

MOTOR ACCIDENTS (AMENDMENT) BILL 1990*

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are to make miscellaneous amendments to the Motor Accidents Act 1988, including amendments relating to:

- * insurance of trailers
- * the method of effecting and the duration of third-party insurance
- * the determination of premiums
- * claims by and against the Nominal Defendant
- * claims in respect of intermediate transport accidents

and to amend the Motor Accidents (Amendment) Act 1989.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days, with certain exceptions. Those exceptions, and the reasons for them, are explained later in this Explanatory Note.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Motor Accidents Act 1988.

Clause 4 amends the Motor Accidents (Amendment) Act 1989. The amendments made by this clause are consequential on the amendment made by Schedule 1 (2) relating to the method of effecting and duration of third-party insurance and are to take effect on the date of assent to the proposed Act.

Clause 5 validates the operation of clause 4 of the Motor Accidents Regulation 1989 by giving it a retrospective commencement as from 1 July 1989. The effect of the provision is to enable a claim to be made against the Nominal Defendant for the death of or injury to a person arising from the use or operation on a public street of a vehicle which may lawfully be so used or operated despite the fact that it is not registered.

* Amended in committee — see table at end of volume.

Motor Accidents (Amendment) 1990

SCHEDULE 1 - AMENDMENTS

Trailers

Schedule 1 (1), (7), (8) and (20) (a) amend provisions relating to trailers. Under the Act at present, trailers are treated as being motor vehicles and are required to be separately insured. The requirement for separate insurance is removed.

Liability for the death of or injury to a person caused by a trailer is to be determined, as a consequence of the amendments, as follows. If the trailer is attached to a motor vehicle at the time of the accident or has run out of control because it has become accidentally detached from the towing vehicle, the trailer will be covered by the third-party policy relating to the motor vehicle. In other cases, a claim involving a trailer may be brought against the Nominal Defendant

Method of effecting and duration of third-party insurance

Schedule 1 (2) substitutes Division 2 of Part 3. The substituted Division contains the following provisions:

Proposed 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 for motor vehicles to which a trader's plate is or is to be fixed. A licensed insurer who issues such a certificate is taken to have issued a third-party policy in relation to the vehicle or vehicles.

Proposed section 11 requires the production of evidence 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.

Proposed section 12 specifies the period for which a third-party policy is in force. A policy takes effect on the registration (or renewal of registration) of the vehicle to which it relates or, if renewal of the registration is effected after the date for renewal, on the date on which the renewal is effected. A policy terminates on the expiry of the motor vehicle's registration or on the cancellation of the policy under proposed section 13. In the case of motor vehicles to which a trader's plate is to be fixed, the third-party policy is in force for the period for which the trader's plate is issued.

Proposed section 13 provides that a licensed insurer has no power to cancel a third-party policy. A policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except if the registration is cancelled for fine default purposes under section 18C of the Traffic Act 1909 or except if after cancellation, the registration is restored before the date for renewal of the registration. The proposed section also provides that a third-party policy may be cancelled if the Roads and Traffic Authority, at the request of a licensed insurer, cancels the registration of a motor vehicle because the premium for the policy is unpaid.

Schedule 1 (6) and clause 4 make consequential amendments.

The substituted Division and Schedule 1 (6) are to commence from 1 July 1991, being the end of the phasing-in period for the motor accidents scheme contained in the Act.

Determination of premium

Schedule 1 (3) repeals section 14 which enables the determination of premiums for third-party policies by the Minister administering the Motor Accidents Act 1988. The repeal takes effect on 1 July 1991, being the end of the phasing-in period for the motor accidents scheme contained in the Act.

Schedule 1 (4) inserts proposed section 14A which enables the Motor Accidents Authority to issue guidelines, after approval by the Board of Directors of the Authority, to licensed insurers as to the determination of premiums for third-party policies.

Schedule 1 (5) enables the Authority to reject premiums if they do not comply with the Authority's guidelines.

Claims against the Nominal Defendant

As referred to in the summary of amendments relating to trailers, Schedule 1 (7) has the effect of enabling a claim to be made against the Nominal Defendant for an accident involving a trailer which is not attached to, and which has not become detached from, a motor vehicle.

Clause 5, as explained above, confirms the right of a person to claim against the Nominal Defendant in respect of the death of or injury to a person arising from the use or operation on a public street of a vehicle which may lawfully be so used or operated despite the fact that it is not registered

Schedule 1 (8) prevents the Nominal Defendant from recovering from an owner or driver any amount paid by the Nominal Defendant in respect of an accident involving a trailer which is not attached to, and which has not become detached from, a motor vehicle or a vehicle which may lawfully be used or operated on a public street despite the fact that it is not registered

Schedule 1 (8) is to commence retrospectively as from 1 July 1989.

Rehabilitation services

Schedule 1 (9) amends section 37 to make it clear that the obligation of a licensed insurer to provide rehabilitation services to an accident victim ceases if the victim's claim is settled.

The amendment is to commence retrospectively as from 1 July 1989 so as to apply to rehabilitation services provided at any time from that date.

Reporting of accidents

Schedule 1 (10) amends section 42 to remove the requirement that a court order to commence proceedings in relation to a motor accident is necessary if a report of the accident has not been made within a specified period after the date of the accident. The amendment requires the plaintiff to provide a full and satisfactory explanation to the court for the non-compliance and enables the court to allow the proceedings to continue if it is satisfied by the explanation.

Motor Accidents (Amendment) 1990

Making of claims

Schedule 1 (11) and (12) amend sections 43 and 44 in minor respects to clarify the procedure for the making of claims. In particular, the Motor Accidents Authority is empowered to appoint different forms according to the person to whom notice of a claim is to be given.

Payments by licensed insurers in respect of claims

Schedule 1 (13) amends section 45 to make it clear that a payment made by a licensed insurer after liability in respect of a claim is admitted is to be taken to form part of any damages payable to the claimant.

Claims register

Schedule 1 (14) amends section 67 to replace the requirement that a licensed insurer forward specified details of a claim to the Motor Accidents Authority within 30 days after receiving notice of a claim with a requirement that those details be forwarded within such period as the Authority may reasonably require.

Business plans of licensed insurer

Schedule 1 (15) amends section 110 to replace the requirement that a licensed insurer deliver to the Motor Accidents Authority a business plan for its third-party insurance business as soon as practicable after it is granted a licence with a requirement that the business plan be delivered as soon practicable after a request to do so is made by the Authority.

Certificate evidence

Schedule 1 (16) amends section 132A to provide that a certificate issued by the Motor Accidents Authority naming a licensed insurer as the third-party insurer of a particular vehicle for a particular period is to be evidence, rather than conclusive evidence, of the matter certified.

Intermediate transport accidents

An intermediate transport accident is a motor accident which occurred after 1 July 1987 (the date of commencement of the Transport Accident Compensation Act 1987) and before 1 July 1989 (the date of repeal of that Act by the Motor Accidents Act 1988) and which was or would have been compensable under either Act.

Schedule 1 (17) amends the definition of "intermediate transport accident" in section 138 by way of statute law revision.

Schedule 1 (18) inserts proposed sections 145A and 145B.

Proposed section 145A makes it clear that, if a person entitled to make a claim in respect of an intermediate transport accident had not made a claim before 1 July 1989, the person may make such a claim. The proposed section specifies the person against whom the claim may be made and the insurer in respect of the claim.

Motor Accidents (Amendment) 1990

Proposed section 145B enables the GIO to obtain contribution from another insurer of a person at fault in respect of an intermediate transport accident.

Schedule 1 (19) amends section 146 to make it clear that Parts 4, 4A, 5, 6, 9 and 10 of the Motor Accidents Act 1988 apply to intermediate transport accidents (and not just Part 5).

The amendments made by Schedule 1 (18) and (19) are commenced retrospectively as from 1 July 1989.

Deputy General Manager of the Motor Accidents Authority

Schedule 1 (21) (a) provides that the approval of the Board of Directors of the Motor Accidents Authority is required before the Deputy General Manager may act in the office of the General Manager.

Schedule 1 (21) (b) enables the appointment of an Acting Deputy General Manager by the Board of Directors of the Authority rather than by the Minister.

Statute law revision

Schedule 1 (20) (b) makes an amendment by way of statute law revision.
