of matters under this section.
- (4) The Authority may request the claimant to undergo a medical examination by one or more medical practitioners nominated by the Authority (not being an examination that is unreasonable, unnecessarily repetitious or dangerous).
- (5) The Authority may request the claimant to provide further information or particulars in connection with the matter.
- (6) The Authority may decline to deal with, or may defer dealing with, the matter under this section or may withdraw the matter from arbitration:
- (a) if of the opinion that there is no dispute or that the matter is still capable of early resolution, or

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- (b) if the claimant declines to comply with such a request to undergo a medical examination, or
 - (c) if the claimant declines to comply with such a request to provide further information or particulars or provides incomplete or inaccurate information or particulars in response to such a request, or
 - (d) for any other reason that appears to be sufficient to the Authority.

[22] Section 50A Provision of information to facilitate settlement of claim before commencing court proceedings: matters arising before commencement of provisions of Motor Accidents Amendment Act 1998

Omit "the prognosis for future recovery" from section 50A (c). Insert instead "an estimate of the future medical condition of the claimant in respect of the injuries that have not stabilised that can be made at the time the details are given".

[23] Section 50A (2)

Insert at the end of section 50A:

- (2) This section does not apply to motor accidents to which section 44C applies.

Note. Section 44C establishes an alternative regime for the giving of particulars in connection with claims made after the commencement of that section, and claims made before that commencement and in respect of which a notice under section 43 (4) had not been given to the insurer before that commencement.

[24] Part 5, Division 3A

Insert after Division 3 of Part 5:

Division 3A Conciliation and pre-conciliation procedures

50B Definitions

In this Division:

dispute means a matter that is referred for conciliation under this Division.

specify an amount of damages includes specify a manner of determining the amount of damages.

50C Application of Division

- (1) This Division applies:
 - (a) where the insurer admits liability (wholly or in part) under section 44H in respect of a claim, or
 - (b) where the insurer admits liability (wholly or in part) in respect of a claim after having wholly denied liability under section 44H in respect of the claim and agrees to pay all the claimant's reasonable costs already incurred.
- (2) This Division, other than sections 50D–50F, also applies:
 - (a) where the insurer:
 - (i) wholly denies liability under section 44H, or
 - (ii) admits partial liability but the claimant is dissatisfied with the extent to which liability is admitted, and
 - (b) the claimant and the insurer agree in writing that the Division should so apply.
- (3) However, this Division does not apply, or ceases to apply:
 - (a) where the insurer admits partial liability but the claimant is dissatisfied with the extent to which liability is admitted (unless the claimant and the insurer agree in accordance with subsection (2) that this Division applies as specified in that subsection), or
 - (b) if a certificate under section 44G authorising the commencement of court proceedings in relation to the claim is issued on the application of the claimant under section 44E or on the joint application of the claimant and the insurer under this section, or
 - (c) in such other circumstances as are prescribed by the regulations, or

- (d) to disputes excluded from this Division by the regulations.
- (4) An application under subsection (3) (b) must specify the reason why the claimant and the insurer consider that court proceedings should be commenced.
- (5) Nothing in this Division prevents the claim from being settled at any time.

50D Duty of claimant to make offer

- (1) This section applies in respect of motor accidents to which section 44C applies.
- (2) It is the duty of the claimant to make an offer of settlement to the insurer of the person against whom the claim is made.
- (3) The offer is to specify an amount of damages.
- (4) The offer is to be made at the time that notice of particulars are given to the insurer under section 44C.
- (5) If the claimant gives the insurer a notice under section 44C but does not make an offer as required by this section the claimant is, for the purposes of Part 6A, in breach of this section.

50E Insurer's response to offer

- (1) It is the duty of the insurer to respond to the claimant's offer made under section 50D by:
 - (a) accepting it, or
 - (b) rejecting it and making a counter-offer.
- (2) The insurer must respond before the day that is:
 - (a) the last day of the period of 6 months commencing with the day on which notice under section 43 (4) is given to the insurer, or

(b) the last day of the period of 3 months commencing with the day on which the offer is made to the insurer, or

(c) the last day of the period of one month commencing with the day on which a determination is made under section 44D (6),

whichever is the later.

- (3) If the insurer does not expressly reject the offer but makes a counter-offer within the period allowed under subsection (2), the insurer is taken to have rejected the offer.
- (4) If the insurer neither accepts nor rejects the offer within the period allowed under subsection (2), the insurer is taken to have rejected it.
- (5) If the insurer rejects the offer without making a counter-offer within the period allowed under subsection (2), the insurer is taken to be in breach of this section.
- (6) The counter-offer is to specify an amount of damages.
- (7) The counter-offer must specify that the claimant may be liable to pay his or her own legal costs and half of the prescribed conciliation fee if the claimant rejects the counter-offer and the conciliator assesses an amount of damages that is equal to or less than the amount of the counter-offer.

50F Claimant's response to counter-offer

- (1) It is the duty of the claimant to respond to the insurer's counter-offer made under section 50E by:
 - (a) accepting it, or
 - (b) rejecting it.

within the period of 4 weeks commencing with the day on which the claimant received the counter-offer.

- (2) If the claimant neither accepts nor rejects the counter-offer within the 4-week period, the claimant is taken to have rejected it.

50G Reference of matter for assessment for conciliation

- (1) If the insurer's counter-offer is rejected by the claimant under section 50F, or the claimant and the insurer have entered into an agreement referred to in section 50C (2), the claimant or the insurer or both may refer the claim to the Motor Accidents Claims Assessment Unit for conciliation under this Division.
- (2) The insurer is required to pay to the Authority the fee prescribed by the regulations in respect of a reference under this section. The Unit may decline to proceed with the reference unless the fee is paid.

50H Screening of dispute

- (1) The Motor Accidents Claims Assessment Unit is to make a preliminary assessment of a dispute as to whether or not the dispute is suitable for conciliation under this Division.
- (2) For the purpose of making that assessment, the Unit may require the production of documents and the furnishing of information to the Unit, and the provisions of section 99D apply (with any necessary modifications) in respect of the Unit's functions under this section in the same way as they apply in respect of a conciliator's functions under Division 5 of Part 7.
- (3) If the Unit decides that the dispute is suitable for conciliation, it is to refer it to the Principal Conciliator.
- (4) If the Unit decides that the dispute is not suitable for conciliation, it is to issue the insurer and claimant with a certificate to that effect (enabling court proceedings to be commenced in respect of the claim concerned).

50I Arrangements for conciliation

The Principal Conciliator is responsible for making arrangements as to the conciliator who is to conciliate in connection with a particular dispute or class of disputes referred by the Motor Accidents Claims Assessment Unit.

50J Conciliation of disputes

- (1) The conciliator is to make all reasonable efforts to conciliate in connection with a dispute referred to the conciliator and to bring the parties to agreement having regard to relevant entitlements and liabilities and to the objects and requirements of this Act.
- (2) Unless the dispute is already resolved, the conciliator is to convene a conciliation conference involving the parties to the dispute to be held before the conciliator within the period of 4 weeks commencing with the day on which the dispute is assessed as being suitable for conciliation.

50K Assessment by conciliator

- (1) If the parties to a dispute do not reach agreement at or within a reasonable period after a conciliation conference has been held or scheduled to be held, the conciliator is to make an assessment of the matters in dispute.
- (2) Such an assessment is to be made having regard to such information as is conveniently available to the conciliator, even if one or more of the parties to the conciliation does not co-operate or ceases to co-operate.
- (3) The assessment is to specify an amount of damages (unless the dispute concerns only the issue, and not the quantum, of liability).
- (4) The conciliator is to attach a brief statement to the assessment, setting out the conciliator's reasons for the assessment.

- (5) The regulations may specify circumstances in which the conciliator may or must refrain from making such an assessment, and the consequences of doing so.

50L Rejection of conciliation

- (1) If any party to a dispute does not accept the conciliator's assessment under section 50K, the conciliator is to issue the insurer and the claimant with a certificate to the effect that the conciliation has failed (enabling court proceedings to be commenced in respect of the claim concerned).
- (2) Each party to a dispute is to notify the conciliator (or the Principal Conciliator) as to whether or not the party accepts the conciliator's assessment within the period of 2 weeks commencing with the date of the assessment.
- (3) If a party does not give the notification within the 2-week period, the party is taken not to accept the assessment.
- (4) If a dispute has been the subject of a failed conciliation under this Part, the relevant claim cannot be determined by way of court arbitration.

50M Regulations

The regulations may make provision for or with respect to any aspect of procedures to be followed under this Division or Division 5 of Part 7, including provision for or with respect to:

- (a) the manner of making or giving offers, counter-offers, responses and notifications under this Division, and
- (b) the manner of referring claims for preliminary assessment, and
- (c) the documentation that is to accompany such a reference of a claim for preliminary assessment, and

- (d) the manner of specifying an amount of damages, and
- (e) the extension or abridgement of any period referred to in this Division.

[25] Section 52 (1A) (b)

Omit the paragraph. Insert instead:

- (b) 90 days have elapsed since the notice of particulars required by section 44C or 50A (as the case requires) was given to the other person's insurer, or

[26] Section 52(1B)

Omit the subsection. Insert instead:

- (1B) Despite subsection (1A), paragraph (c) of that subsection applies only to the first offer made by the other person's insurer and not to any subsequent offer, and does not apply where Division 3A applies in relation to the claim concerned.

[27] Section 52A

Insert after section 52:

52A Further limitation on commencement of proceedings

- (1) A claimant is not entitled to commence court proceedings against another person in respect of a claim to which section 44C applies, unless:
 - (a) the claim is not the subject of Division 3A, or
 - (b) Division 3A ceases to apply to the claim because of section 50C (3), or

- (c) a certificate has been issued under section 44G enabling proceedings to be commenced in respect of the claim, or
 - (d) the insurer is in breach of section 50E in relation to the claim, or
 - (e) the regulations authorise those proceedings to be commenced.
- (2) The provisions of this section are additional to those of section 52. Accordingly, both sections are capable of applying in relation to such a claim.

[28] Section 52B

Insert before section 53:

52B Insurer may require claimant to commence proceedings

- (1) The insurer of a person against whom a claim is made may give the claimant a notice requiring the claimant to commence court proceedings in respect of the claim if:
 - (a) the claimant has been entitled to commence the proceedings for a period of at least 6 months, and
 - (b) at least 18 months have elapsed since the date of the motor accident to which the claim relates.
- (2) The claimant must comply with the notice within 3 months after receipt.
- (3) If the claimant does not comply with the notice as required by this section, the claimant is taken to have withdrawn the claim.
- (4) A claimant whose claim is taken to have been withdrawn by operation of this section may apply to a court of competent jurisdiction for reinstatement of the claim.

- (5) The court may reinstate such a claim only if the court is satisfied that:
- (a) there was a good reason, for the claimant's failure to comply with the notice, and
 - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are equal to or greater 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.

[29] Section 56

Insert after section 55:

56 Disclosure of offers and counter-offers

Except as prescribed by the regulations, the amount of an offer or counter-offer made under Division 3A in connection with a claim is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings. and is not to be disclosed to or taken into account by the court, before the court's determination of the amount of damages in the proceedings.

[30] Section 65 False claims and statements

Insert after section 65 (b):

- (b1) in the course of the conciliation under this Act of a dispute referred to in Division 3A, or

[31] Section 82A Costs

Omit the section.

[32] Part 6A

Insert after Part 6:

Part 6A Costs

82B Definitions

In this Part:

claim and *claimant* have the same meanings as in Part 5.

conciliation fees means conciliation fees prescribed by the regulations as referred to in section 82G.

court includes a court arbitrator or arbitrators.

court fees means court fees prescribed by the regulations as referred to in section 82G.

insurer has the same meaning as in Part 5.

legal costs means costs payable on a party and party basis in relation to a claim.

82C Application of this Part

This Part applies in relation to a claim, where the notice required under section 43 (4) is given on or after the date of commencement of this section.

82D Costs where assessments made by conciliator

- (1) This section applies where an amount of damages is specified in an assessment made by a conciliator under section 50K, whether or not the relevant claim is subsequently determined by court proceedings.
- (2) If the amount of damages assessed by the conciliator is more than the amount of the insurer's counter-offer under section 50E, the insurer is liable to pay the claimant's legal costs up to and including the conciliation and the prescribed conciliation fee.

- (3) If the amount of damages assessed by the conciliator is equal to or less than the amount of the insurer's counter-offer under section 50E, each party is to bear its own legal costs up to and including the conciliation and to pay half the prescribed conciliation fee.
- (4) If the claimant is in breach of section 50D or the insurer is in breach of section 50E, the costs and fees referred to in this section are to be paid or borne as prescribed by the regulations.

82E Conciliation of costs

- (1) A conciliator in a conciliation under Division 3A of Part 5 may require a claimant to produce an assessment of the claimant's legal costs up to and including the conciliation.
- (2) The conciliator is to make all reasonable efforts to bring the parties to the conciliation to an agreement in respect of the legal costs of the claimant.
- (3) If the parties are unable to agree on those costs, the costs may be assessed in accordance with the *Legal Profession Act 1987*.

82F Costs where court proceedings

- (1) This section applies where:
 - (a) a claim has not been the subject of Division 3A of Part 5, or
 - (b) the Motor Accidents Claims Assessment Unit has decided under section 50H that a dispute relating to a claim is not suitable for conciliation under that Division,and the claim is determined by court proceedings (including court arbitration).
- (2) The rules of court concerning offers of compromise apply to any such offer in those proceedings.
- (3) The legal costs are, subject to the rules of court, to follow the event, and are to include the prescribed court fee.

82G Fees

- (1) The regulations may make provision for or with respect to the conciliation fees and court fees payable under this Part.
- (2) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated.
- (3) Conciliation fees are payable to the Motor Accidents Authority Fund.
- (4) Court fees are payable to the Consolidated Fund.

82H Adjustment of amounts

- (1) The regulations may make provision for or with respect to the manner in which amounts referred to in this Part are to be adjusted for the purposes of enabling the comparisons provided for by this Part to be made.
- (2) In particular, the regulations may provide methods for adjusting or further adjusting amounts to take account of inflation, deflation and other matters.

82I Other matters relating to costs

- (1) If by this Part a party to a claim is liable to pay the other party's legal costs, the other party is not liable to pay any of the firstmentioned party's legal costs.
- (2) Any order as to costs is to be made consistently with the relevant provisions of this Part. However, the court may make an order that departs from those provisions in special circumstances that warrant this action.
- (3) The regulations may provide that, subject to rules of court where relevant, if costs are awarded to a claimant by reference to the amount recovered by the claimant, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with or by reference to Part 6.

- (4) The regulations may make provision for or with respect to the assessment or taxation of costs and any associated matters, and may do so by reference to the provisions of any Act.

82J Exclusion of matters from this Part

The regulations may make provision for or with respect to excluding any matters or class of matters from any or all of the other provisions of this Part.

[33] Part 7, Division 5

Insert after Division 4 of Part 7:

Division 5 Motor Accidents Claims Assessment Unit

99A Definition

In this Division:

dispute means a matter that is referred for assessment and determination under section 44D or for conciliation under Division 3A of Part 5.

99B Motor Accidents Claims Assessment Unit

- (1) The Authority is to establish in association with its operations a unit, to be known as the Motor Accidents Claims Assessment Unit.
- (2) The Unit is to consist of the following members:
- (a) such officers of the Authority as the Authority determines, and
 - (b) the conciliators.
- (3) Any function expressed to be conferred or imposed on the Unit may be exercised by such member or members of the Unit as the Authority determines.

99C Conciliators

- (1) For the purposes of this Act, the Principal Conciliator is the officer of the Authority for the time being designated by the Authority as Principal Conciliator.
- (2) For the purposes of this Act, a conciliator is:
 - (a) the Principal Conciliator, or
 - (b) an officer of the Authority for the time being designated by the Authority as a conciliator, or
 - (c) a person appointed under subsection (3).
- (3) The Governor may, on the recommendation of the Minister, appoint other suitably qualified persons to be conciliators for the purposes of this Act, to conciliate on disputes as and when required to do so by the Principal Conciliator. Schedule 3 has effect with respect to conciliators appointed under this subsection.
- (4) The Principal Conciliator may delegate to any conciliator any of the Principal Conciliator's functions under this Part, except this power of delegation.

99D Power of conciliator to require information

- (1) A conciliator may give a direction in writing to a party to a dispute referred to the conciliator requiring the party:
 - (a) to produce to the conciliator, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the conciliator considers relevant to the dispute concerned, or
 - (b) to furnish specified information to the conciliator within a time specified in the direction, being information that the conciliator considers relevant to the dispute concerned.
- (2) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) If a person fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before a court have the document or information admitted in the proceedings unless the court otherwise orders in the special circumstances of the case. This subsection does not apply to a claimant unless the claimant was represented by a legal practitioner at the time of the failure.
- (4) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of documents or information from the operation of this section,
 - (b) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1).

99E Power of conciliator to provide documents and information to a party

- (1) When documents or information are produced or furnished to a conciliator by a party to a dispute (whether or not pursuant to a requirement under this Act), the conciliator may produce or furnish the documents or information to any other party to the dispute.
- (2) The regulations may make provision for or with respect to any of the following matters:
 - (a) specifying cases and circumstances in which a conciliator is required to exercise the conciliator's powers under subsection (1),
 - (b) excepting specified kinds of documents or information from the operation of this section,
 - (c) specifying circumstances in which documents or information produced or furnished to a conciliator may not be produced or furnished by the conciliator to another party to the dispute.

99F Summons to appear at conciliation conference

- (1) The Principal Conciliator may issue a summons requiring the attendance of a party to a dispute at a conciliation conference (as referred to in section 99H) on the dispute if the Principal Conciliator is satisfied that the party has failed without reasonable excuse to comply with a request by a conciliator to attend a conciliation conference on the dispute.
- (2) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

99G Protection of conciliators

- (1) A matter or thing done or omitted to be done by a conciliator in the exercise of the conciliator's functions does not, if the matter or thing was done or omitted in good faith, subject the conciliator personally to any action, liability, claim or demand.
- (2) A conciliator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a conciliator.

99H Proceedings before conciliators

- (1) In this section:
conciliation conference means any conference or other proceeding held with or before a conciliator in connection with a dispute.
- (2) A person who is a party to a dispute referred for conciliation is entitled to be represented by a legal practitioner, and by an agent of such a class as may be prescribed by the regulations. The conciliator may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.

- (3) A party to a dispute at a conciliation conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at the conciliation conference.
- (4) A conciliator must take into account any written submission prepared by a legal practitioner acting for a party to the dispute and submitted by or on behalf of the party (whether or not the party is represented by a legal practitioner at a conciliation conference on the dispute).
- (5) A conciliator may, subject to any general directions by the Principal Conciliator, hold a conciliation conference with all relevant parties in attendance and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them.
- (6) If the conciliator is satisfied that sufficient information has been supplied to him or her in connection with a dispute, the conciliator may exercise functions under this Act without holding any conciliation conference or formal hearing.

99I Control and direction of conciliators

- (1) This section applies to members of the Motor Accidents Claims Assessment Unit in their capacity as conciliators.
- (2) A conciliator is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the conciliator that affect the interests of the parties to a dispute, and the Authority or any public servant may not overrule or interfere with any such decision of the conciliator in respect of any such dispute.
- (3) Subject to subsection (2), conciliators are, in the exercise of their functions, subject to the general control and direction of the Principal Conciliator.
- (4) Subsection (2) does not prevent the making of arrangements for the training of conciliators, and does not prevent conciliators from obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations and of other relevant matters.

- (5) Conciliators are subject to guidelines issued by the Principal Conciliator with respect to the procedures to be followed in the conciliation of disputes and associated matters, being guidelines issued for the purposes of achieving consistency in the application of the provisions of this Act and the regulations and of other relevant matters. Any such guidelines are subject to the regulations under section 50M.
- (6) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to conciliators.

99J Control and direction of other members of Unit

- (1) This section applies to members of the Motor Accidents Claims Assessment Unit who are not conciliators. It also applies to members of the Unit who are conciliators, but does not apply to them in their capacity as conciliators.
- (2) A member of the Unit is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the member that affect the interests of the parties to a dispute, and the Authority or any public servant may not overrule or interfere with any such decision of the member in respect of any such dispute.
- (3) Subject to subsection (2), members of the Unit are, in the exercise of their functions, subject to the general control and direction of the General Manager or another officer of the Authority nominated by the General Manager.
- (4) Subsection (2) does not prevent the making of arrangements for the training of members of the Unit, and does not prevent members from obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations and of other relevant matters.

- (5) Members of the Unit are subject to guidelines issued by the General Manager or another officer of the Authority with respect to the procedures to be followed in connection with disputes and associated matters, being guidelines issued for the purposes of achieving consistency in the application of the provisions of this Act and the regulations and of other relevant matters. Any such guidelines are subject to the regulations under section 50M.
- (6) This section does not affect the exercise of the functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to conciliators.

[34] Section 102 Determination of application for licence

Omit section 102 (2) (e).

[35] Section 105 Conditions of licence

Omit "or varied by the Authority if it gives or is" from section 105 (1A).

Insert instead " , revoked or varied by the Authority if this would give or be".

[36] Section 105 (2)

Insert "revoke or" before "vary".

[37] Section 105 (5)

Insert after section 105 (4):

- (S) A condition that requires or has the effect of requiring a licensed insurer to obtain a share of the insurance market specified in or determined in accordance with the terms of the condition is of no effect. This subsection extends to conditions imposed or otherwise applicable before the commencement of this subsection.

[38] Section 105 (6)

Insert as section 105 (6):

- (6) A condition may require or have the effect of requiring a licensed insurer to achieve early resolution of compensation claims at levels specified or referred to in or as determined in accordance with the condition. It is a defence to a prosecution for an offence relating to a contravention of such a condition if the licensed insurer establishes that the licensed insurer furnished a report to the Authority within a reasonable period and that the report set out reasonable grounds for justifying the contravention.

[39] Section 105 (7)

Insert as section 105 (7):

- (7) A condition may require or have the effect of requiring a licensed insurer to comply with any or all of the timeframes under Division 3A of Part 5, but only if the Authority is satisfied that the insurer has been in breach of the insurer's duty under that Division to such an extent that warrants imposition of such a condition.

[40] Section 115 Information and documents as to business etc to be supplied to Authority by insurers and former insurers

Insert after section 115 (2):

- (2A) Subsection (2) extends to requiring:
- (a) financial information that is or may be relevant to the consideration by the Authority of insurance premiums filed by the insurer under this Act, and
 - (b) information about the cost of claims handling incurred by the insurer, about the settlement of claims by the insurer, and about such other matters concerning the insurer as are prescribed by the regulations.

but this subsection does not affect the generality of subsection (2), section 15A or any other provision of this Act regarding the obtaining of information by the Authority, and does not limit any other manner in which the Authority may obtain information.

[41] Section 132B

Insert after section 132A:

132B Secrecy

- (1) A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person, except in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

- (2) Despite Subsection (1), protected information may be divulged:
- (a) to a particular person or persons, if the Authority certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
 - (b) to a prescribed person or prescribed authority, or
 - (c) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or
 - (d) to the Minister.
- (3) A person cannot be required:
- (a) to produce in any court any document or other thing that contains protected information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or
 - (b) to divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act.

-
- (4) Despite subsection (3), a person may be required to produce such a document or other thing in a court or to divulge protected information to a court if:
- (a) the Authority certifies that it is necessary in the public interest to do so, or
 - (b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.
- (5) An authority or person to whom protected information is divulged under subsection (2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.
- (6) This section does not apply to the divulging of information to, or the production of any document or other thing to:
- (a) any law enforcement agency, or
 - (b) any person or body prescribed for the purposes of this subsection.
- (7) In this section:
- court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.
- functions under this Act*** includes functions under the regulations.
- produce*** includes permit access to.
- protected information*** means:
- (a) information concerning the business, commercial, professional or financial affairs of an applicant for a licence under this Act or of a licensed insurer.

- (b) information obtained in the course of an investigation of an application for such a licence,
- (c) information that was obtained by the Authority under this Act from a licensed insurer and that is the subject of an unrevoked declaration by the licensed insurer to the effect that the information is confidential,

not being information that is publicly available.

[42] Section 132C

Insert as section 132C:

132C Reports about insurers

- (1) The Authority may from time to time forward to the Minister reports relating to:
 - (a) the level of compliance by insurers with:
 - (i) any requirements of this Act, and
 - (ii) the Code of Practice for Claims Handling prepared under this Act, and
 - (iii) any conditions of licences granted under this Act, and
 - (b) complaints made about insurers, and any other matters relating to insurers, in connection with any matters to which this Act relates.
- (2) A report may relate to insurers generally, or to any class of insurers, or to any particular insurers.
- (3) A report may identify particular insurers.
- (4) A report may include such observations and recommendations as the Authority thinks fit.
- (5) If the Authority recommends tabling of a report in Parliament, the Minister may lay the report or cause it to be laid before both or either of the Houses of Parliament.
- (6) Nothing in this section affects reports that may be made apart from this section.

[43] Schedule 3

Insert after Schedule 2:

Schedule 3 Provisions relating to appointed conciliators

(Section 99C)

1 Schedule applies to appointed conciliators

This Schedule applies only to conciliators appointed under section 99C (3).

2 Terms of office

Subject to this Schedule, a conciliator holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the conciliator, but is eligible for re-appointment.

3 Remuneration

A conciliator is entitled to be paid such remuneration (including travelling and subsistence allowances) in respect of work done as a conciliator as the Minister may from time to time determine in respect of the conciliator.

4 Casual vacancies

- (1) A conciliator is taken to have vacated office if the conciliator:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) 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

- (d) becomes a mentally incapacitated person, or
 - (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (f) resigns the office by instrument in writing addressed to the Governor, or
 - (g) is removed from office by the Governor under subclause(2).
- (2) The Governor may at any time remove a conciliator from office.

5 Effect of certain other Acts

- (1) If by or under any other 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,
- that provision does not operate to disqualify the person from holding that office and also the office of a conciliator or from accepting and retaining any remuneration payable to the person under this Act as a conciliator.
- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to a conciliator.

[44] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1(1):

the *Motor Accidents Amendment Act 1998*

[45] Schedule 4

Insert in the Schedule (with appropriate Part and clause numbers):

Part Provisions arising from the enactment of the Motor Accidents Amendment Act 1998

Definitions

In this Part:

amending Act mean the *Motor Accidents Amendment Act 1998*.

Cancellation of third-party policies

The amendment of section 13 (4) by the amending Act applies to credit card transactions entered into after the commencement of Schedule 1 [5] to the amending Act.

Rejection of premiums by Authority

Section 15B (6) as in force before the commencement of Schedule 1 [9] to the amending Act continues to apply in relation to premiums filed under Division 3 of Part 3 before that commencement as if that item had not been enacted.

Conciliation

Division 3A of Part 5 does not apply in relation to a claim arising out of a motor accident that occurred before the commencement of section 44C (which was inserted by the amending Act), being a motor accident in respect of which notice under section 43 (4) had been given to an insurer before that commencement.

Costs

The amendments made by the amending Act do not affect costs in connection with claims in respect of which a notice under section 43 (4) was given before the commencement of any of the provisions of Part 6A (which was inserted by the amending Act).

**Schedule 2 Amendment of Legal Profession
Amendment (Costs Assessment) Act
1998**

(Section 4)

[1] Schedule 1 Amendments

Omit Schedule 1 [3] and [5].

[2] Schedule 1 [15]

Omit the item. Insert instead:

[15] Section 208O Costs fixed by regulations

Insert "(a1)," after "(a)," in section 208O (1).

[Minister's second reading speech made in—
Legislative Council on 15 October 1998
Legislative Assembly on 25 November 1998]