

MOTOR ACCIDENTS (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to amend the Motor Accidents Act 1988—
 - (i) to make further provision for the phasing-in of the motor accidents scheme under the Act from the commencement of the scheme (which is anticipated to be 1 July 1989) until 1 July 1991;
 - (ii) to provide for the operation and administration of the scheme after the phasing-in period (with particular reference to the licensing and control of insurers and the nature of their participation in the scheme);
 - (iii) to authorise the Attorney General and the Motor Accidents Authority to enter into a deed with insurers relating to the operation of the scheme;
 - (iv) to increase the membership of the Board of Directors of the Authority and to further define the role and functions of the Authority; and
 - (v) to make miscellaneous amendments to that Act; and
- (b) to make amendments to other Acts; and
- (c) to enact savings, transitional and other provisions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the staged commencement of the proposed Act. The bulk of its provisions (being those contained in Schedule 1) are to commence on the date of assent. Other provisions (being those contained in Schedule 2) are to commence on 1 July 1991.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Act.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to other Acts.

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SCHEDULE 1—GENERAL AMENDMENTS**Definitions**

Schedule 1 (1) (a) amends section 3 to make a minor amendment to the definition of "injury".

Schedule 1 (1) (b) amends section 3 to insert a definition of "Industry Deed".

Schedule 1 (1) (c) amends section 3 to insert a definition of "market share" in relation to insurers.

Industry Deed

Schedule 1 (2) inserts proposed section 3A which authorises the Attorney General and the Motor Accidents Authority to enter into an agreement with insurers in the form contained in Schedule 5 as proposed to be inserted into the Act. It also authorises the Attorney General and the Authority to exercise the functions conferred on them under the agreement and requires them to comply with the agreement in exercising their functions under the Act.

Schedule 1 (77) inserts proposed Schedule 5 which sets out the terms of the Industry Deed.

Initial arrangements for effecting third-party insurance

Schedule 1 (4) amends section 11 to make further provision to ensure that the initial distribution of third-party policies among participating insurers is made equitably.

Schedule 1 (5) amends section 13 to provide that insurance premiums received by the Roads and Traffic Authority during the first 2 years of operation of the scheme are to be paid to third-party insurers in accordance with an agreement made between the Roads and Traffic Authority and the Motor Accidents Authority. The agreement is to make provision for the amount of commission to be retained by the Roads and Traffic Authority, the intervals at which insurance premiums are to be paid to licensed insurers and the audit of the method of allocation of third-party policies to insurers.

Determination of insurance premiums

The Act presently provides for the determination of insurance premiums by the Minister.

Schedule 1 (6) amends section 14 to enable the Minister to vary premiums if significant changes occur in factors relevant to the determination of those premiums.

Schedule 1 (7) omits section 15 and inserts proposed sections 15, 15A and 15B which specify the arrangements to be made for the determination of premiums from 1 July 1991. Section 15 enables a licensed insurer to charge a premium determined by it if it has first filed the premium with the Motor Accidents Authority and the Authority has not rejected the premium within 6 weeks after it is filed. Section 15A provides for the filing of full sets of premiums by a licensed insurer annually or at the requirement of the Authority. Section 15B limits the grounds on which the Authority may reject a premium and enables the resolution of any dispute between the Authority and a licensed insurer following a rejection.

Changes in circumstances affecting the amounts of premiums

Schedule 1 (9) inserts proposed section 19A. The section requires the Roads and Traffic Authority to notify licensed insurers of changes in registered particulars relating to motor vehicles. It also enables an insurer to recover any increase in a premium resulting from a change in the circumstances which determine the amount of premium to be charged.

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Entry of judgment against licensed insurer

Schedule 1 (11) substitutes section 25 to provide for the circumstances in which and the procedure by which a judgment against the owner or driver of a motor vehicle may be enforced against the vehicle's third-party insurer.

Nominal Defendant

Schedule 1 (13) substitutes section 30 to provide that the Nominal Defendant will not handle claims made against it but instead will allocate them to be dealt with by licensed insurers, the allocation of claims being made in accordance with arrangements contained in the Industry Deed or as determined by the Authority.

Schedule 1 (15) amends section 33 to provide for the basis on which collections may be made by the Authority for the purposes of the Nominal Defendant's Fund.

Rehabilitation

Schedule 1 (16) substitutes section 37 to redefine the responsibilities of licensed insurers for the rehabilitation of persons injured in motor accidents and the consequences of the failure of a person who is assessed to be suitable for rehabilitation to accept the provision of appropriate rehabilitation services.

Schedule 1 (17) amends section 38 to require the prompt provision of rehabilitation services to an injured person assessed to be suitable for rehabilitation after liability is admitted by a licensed insurer.

Schedule 1 (18) amends section 39 to clarify the circumstances in which consideration is to be given to the steps taken by an injured person to mitigate damages through undertaking rehabilitation.

Payments to hospitals etc.

Schedule 1 (19) inserts proposed Part 4A containing sections 39A-39E. The provisions are based on Division 2 of Part 2 of the Motor Vehicles (Third Party Insurance) Act 1942. They enable the determination by the Minister for Health and by the regulations of amounts to be paid for hospital, medical and associated services provided to motor accident victims and for the payment of those amounts by licensed insurers and the Nominal Defendant. The provisions will not be required if suitable bulk billing arrangements are made between the providers of the services and insurers.

Section 39A contains definitions for the purposes of the proposed Part.

Section 39B provides for the direct payment by an insurer or the Nominal Defendant to the provider of a hospital, medical or associated service of the amount for the service determined under the section.

Section 39C enables the provider of a hospital, medical or associated service to recover the cost of the service from the person whose fault caused the injury for which the service was provided. Recovery action cannot be taken if a licensed insurer or the Nominal Defendant has met the cost or if any relevant workers compensation proceedings are on foot or, in any case, until 6 months after the motor accident occurred.

Section 39D provides that the payment by a licensed insurer or the Nominal Defendant discharges the liability of any other person to make the payment.

Section 39E provides for the time within which and the manner by which notice of a claim under the proposed Part is to be given.

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Matters relating to the making of claims

Schedule 1 (21) substitutes section 43. The proposed section provides that a claim in respect of a motor accident is generally to be made within 6 months after the date of the accident, or the death of the person in respect of whom the claim is made, unless the claimant is able to make a full and satisfactory explanation for having made the claim outside that period. Notice of the claim is required to be given to the person against whom it is made and to the person's third-party insurer.

Schedule 1 (22) amends section 45 to remove the provision that an insurer, after an admission of liability, is required to pay the claimant's loss of earnings as incurred and further qualifies the nature of an insurer's duty under that section.

Schedule 1 (24) and (25) amend sections 48 and 49, respectively, to require a claimant to co-operate fully, not only with the person against whom the claim is made, but also with the person's insurer.

Schedule 1 (26) substitutes section 50. The proposed section clarifies the nature of the co-operation required to be given by the owner or driver of a motor vehicle involved in a motor accident to the vehicle owner's insurer.

Schedule 1 (27) substitutes section 52. The proposed section requires any court proceedings relating to a claim to be brought not earlier than 6 months after giving notice of the claim and not later than 3 years after giving notice. Proceedings may only be brought after the 3-year period with the leave of the court in which the proceedings are to be taken.

Schedule 1 (28) omits section 56 which imposed a costs penalty in certain circumstances where an offer of settlement was rejected.

False and fraudulent claims

Schedule 1 (29) inserts proposed section 64A. The section requires licensed insurers to take all reasonable steps to deter fraudulent claims.

Schedule 1 (30) amends section 65 to make it an offence to make a statement which is known to be false or misleading when furnishing any information to any person concerning a motor accident or any claim relating to a motor accident.

Schedule 1 (31) amends section 66, which relates to the consequence of making a fraudulent claim to obtain a financial benefit, to clarify the application of the section.

Schedule 1 (32) inserts proposed section 66A. The section enables an insurer to apply to a court to be joined as a party to proceedings which have been brought against a person indemnified under a third-party policy of the insurer if the insurer believes the claim in respect of which the proceedings are brought has not been made in good faith. If the court gives the insurer leave to be joined, the insurer may call and examine witnesses and lead other evidence to test the genuineness of the claim. The section applies to proceedings commenced before or after the date of commencement of the section.

Schedule 1 (33) amends section 67 to enable the Authority to obtain additional information from insurers for inclusion in the claims register maintained by it, to restrict access to information in the register and to authorise insurers to exchange information concerning claims.

Awarding of damages

Schedule 1 (34) amends section 71 to make it clear that the discount rate under that section applies to lump sum damages for future economic loss which is referable to the value of home care and attendant care services.

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Schedule 1 (35) amends section 73 to make further provision for the circumstances in which a court may order the payment of interest on an award of damages in a case where the defendant has made an offer of settlement.

Schedule 1 (36) amends section 75 to make it clear that the contributory negligence of a deceased person will not operate as a complete bar to proceedings under the Compensation to Relatives Act 1897 by a dependant.

Schedule 1 (37) amends section 78 to remove the requirement that a plaintiff's economic loss is to be reduced by the amount of certain retirement or superannuation benefits.

Schedule 1 (39) substitutes section 80. The proposed section provides for the indexation of amounts which may be awarded under section 79 as damages for non-economic loss.

Schedule 1 (40) substitutes section 81. The proposed section enables a court, with the consent of the plaintiff and the defendant's insurer (or the Nominal Defendant), to implement structured settlements in respect of damages awarded to the plaintiff.

Schedule 1 (41) inserts proposed section 81A. The section prohibits a court from awarding exemplary or punitive damages in respect of a motor accident.

Schedule 1 (42) inserts proposed section 82A. The section will enable the making of lump sum awards of costs and of avoiding the necessity for taxation of costs so awarded.

The Motor Accidents Authority, Board of Directors and General Manager

Schedule 1 (43) amends section 84 to increase the number of directors from 5 to 7. Of the 7 directors, 2 are to be persons nominated or approved by licensed insurers and 1 is to be a person nominated by the NRMA. The qualifications of other directors are to be extended to include medical and insurance qualifications.

Schedule 1 (45) substitutes section 88. The proposed section redefines the nature and extent of Ministerial control over the Board of Directors of the Authority and the General Manager of the Authority. A Ministerial direction may only be given if the Minister is satisfied that it is desirable in the public interest to do so. Particulars of any directions given are to be published in the Gazette and in the annual report of the Authority.

Schedule 1 (46) omits section 91 so as to remove the requirement that the Authority make, within the first 2 years, a special investigation and report on deregulation of insurance arrangements under the Act.

Schedule 1 (47) amends section 94 to require the Authority to provide a copy of the estimates, provisions and amounts to be contributed to the Motor Accidents Authority Fund by licensed insurers to each licensed insurer not later than 21 days before the commencement of the financial year to which they relate.

Schedule 1 (48) amends section 96 to provide that the Authority shall not delegate any of its functions without the approval of the Board of Directors and to prohibit the Authority from delegating certain specified functions.

Schedule 1 (75) substitutes clause 6 of Schedule 3 to provide for the remuneration of the General Manager of the Authority to be determined by the Board of Directors of the Authority.

Licensing of insurers

Schedule 1 (49) amends section 100 to clarify the operation of that section.

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Schedule 1 (50) (a) amends section 101 to enable an application for a licence to be made by an affiliate of the GIO.

Schedule 1 (50) (b) amends section 101 to provide that a corporation is not competent to make an application for a licence unless it is a party to the Industry Deed.

Schedule 1 (51) amends section 102 to impose further restrictions on the Authority in granting licences to insurers.

Schedule 1 (52) substitutes section 103. The proposed section provides for the initial determination, before 1 July 1989, of the market share of each licensed insurer by the Minister. The Minister is only empowered to redetermine market share if the Authority suspends or cancels the licence of a licensed insurer or issues a new licence in accordance with the Act and the Industry Deed. The Minister's power to redetermine market share ceases on 30 June 1991.

Schedule 1 (53) substitutes section 104. The proposed section provides that a licence continues in force until it is cancelled.

Schedule 1 (54) amends section 105 to provide that a condition of a licence cannot be imposed if it gives or is likely to give a competitive advantage to one licensed insurer over other licensed insurers.

Schedule 1 (55) amends section 106 to further limit the matters that may be regulated by a condition of a licence.

Schedule 1 (56) inserts proposed sections 106A and 106B. Section 106A provides for the circumstances in which a licensed insurer may assign its licence to another licensed insurer or to a prospective licensed insurer. Section 106B provides for the suspension of licences. It specifies the grounds on which a suspension may be made. An insurer whose licence is suspended is prohibited from issuing any third-party policies during the period of the suspension. Contravention of the prohibition is made an offence with a maximum penalty of 100 penalty units. Provision is also made for the circumstances in which a suspension may be terminated.

Schedule 1 (57) amends section 107 to provide that the Authority shall not cancel a licence unless it is satisfied that the licensed insurer has discharged all past, present and future insurance liabilities.

Records and information relating to licensed insurers

Schedule 1 (61) substitutes section 111. The proposed section requires a licensed insurer to notify the Authority of specified matters relating to re-insurance in respect of liabilities under its third-party policies and imposes controls on the form of re-insurance a licensed insurer may effect.

Schedule 1 (62) amends section 112 to enable the Authority to obtain information from a licensed insurer relating to the investment of its third-party funds and other funds.

Schedule 1 (63) amends section 114 to provide that the appointment of an auditor under that section may only be made by the Board of Directors of the Authority and to enable an auditor to report to the Authority on the manner in which the third-party funds and other funds of a licensed insurer are invested.

Schedule 1 (65) substitutes section 117. The proposed section requires a licensed insurer and a former licensed insurer to notify the Authority of the occurrence of the defaults specified in the proposed section 106B and of certain other matters. The maximum penalty for a failure to do so is 100 penalty units.

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Schedule 1 (66) amends section 118 (which relates to the powers of entry and inspection by authorised officers of the Authority) to provide that the authorisation of a person as an authorised officer for the purposes of the section is to be given by the Board of Directors of the Authority and is to be limited to a specified investigation.

Miscellaneous matters relating to licensed insurers

Schedule 1 (67) inserts proposed section 118A. The section provides that no proceedings are to be taken against a licensed insurer for default under a licence, the Act or the regulations, except by the Authority.

Schedule 1 (68) inserts proposed section 127A. The section enables the Nominal Defendant to borrow money to satisfy claims relating to third-party policies issued by a licensed insurer.

Schedule 1 (69) inserts proposed section 132A. The section enables evidence to be given in court proceedings of various matters on the certificate of the Authority.

Funding and administration of previous schemes

Schedule 1 (72) inserts proposed section 146A. The section confers privilege on certain records compiled by the GIO relating to intermediate transport accidents within the meaning of Part 10 of the Act.

Schedule 1 (73) inserts proposed sections 147A and 147B. Section 147A makes it clear that the GIO has a right of recovery in relation to intermediate transport accidents against certain persons who were not contributors to the Transport Accidents Compensation Fund under the Transport Accidents Compensation Act 1987. Section 147B causes the insurance funds administration business division of the GIO to be responsible to the Authority in its handling of claims relating to intermediate transport accidents and outstanding claims under the Motor Vehicles (Third Party Insurance) Act 1942.

Savings, transitional and other provisions

Schedule 1 (76) amends Schedule 4 to enact savings, transitional and other provisions consequent on the enactment of the proposed Act.

The amendment made by Schedule 1 (76) (e) to clause 1 (renumbered as clause 2) enables the GIO to recover, when recovering any contribution under the Transport Accidents Compensation Act 1987, the amount of any additional liability imposed as a consequence of the enactment of the Motor Accidents Act 1988.

Proposed clause 4 provides that the amendment which increases the number of members of the Board of Directors of the Authority does not affect the appointment or term of office of an existing director.

Proposed clause 5 sets out the arrangements which are to apply on the introduction of the scheme of compulsory third-party insurance under the Act for the allocation of third-party insurance business among licensed insurers.

Proposed clause 6 makes provision for the funding of the transitional insurance arrangements.

Minor and consequential amendments

Schedule 1 (3) and (74) amend various sections to replace references to the Commissioner for Motor Transport with references to the Roads and Traffic Authority.

Schedule 1 (8) amends section 18 to facilitate the recovery by a licensed insurer of underpaid premiums.

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Schedule 1 (10) amends section 21 to make a minor qualification as to the time at which a third-party policy is taken to be cancelled if the registration of the motor vehicle to which the policy applies is not renewed by the due date.

Schedule 1 (12) amends section 27 to remove an unnecessary qualification.

Schedule 1 (14) makes an amendment to section 32 consequential on the amendment made by Schedule 1 (15).

Schedule 1 (20) makes a minor amendment to the definition of "claim" in section 40 and amends the definition of "insurer" in that section so as to include the Nominal Defendant and an insurer who acts on behalf of another insurer.

Schedule 1 (23) makes a minor amendment to section 46.

Schedule 1 (38) makes an amendment to section 79 consequential on the amendment made by Schedule 1 (39).

Schedule 1 (44) makes an amendment to section 85 consequential on the amendment made by Schedule 1 (45).

Schedule 1 (58) makes an amendment to section 108 consequential on the amendments made by Schedule 1 (1) (c) and (52).

Schedule 1 (59) makes an amendment to section 109 consequential on the amendment made by Schedule 1 (56).

Schedule 1 (60) amends section 110 to require a licensed insurer to revise its business plan for its third-party insurance business at intervals of not less than 12 months.

Schedule 1 (64) amends section 116 by way of statute law revision.

Schedule 1 (70) makes a minor amendment to section 133.

Schedule 1 (71) makes amendments to section 146 consequential on the amendment made by Schedule 1 (27).

SCHEDULE 2—AMENDMENTS TO COMMENCE ON 1 JULY 1991

Schedule 2 contains amendments to the Act which relate to the operation and administration of the scheme of compulsory third-party insurance under the Act from 1 July 1991, that is, after the phasing-in period.

Schedule 2 (1) amends section 3 so as to substitute the definition of "market share".

Schedule 2 (2) substitutes Division 2 of Part 3. The proposed Division contains sections 10 and 11. Section 10 requires a licensed insurer to issue a certificate of insurance on acceptance of a premium for a third-party policy for a motor vehicle or motor vehicles to which a trader's plate is attached. A licensed insurer who issues such a certificate shall be taken to have issued a third-party policy in conformity with the certificate. Section 11 requires the production of a certificate of insurance at the time an application is made for the registration or renewal of registration of a motor vehicle or on an application for a trader's plate.

Schedule 2 (3) substitutes section 20. The proposed section continues, for a limited period, the cover under a third-party policy notwithstanding a delay in its renewal and the renewal of the registration of the motor vehicle to which it applies.

Schedule 2 (4) amends section 21 to limit the circumstances in which a third-party policy revives on the restoration of the registration of the motor vehicle to which it applies.

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Schedule 2 (5) omits section 103 (being the provision under which the market share of a licensed insurer is determined during the phasing-in period).

Schedule 2 (6) amends section 108 consequential on the amendment made by Schedule 2 (7).

Schedule 2 (7) inserts proposed section 115A. The section provides for the determination by the Authority of the market share of each licensed insurer according to the proportion of the insurance premiums for third-party policies received by an insurer for a particular period bears to the total of all such insurance premiums received by all insurers for that period.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

Schedule 3 contains amendments to other Acts.

The Defamation Act 1974 is amended to provide a defence of absolute privilege for publication of various matters under the Motor Accidents Act 1988.

The Justices Act 1902 is amended to enable penalty notices to be served under that Act in respect of the offence under section 8 (1) of the Motor Accidents Act 1988 of using a motor vehicle that is not an insured motor vehicle on a public street.

The Miscellaneous Acts (Motor Accidents) Amendment Act 1988 and the Workers Compensation Act 1987 are amended to provide that employees are not to be prevented from recovering damages from their employers under the Motor Accidents Act 1988 if those employers are covered by third-party policies and to provide also that the total liability of a third-party insurer to a workers compensation insurer is to be no greater than the total liability the third-party insurer would have had to the claimant directly.

The Motor Vehicles (Third Party Insurance) Amendment Act 1984 is amended to remove the requirement that separate accounts be kept for Nominal Defendant matters arising under the Motor Vehicles (Third Party Insurance) Act 1942.
