

[Act 1995 No 66]



New South Wales

# Motor Accidents Amendent Bill 1995

## 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 scheme under the *Motor Accidents Act 1988*:

- (a) to improve procedures for claims management and to achieve, where possible, an early settlement of a claim without recourse to court proceedings, and
- (b) generally to limit increases in the costs of the scheme and, consequently, to limit the amount of premiums paid for compulsory third-party insurance policies, and
- (c) to make other miscellaneous amendments.

---

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

---

## 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. The amendments relating to the limitation of damages for non-economic loss are backdated to the date on which the Government announced the proposed changes, namely, 26 September 1995.

**Clause 3** gives effect to the amendments to the *Motor Accidents Act 1988* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1** amends the *Motor Accidents Act 1988* in the following respects.

### Objects

A number of amendments are made to the *Motor Accidents Act 1988* to state the objects of the Act as a whole, or the objects of a Part of the Act, or the objects of a particular section of the Act. The amendments are made by **Schedule 1 [1], [8], [11], [14], [15], [22], [22], [22], [30], [31], [34] and [36]**

Proposed section 2B (inserted into the Act by **Schedule 1 [1]**) requires the Act to be interpreted, and discretions conferred under the Act to be exercised, in a way that promotes its objects.

### Definition of "injury"

The definition of *injury* in the *Motor Accidents Act 1988* is substituted by Schedule 1 [4] in order to remove an overlap that exists between motor accident claims and workers compensation claims. **Schedule 1 [2] and [3]** make consequential amendments.

### Coverage of third-party policies

The amendments made by **Schedule 1 [6] and [41]** will limit the coverage available under a third-party policy in the case of vehicles subject to unregistered vehicle permits under Regulation 53A of the *Motor Traffic Regulations 1935* to those vehicles only when used or operated on a public street in New South Wales.

## **Claims against the Nominal Defendant**

**Schedule 1 [7]** amends section 27 of the *Motor Accidents Act 1988* to the effect that claims can only be made against the Nominal Defendant in respect of vehicles that are capable of being (with or without the repair of minor defects) and are required to be registered for use on a public street (including trailers), or are exempt from registration.

## **Mitigation of damages**

**Schedule 1 [9]** amends section 39 of the *Motor Accidents Act 1988* to make it clear that a person injured in a motor accident is under a duty to mitigate his or her damages and specifies some of the things that will comprise mitigation.

## **The requirement for "a full and satisfactory explanation"**

Under the *Motor Accidents Act 1988* a claimant who fails to comply with a duty imposed by the Act or who delays the carrying out of a procedure regulated by the Act is required to give the court "a full and satisfactory explanation". **Schedule 1 [10]** inserts a definition of this expression to make it clear that the explanation, rather than being full and complete, must address the real reasons for the claimant's failure.

## **Motor Accidents Authority's access to police information**

**Schedule 1 [13]** inserts proposed section 42A into the *Motor Accidents Act 1988*. In order to facilitate the early settlement of claims, the proposed section gives the Authority a right to obtain police information concerning a motor accident and to pass that information on to the parties to the accident (or appropriate representatives) and to relevant insurers. A statement so provided to or by the Authority will not be admissible in legal proceedings concerning a claim.

## **Late making of claims**

**Schedule 1 [15]** substitutes section 43A of the *Motor Accidents Act 1988*. The substituted section makes the requirement that, in addition to giving a full and satisfactory explanation for delay, the late making of the claim will only be allowed if the total damages likely to be awarded to the claimant are not less than 10 per cent of the maximum amount that is prescribed under the Act as at the date of the relevant motor accident as damages for non-economic loss.

### **Insurer's duty to try to resolve claims**

**Schedule 1 [19]** amends section 45 of the *Motor Accidents Act 1988* relating to an insurers' obligation to make reasonable payments for necessary hospital, medical, pharmaceutical and rehabilitation expenses from the time of admitting liability, to include a requirement to make interim payments for necessary and reasonable respite care expenses in respect of a claimant who is seriously injured.

**Schedule 1 [20]** also amends section 45 to provide that payments made under the section are a statutory defence to any further claims for damages under that section.

### **Power of insurer to intervene in legal proceedings**

**Schedule 1 [21]** inserts proposed section 47A into the *Motor Accidents Act 1988*. The proposed section will give insurers limited power to intervene in proceedings for the purpose of arguing that the indemnification of the defendant should not be met under the compulsory third-party policy.

### **Provision of information to facilitate settlement of claim before commencing court proceedings**

**Schedule 1 [23]** inserts proposed section 50A into the *Motor Accidents Act 1988*. The proposed section requires a claimant, when the claimant has sufficient information to enable a proper assessment of the claimant's full entitlement to damages and before commencing court proceedings, to give that information to the person's insurer.

### **Time limitations on commencement of court proceedings**

**Schedule 1 [24]–[27]** make amendments that identify the period before which court proceedings cannot be commenced, the period during which they may be commenced and the period after which they may only be commenced with the leave of the court granted after hearing a full and satisfactory explanation for the delay. The object of the amendments is to ensure that court proceedings are neither commenced at an inappropriately early stage nor too remotely from the motor accident to which they relate.

Under the amendments, a claimant cannot commence court proceedings until the later or latest of the following events has occurred:

- 6 months have passed since giving notice of the claim
- 90 days have passed since the information sufficient to enable a proper assessment of the claimant's full entitlement to damages has been given under proposed section 50A

- if an offer of settlement has been made to the claimant, 28 days have passed since the claimant communicated his or her response to the offer.

The existing provision (in section 52 (3)) that a claimant may commence court proceedings within 12 months after the date on which the claim is made without being required to give a full and satisfactory explanation for delay is replaced with a provision (in proposed section 52 (4)) that the proceedings may be commenced within 3 years after the date of the relevant motor accident or, in the case of a claim made in respect of a person's death, the date of death. The 3-year period is extended to the extent to which it falls within the 90-day or 28-day period referred to above so as to avoid any increase in leave applications to the court.

If an application is made to the court for leave to commence proceedings after the 3-year period (or the 3-year period as so extended) has expired, the court cannot grant leave unless, in addition to being provided with a full and satisfactory explanation for the delay, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds will be not less than 25 per cent of the maximum amount that, at the date of the relevant motor accident, was determined under the *Motor Accidents Act 1988* in respect of non-economic loss.

### **Damages for future economic loss**

**Schedule 1 [29]** inserts proposed section 70A into the *Motor Accidents Act 1988* to prevent a court from awarding damages for future economic loss or damages for diminution of future economic capacity unless the claimant first satisfies the court that there is at least a 25 per cent likelihood that the claimant will sustain the future loss claimed.

### **Motor vehicles engaged in motor racing**

**Schedule 1 [32]** and **[33]** amend section 76 of the *Motor Accidents Act 1988* relating to the defence of voluntary assumption of risk. Generally the defence is not available in proceedings to which the Act applies. It is, however, to be available in relation to motor accidents that occur in the course of motor racing, whether the motor racing is an organised motor sports event or an activity that is an offence under section 4B of the *Traffic Act 1909*.

## Determination of non-economic loss

**Schedule 1 [34]–[36]** make amendments to the *Motor Accidents Act 1988* relating to the determination of non-economic loss. The existing section 79 (with the addition of a statement of its objects) will continue to apply to motor accidents that occurred before midnight on 26 September 1995. Proposed section 79A is to apply to motor accidents occurring after that time. Under the proposed section, new criteria are established that must be met by the claimant before damages for non-economic loss can be assessed. Firstly, significant impairment must be evidenced for at least a 12-month period (currently 6 months) and, secondly, the level of impairment must be at least 15 per cent of a most extreme case. Once the two thresholds are passed, damages are assessed in accordance with the provisions of the proposed section as a percentage of a most extreme case.

**Schedule 1 [37]** and **[38]** make consequential amendments.

**Schedule 1 [39]** will empower the regulations under the Act to adopt guidelines relating to the determination of non-economic loss.

## Proceedings for offences

**Schedule 1 [40]** amends section 135 of the *Motor Accidents Act 1988* to provide that proceedings relating to the offence of making a false claim under section 65 may be commenced at any time within 2 years after the offence is committed.

## Miscellaneous minor amendments

The proposed Act inserts some notes into the text of the *Motor Accidents Act 1988*. The amendment made by **Schedule 1 [5]** makes it clear that notes do not form part of the Act.

**Schedule 1 [12]** requires, so as to avoid the possibility of fraud, the report of a motor accident that must be given to the police within 28 days after the accident to be a written report.

Several provisions in the *Motor Accidents Act 1988* enable a court to “strike out” proceedings. Because of the insertion of a definition of *dismiss* in the *District Court Rules 1973* having effect from 23 June 1995, the power to strike out is being replaced with a power to “dismiss”. The relevant amendments are made by **Schedule 1 [15]**, **[16]** and **[18]**.

Motor Accidents Amendment Bill 1995 [Act 1995 No 66]

Explanatory note

---

**Schedule 1 [15] and [17]** amend sections 43A and 44B, respectively, of the *Motor Accidents Act 1988* to provide that the 2-month period in which an insurer may reject a claim on the basis of lateness or a failure to comply with certain notice requirements does not commence to run until the claim form has not only been received by the insurer but has also been served on the defendant.

### **Savings and transitional provisions**

**Schedule 1 [42] and [43]** contain savings and transitional provisions consequent on the amendments made by the proposed Act.