



New South Wales

# Motor Accidents Compensation Amendment Bill 2010

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Motor Accidents Compensation Act 1999*:
  - (i) to extend the compulsory third-party insurance scheme to include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision or any vehicle running out of control, in addition to incidents and accidents that occur during such events, and
  - (ii) to allow for people who are not members of the Government Service (that is, contractors) to be appointed as claims assessors, and
  - (iii) to provide for an additional ex officio member to be appointed to both the Board of Directors of the Motor Accidents Authority and the Motor Accidents Council, and
  - (iv) to provide for additional members to be appointed to the Motor Accidents Council, and
- (b) to amend the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide for an additional ex officio member to be appointed to both the Board

of Directors of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

## 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 proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Motor Accidents Compensation Act 1999 No 41**

### **Motor accidents covered by compulsory third-party insurance**

**Schedule 1 [2]** extends the definition of *motor accident* in the *Motor Accidents Compensation Act 1999* to include not only incidents or accidents that occur during the driving of a motor vehicle, a collision or action taken to avoid a collision, or during a vehicle's running out of control, but also incidents and accidents that occur as a result of a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle's running out of control. The amendment is made as a response to a recent decision of the New South Wales Court of Appeal. That case concerned a person who was seriously injured when he lost control of the bicycle that he was riding and who claimed that an oil slick that remained on the road following a motor accident some hours earlier caused his accident. The Court held that the compulsory third-party insurance policy would not extend to indemnify the driver of the car in the earlier accident because the cyclist's injury did not occur during a collision but occurred some time later: see *Zotti v Australian Associated Motor Insurers Limited* [2009] NSWCA 323, which followed the High Court's decision in *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* [2005] HCA 26.

**Schedule 1 [3]** makes a consequential amendment to a provision about the application of the Act and the third party policy under the Act.

**Schedule 1 [18]** extends the protection of the amendments made by Schedule 1 [2] and [3] to motor accidents that occurred on or after 1 October 2006 (which is the date of commencement of earlier amendments that limited the incidents and accidents to which the Act applies).

### **Appointment of claims assessors**

**Schedule 1 [6]** provides for the appointment of any suitably qualified person as a claims assessor having functions under the *Motor Accidents Compensation Act 1999* (at present, only a member of staff of the Compensation Authorities Staff Division of the Government Service can be appointed).

**Schedule 1 [18]** validates the appointment of, and acts or omissions of, claims assessors who were not members of staff, or officers of the Motor Accidents Authority, when they were appointed (see proposed clause 39 of Schedule 5).

**Schedule 1 [1] and [4]** make consequential amendments.

**Schedule 1 [7]** transfers an existing provision about the Principal Claims Assessor (currently found in section 105 (3)) to a more appropriate provision.

**Schedule 1 [8]** provides for the Principal Claims Assessor to delegate functions to any claims assessor, not just a member of staff of the Compensation Authorities Staff Division of the Government Service.

**Schedule 1 [9]** inserts a standard provision attaching liability to the Crown in those circumstances where claims assessors (who are not necessarily public servants) are not personally liable.

**Schedule 1 [10]** restates an existing provision relating to the control and direction of claims assessors and extends its operation, as a consequence of the fact that claims assessors may not be public servants.

### **Membership of Board of Directors of the Motor Accidents Authority and Motor Accidents Council**

**Schedule 1 [11]** provides for an additional member on the Board of Directors of the Motor Accidents Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority.

**Schedule 1 [13]** provides for an additional member of the Motor Accidents Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority. In addition, if the Minister decides to appoint additional members, the amendment provides for up to 4 such additional members to be appointed to the Council.

**Schedule 1 [12], [14], [15] and [16]** make consequential amendments.

### **Other amendments**

**Schedule 1 [5]** corrects a cross-reference.

**Schedule 1 [17]** empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16**

**Schedule 2 [1]** provides for an additional member of the Board of Directors of the Lifetime Care and Support Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

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**Schedule 2 [4]** makes a consequential amendment.

**Schedule 2 [2] and [3]** provide for an additional ex officio member of the Lifetime Care and Support Advisory Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

**Schedule 2 [5]** makes a consequential amendment.

**Schedule 2 [6]** empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

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New South Wales

# Motor Accidents Compensation Amendment Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Motor Accidents Compensation Act 1999* and the *Motor Accidents (Lifetime Care and Support) Act 2006* in relation to motor accidents for which compensation is payable and the appointment of claims assessors; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Motor Accidents Compensation Amendment Act 2010</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5

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<b>Schedule 1</b>	<b>Amendment of Motor Accidents Compensation Act 1999 No 41</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Omit the definition of <i>claims assessor</i> . Insert instead:	4
	<i>claims assessor</i> means a person appointed as a claims assessor under section 99.	5 6
<b>[2] Section 3, definition of “motor accident”</b>		7
	Insert at the end of paragraph (c) of the definition:	8
	, or	9
	(d) a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle’s running out of control.	10 11 12
<b>[3] Section 3A General restrictions on application of Act</b>		13
	Insert at the end of section 3A (1) (c):	14
	, or	15
	(d) a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle’s running out of control.	16 17 18
<b>[4] Section 88 Definitions</b>		19
	Omit the definition of <i>claims assessor</i> from section 88 (1).	20
<b>[5] Section 91 Time limits for referring claims</b>		21
	Omit “section 133” from section 91 (2) (d). Insert instead “section 132 (3)”.	22
<b>[6] Section 99</b>		23
	Omit the section. Insert instead:	24
	<b>99 Appointment of claims assessors</b>	25
	(1) The Authority may appoint as a claims assessor any person who, in the opinion of the Authority, is suitably qualified to be a claims assessor. Such a person may be a member of staff.	26 27 28
	(2) A claims assessor has the functions that are conferred on the claims assessor by or under this Act.	29 30
	(3) The Authority may remove a claims assessor from office at any time.	31 32

(4)	A claims assessor is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Authority may from time to time determine in respect of the claims assessor.	1 2 3 4
<b>[7]</b>	<b>Section 99A Principal Claims Assessor</b>	5
	Insert after section 99A (2):	6
(2A)	The Principal Claims Assessor is, in the exercise of his or her functions, subject to the general direction and control of the Chief Executive Officer. However, the provisions of section 105 (2)–(5) apply to the Principal Claims Assessor in the same way as they apply to a claims assessor.	7 8 9 10 11
<b>[8]</b>	<b>Section 99A (3)</b>	12
	Omit “member of staff”. Insert instead “claims assessor”.	13
<b>[9]</b>	<b>Section 103 Protection of claims assessors</b>	14
	Insert after section 103 (1):	15
(1A)	However, any such liability attaches to the Crown.	16
<b>[10]</b>	<b>Section 105</b>	17
	Omit the section. Insert instead:	18
<b>105</b>	<b>Control and direction of claims assessors</b>	19
(1)	A claims assessor is, in the exercise of his or her functions, subject to the general control and direction of the Principal Claims Assessor.	20 21 22
(2)	However, a claims assessor is not, in his or her capacity as a claims assessor, subject to control and direction by the Principal Claims Assessor, the Authority, any member of staff of any Division of the Government Service or any other person with regard to any of the decisions of the assessor that affect the interests of the parties to an assessment.	23 24 25 26 27 28
(3)	The Principal Claims Assessor, the Authority, any member of staff of any Division of the Government Service or any other person cannot overrule or interfere with any decision of a claims assessor who is a member of staff that affects the interests of the parties to an assessment in respect of any such assessment.	29 30 31 32 33
(4)	This section does not prevent the making of arrangements for the training of claims assessors, and does not prevent claims assessors from obtaining advice, to ensure consistently correct	34 35 36

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	application of the provisions of this Act and the regulations and of other relevant matters.	1 2
(5)	This section does not affect the exercise of the functions of the Chief Executive Officer of the Authority under the <i>Public Sector Employment and Management Act 2002</i> with respect to claims assessors who are members of staff.	3 4 5 6
<b>[11]</b>	<b>Section 199 Board of Directors</b>	7
	Insert after section 199 (2) (a):	8
	(a1) a member of staff who for the time being holds an office nominated by the Chief Executive Officer,	9 10
<b>[12]</b>	<b>Section 208 Membership and procedure of Council</b>	11
	Omit “12” from section 208 (1).	12
<b>[13]</b>	<b>Section 208 (1) (j) and (k)</b>	13
	Insert after section 208 (1) (i):	14
	(j) a member of staff who for the time being holds an office nominated by the Chief Executive Officer,	15 16
	(k) such additional members (if any) as the Minister decides to appoint, being persons of the Minister’s own choosing and not exceeding 4 additional members.	17 18 19
<b>[14]</b>	<b>Schedule 1 Provisions relating to Board of Directors of Authority</b>	20
	Omit the definition of <i>part-time director</i> from clause 1. Insert instead:	21
	<i>part-time director</i> means a director appointed under section 199 (2) (b).	22 23
<b>[15]</b>	<b>Schedule 2 Provisions relating to Motor Accidents Council</b>	24
	Omit the definition of <i>appointed member</i> from clause 1. Insert instead:	25
	<i>appointed member</i> means a member of the Motor Accidents Council who is appointed by the Minister.	26 27
<b>[16]</b>	<b>Schedule 2, clause 10</b>	28
	Omit “7 members”. Insert instead “a majority of members for the time being”.	29
<b>[17]</b>	<b>Schedule 5 Savings, transitional and other provisions</b>	30
	Insert at the end of clause 2 (1):	31
	<i>Motor Accidents Compensation Amendment Act 2010</i>	32

<b>[18] Schedule 5, Part 9</b>	1
Insert after clause 36:	2
<b>Part 9 Provisions arising from Motor Accidents Compensation Amendment Act 2010</b>	3 4
<b>37 Definition</b>	5
In this Part:	6
<i>amending Act</i> means the <i>Motor Accidents Compensation Amendment Act 2010</i> .	7 8
<b>38 Operation of amendment to definition of “motor accident”</b>	9
The amendments made by the amending Act to the definition of <i>motor accident</i> in section 3 and to section 3A extend to an incident or accident that occurred on or after 1 October 2006, but not so as to affect any compromise or settlement of a claim, or any decision made by a court, before the date of assent to the amending Act.	10 11 12 13 14 15
<b>39 Claims assessors</b>	16
(1) A person (other than a member of staff or an officer of the Authority) who was designated by the Authority as a claims assessor before the substitution of section 99 by the amending Act is taken to have been validly appointed by that designation as a claims assessor.	17 18 19 20 21
(2) A person cannot challenge or otherwise call into question anything done or not done by a person referred to in subclause (1) on the basis that the person was not a claims assessor because the person was not validly appointed as a claims assessor.	22 23 24 25

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<b>Schedule 2</b>	<b>Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16</b>	1 2 3
<b>[1] Section 34 Board of Directors</b>		4
Insert after section 34 (2) (a):		5
(a1) a member of staff who for the time being holds an office nominated by the Chief Executive Officer,		6 7
<b>[2] Section 45 Membership and procedure of Advisory Council</b>		8
Omit “8 members” from section 45 (1). Insert instead “9 members”.		9
<b>[3] Section 45 (1) (f)</b>		10
Insert after section 45 (1) (e):		11
(f) a member of staff who for the time being holds an office nominated by the Chief Executive Officer.		12 13
<b>[4] Schedule 1 Provisions relating to Board of Directors of Authority</b>		14
Omit the definition of <i>part-time director</i> from clause 1. Insert instead:		15
<i>part-time director</i> means a director appointed under section 34 (2) (b).		16 17
<b>[5] Schedule 2 Provisions relating to Advisory Council</b>		18
Omit the definition of <i>appointed member</i> from clause 1. Insert instead:		19
<i>appointed member</i> means any member of the Advisory Council appointed under section 45 (1) (a)–(d).		20 21
<b>[6] Schedule 3 Savings, transitional and other provisions</b>		22
Insert at the end of clause 1 (1):		23
<i>Motor Accidents Compensation Amendment Act 2010</i>		24