

[Act 1997 No 3]



Motor Accidents Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Motor Accidents Act 1988* as follows:

- (a) to change the definition of *motor vehicle* to include a trailer,
- (b) to change the definition of *trader's plate* so that it will be consistent with any changes made to the definition of *trader's plate* used in the *Motor Traffic Regulations 1935*,
- (c) to extend the coverage for motor vehicles that are subject to unregistered vehicle permits issued under Regulation 53A of the *Motor Traffic Regulations 1935* to damage occurring on a public street in any part of the Commonwealth (currently coverage is available only for the use or operation of the vehicle on a public street in New South Wales),

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

- (d) to update certain references contained in the Act to the former Government Insurance Office of New South Wales,
- (e) to provide for the amendment of the Industry Deed (set out in Schedule 5 to the Act) by agreement between the parties to the Industry Deed,
- (f) to ensure that structured settlements are not varied or terminated if they involve investments that cannot be readily altered by the parties to the investments (eg an annuity),
- (g) to make minor amendments to clarify the operation of some provisions,
- (h) to make consequential amendments including the enactment of savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the provisions of the proposed Act.

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

Schedule 1 Amendments

Schedule 1 [1] inserts a definition of *Ministerial Corporation*. **Schedule 1 [19]** and **[22]–[25]** make consequential amendments by updating references to the former Government Insurance Office of New South Wales with references to the Ministerial Corporation where appropriate.

Schedule 1 [2] amends the definition of *motor vehicle* to include a trailer. **Schedule 1 [6]** and **[9]–[12]** make consequential amendments.

Schedule 1 [3] amends the definition of *trader's plate* so that it will be consistent with any changes made to that term as it is used in the *Motor Traffic Regulations 1935*.

Schedule 1 [4] provides for the amendment of the Industry Deed by agreement in writing between the parties to the Industry Deed.

Schedule 1 [5] inserts proposed sections 3B and 3C to make clear the application of the Act in relation to trailers and tow trucks:

- Proposed section 3B (1) limits the operation of the Act so that it will only apply to trailers when they are being towed or have run out of control while being towed.
- Proposed section 3B (2) extends a motor vehicle's third-party insurance policy so that the policy will cover a trailer being towed by the vehicle or that has run out of control while being towed.
- Proposed section 3C extends a motor vehicle's third-party insurance policy in the case of a vehicle that is a tow truck so that the policy will cover an uninsured motor vehicle when it is being towed or carried by the tow truck.

Schedule 1 [8] and **[27]** make consequential amendments.

Schedule 1 [7] and **[26]** extend the third-party policy coverage in relation to a motor vehicle that is subject to an unregistered vehicle permit issued under Regulation 53A of the *Motor Traffic Regulations 1935* to the use or operation of the vehicle on public streets outside New South Wales.

Schedule 1 [13] makes it clear that the time for making claims in respect of the death of or injury to a person caused by the owner or driver of a motor vehicle in the use or operation of the vehicle runs from the date of the motor accident to which the claim relates or, in the case of a claim made in respect of the death of a person, from the date of the person's death. **Schedule 1 [14]** and **[16]** make consequential amendments.

Schedule 1 [15] makes it clear that section 43A (6) includes late claims made against the Nominal Defendant.

Schedule 1 [17] replaces certain words used in section 52 (1) (b) (i) with words that are consistent with the remainder of the section.

Schedule 1 [18] makes it clear that, in the case of a late claim, proceedings may be commenced immediately if the insurer rejects the claimant's explanation for the delay or rejects the claim on the ground that the total damages likely to be awarded to the claimant are less than 10% of the maximum amount that is provided for under the Act (as at the date of the relevant motor accident) as damages for non-economic loss.

Schedule 1 [20] omits certain words from section 72 (1) (a) so that the paragraph is consistent with the remainder of the section.

Schedule 1 [21] ensures that a structured settlement is not varied or terminated if the settlement involves an investment that does not readily allow for the variation or termination of the investment by the parties to the investment.

Schedule 1 [28] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [29]–[33] make clear the application of certain amendments that were made to the Act by the *Motor Accidents Amendment Act 1995*.

- **Schedule 1 [29]** omits a reference to section 52 (1) from clause 17 (1) of Schedule 4 (Savings, transitional and other provisions) to the Act so that section 52 applies to motor accidents occurring on or after 1 January 1996.
- **Schedule 1 [30]** inserts in clause 17 (2) of that Schedule a reference to item [15] of the Schedule of amendments made by the *Motor Accidents Amendment Act 1995* to the Act (that item inserted section 43A (Late making of claims)) so that section 43A applies only in relation to motor accidents occurring on or after the commencement of that section (1 January 1996). **Schedule 1 [29]** makes a consequential amendment by omitting a reference to section 43A (1) from clause 17 (1) of that Schedule.
- **Schedule 1 [31]** inserts in clause 17 (2) of that Schedule a reference to item [23] of the Schedule of amendments made by the *Motor Accidents Amendment Act 1995* to the Act (that item inserted section 50A (Provision of information to facilitate settlement of claim before commencing court proceedings)) so that section 50A applies only in relation to motor accidents occurring on or after the commencement of that section (1 January 1996).
- **Schedule 1 [33]** inserts proposed clause 17 (7A) in that Schedule so that section 70A (Claimant's prospect of future economic loss) extends to claims arising out of motor accidents that occurred after midnight on 26 September 1995, but not so as to affect any award of damages made before the commencement of that subclause.

Schedule 1 [32] makes a consequential amendment.

Schedule 1 [34] contains savings and transitional provisions consequent on the amendments made by the proposed Act.