



New South Wales

# Motor Accidents Legislation Amendment Act 2004 No 77

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New South Wales

# **Motor Accidents Legislation Amendment Act 2004 No 77**

Act No 77, 2004

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*An Act to amend the Motor Accidents Act 1988 and the Motor Accidents Compensation Act 1999 in respect of motor accidents occurring in the course of coal miner employment; and for other purposes. [Assented to 11 October 2004]*

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

**1 Name of Act**

This Act is the *Motor Accidents Legislation Amendment Act 2004*.

**2 Commencement**

This Act commences on the date of assent.

**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 Motor Accidents Compensation Act 1999 No 41**

The *Motor Accidents Compensation Act 1999* is amended as set out in Schedule 2.

**5 Amendment of workers compensation legislation**

The *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* are amended as set out in Schedule 3.

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## Schedule 1 Amendment of Motor Accidents Act 1988

(Section 3)

### [1] Section 3D

Insert after section 3C:

#### **3D Parts 4, 5 and 6 not to apply to coal miner work injury claim resulting from uninsured off-road accident**

- (1) Parts 4, 5 and 6 do not apply in respect of the death of or injury to a coal miner caused by a motor accident if:
  - (a) the motor accident did not arise from the use or operation of a motor vehicle on a road or road related area, and
  - (b) there is no motor accident insurer on risk in respect of the motor accident, and
  - (c) the death or injury gives rise to a work injury claim.
- (2) For the purposes of subsection (1) (b), there is no motor accident insurer on risk in respect of a motor accident if:
  - (a) at the time of the motor accident the motor vehicle was not subject to coverage under a third-party policy and was not subject to coverage under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of a place other than New South Wales or under a law of the Commonwealth, and
  - (b) there is no right of action against the Nominal Defendant in respect of the motor accident.
- (3) For the purposes of subsection (1) (c), death or injury gives rise to a work injury claim if it is:
  - (a) a death of a worker resulting from or caused by an injury to the worker (being an injury caused by the negligence or other tort of the worker's employer), or
  - (b) an injury to a worker caused by the negligence or other tort of the worker's employer.
- (4) Expressions used in subsection (3) (a) and (b) have the same meanings as they have in Part 5 of the *Workers Compensation Act 1987*.

(5) In this section:

*coal miner* has the same meaning as in clause 3 of Part 18 of Schedule 6 to the *Workers Compensation Act 1987*.

**[2] Sections 34B, 41 and 69**

Insert at the end of the sections, respectively:

**Note.** The application of this Part in respect of coal miner work injury matters is limited by section 3D.

**[3] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

the *Motor Accidents Legislation Amendment Act 2004*

**[4] Schedule 4, Part 12**

Insert after Part 11:

**Part 12 Provisions arising from the enactment of the Motor Accidents Legislation Amendment Act 2004**

**35 Application of section 3D**

Section 3D extends to motor accidents occurring before the section commences. However, section 3D does not affect court proceedings commenced before 5 December 2002 or any decision of a court made before the section commences.

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## **Schedule 2 Amendment of Motor Accidents Compensation Act 1999**

(Section 4)

### **[1] Section 5A**

Insert after section 5:

#### **5A Chapters 3, 4, 5 and 6 not to apply to coal miner work injury claim resulting from uninsured off-road accident**

- (1) Chapters 3, 4, 5 and 6 do not apply in respect of the death of or injury to a coal miner caused by a motor accident if:
  - (a) the motor accident did not arise from the use or operation of a motor vehicle on a road, and
  - (b) there is no motor accident insurer on risk in respect of the motor accident, and
  - (c) the death or injury gives rise to a work injury claim.
- (2) For the purposes of subsection (1) (b), there is no motor accident insurer on risk in respect of a motor accident if:
  - (a) at the time of the motor accident the motor vehicle was not subject to coverage under a third-party policy and was not subject to coverage under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of a place other than New South Wales or under a law of the Commonwealth, and
  - (b) there is no right of action against the Nominal Defendant in respect of the motor accident.
- (3) For the purposes of subsection (1) (c), death or injury gives rise to a work injury claim if it is:
  - (a) a death of a worker resulting from or caused by an injury to the worker (being an injury caused by the negligence or other tort of the worker's employer), or
  - (b) an injury to a worker caused by the negligence or other tort of the worker's employer.
- (4) Expressions used in subsection (3) (a) and (b) have the same meanings as they have in Part 5 of the *Workers Compensation Act 1987*.

(5) In this section:

*coal miner* has the same meaning as in clause 3 of Part 18 of Schedule 6 to the *Workers Compensation Act 1987*.

**[2] Sections 43, 67 and 148**

Insert at the end of the sections, respectively:

**Note.** The application of this Chapter in respect of coal miner work injury matters is limited by section 5A.

**[3] Section 122 Damages in respect of motor accidents**

Omit the note to the section. Insert instead:

**Note.** See *Motor Accidents Act 1988* for motor accidents occurring before the commencement of this Act.

See section 121 of the *Transport Administration Act 1988* for the application of this Chapter to railway, ferry and other public transport accidents.

The application of this Chapter in respect of coal miner work injury matters is limited by section 5A.

**[4] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Motor Accidents Legislation Amendment Act 2004*

**[5] Schedule 5, Part 4**

Insert after Part 3:

**Part 4 Provisions arising from the enactment of the Motor Accidents Legislation Amendment Act 2004**

**17 Application of section 5A**

Section 5A extends to motor accidents occurring before the section commences. However, section 5A does not affect court proceedings commenced before 5 December 2002 or any decision of a court made before the section commences.

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## Schedule 3 Amendment of workers compensation legislation

(Section 5)

### 3.1 Workers Compensation Act 1987

#### Section 151E Application—modified common law damages

Insert after section 151E (2):

**Note.** However, this Division will generally apply in the case of an injury to a coal miner if the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (as described in section 3D of the *Motor Accidents Act 1988* and section 5A of the *Motor Accidents Compensation Act 1999*).

### 3.2 Workplace Injury Management and Workers Compensation Act 1998

#### Section 250 Interpretation

Insert at the end of the definition of *work injury damages* in section 250 (1):

**Note.** However, *work injury damages* generally extends to damages recoverable from a worker's employer in the case of an injury to a coal miner where the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (as described in section 3D of the *Motor Accidents Act 1988* and section 5A of the *Motor Accidents Compensation Act 1999*).

[Second reading speech made in—

Legislative Assembly on 12 November 2003

Legislative Council on 21 September 2004]

BY AUTHORITY