

[Act 1999 No 41]



New South Wales

Motor Accidents Compensation Bill 1999

Explanatory note

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

The object of this Bill is to establish a new scheme of compulsory third-party insurance and payment of compensation relating to the death of or injury to persons as a consequence of motor accidents. Motor accidents occurring before the commencement of the new scheme will continue to be subject to the scheme established under the *Motor Accidents Act 1988*.

Specific objects of Bill

The specific objects of this Bill are as follows:

- (a) to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,
- (b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,

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

- (c) to promote competition in the setting of premiums for third-party policies, and to provide the Motor Accidents Authority with a prudential role to ensure against market failure,
- (d) to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,
- (e) to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities,
- (f) to ensure that insurers charge premiums that fully fund their anticipated liability,
- (g) to deter fraud in connection with compulsory third-party insurance.

Features of previous scheme retained

The principal features of the previous scheme that have been retained are as follows:

- (a) Insurance for liability of the driver or owner of a registered motor vehicle relating to the death of or injury to other persons as a consequence of motor accidents is compulsory.
- (b) Insurance under the scheme is privately underwritten and the insurance risk remains with the private sector. Insurers providing third-party insurance are licensed and supervised by the Motor Accidents Authority.
- (c) Compensation under the scheme is payable only if the injury or death was caused by the fault of the insured driver or owner in the use or operation of the motor vehicle.
- (d) Compensation where the motor vehicle involved in the accident was not insured or cannot be identified is payable under a Nominal Defendant scheme operated by the Motor Accidents Authority (with licensed insurers acting for the Authority in connection with claims).
- (e) The courts are the final arbiters on the issues of liability to pay compensation and the assessment of the amount of damages required to be paid by way of compensation.
- (f) Specific principles apply to a court when assessing compensation payments in any award of damages in a motor accident claim (including restrictions on compensation for pain and suffering and other categories of damages).

Principal changes to previous scheme

The principal changes to the previous scheme are as follows:

- (a) Early notification of injuries and decisions on provisional liability and payment by insurers (of up to \$500) to encourage prompt appropriate medical and related treatment of injured persons and discourage formal claims and litigation in respect of minor matters.
- (b) The issue of official guidelines with respect to appropriate treatment for injured persons for which insurers are liable.
- (c) The facility for regulations to prescribe schedules of fees for which insurers are liable for medical and related treatment, and to prescribe schedules of fees that legal practitioners may charge when dealing with motor accident claims.
- (d) The establishment of a system of independent medical assessment to resolve disputes about treatment, rehabilitation and other related medical matters.
- (e) The institution of new claims handling procedures by insurers to promote the prompt acceptance or denial of liability by insurers and the prompt making of reasonable offers of settlement for claims in which liability is accepted.
- (f) The establishment of a Motor Accidents Claims and Resolution Service within the Authority to assess disputed claims before court proceedings can be commenced to assist in the resolution of disputes about claims. The decision of the independent claims assessor on the amount of compensation to be paid will be binding on the insurer, and on the claimant if the claimant accepts the amount within 21 days. A claimant who does not accept the amount assessed will be liable for the payment of additional legal costs if the court does not award an increased amount of compensation.
- (g) The establishment of a Motor Accidents Council (with wide representation) to oversee the new medical and claims assessment procedures.
- (h) The modification of the principles applicable to the award of damages, in particular:
 - (i) changing the current threshold tests that apply before a person is entitled to damages for non-economic loss (e.g. pain and suffering) to at least 10% permanent impairment on a “whole of person” medical assessment, and
 - (ii) excluding compensation for economic loss for the first 5 days of loss of earnings and providing a cap on the weekly amount of loss of earnings similar to that applying to damages for work-related injuries.
- (i) Increased regulatory powers of the Authority with respect to licensed insurers, including the imposition of civil penalties for breaches of the Act or licence conditions.

- (j) Changes to the premium-fixing mechanisms for third-party insurance, including increased powers of the Authority to supervise those mechanisms, arrangements for pooling the risks associated with high risk groups in the community and for an initial premium of an average of approximately \$330 for passenger vehicles in a metropolitan area.

Outline of provisions

Chapter 1 Preliminary

This Chapter sets out the name of the proposed Act, provides for its commencement on a proclaimed date, defines words and expressions used in the proposed Act and sets out the objects of the proposed Act. The Chapter requires the proposed Act to be construed and discretions exercised in a way that would best promote the objects of the proposed Act.

Chapter 2 Third-party insurance

Part 2.1 Compulsory insurance

This Part makes it an offence, subject to certain exceptions, for a person to use an uninsured motor vehicle on a road. It provides for a defence in criminal proceedings where the person believed, and had reasonable grounds for believing, that the vehicle was insured.

Part 2.2 Insurance policies

This Part deals with matters relating to third-party insurance policies. The prescribed form of policy covers the use or operation of a registered vehicle on a road or elsewhere in Australia and the use or operation of a vehicle the subject of an unregistered vehicle permit only on a road in Australia. The Part prohibits the RTA from registering or renewing the registration of a motor vehicle or issuing a trader's plate unless a certificate of insurance is produced to the RTA or the RTA is otherwise satisfied that a third-party insurance policy exists.

This Part also outlines the method of effecting a third-party insurance policy. More specifically, it deals with the issuing of certificates of insurance, the commencement, duration and cancellation of policies and the rights and liabilities attaching to persons who are parties to those policies.

Part 2.3 Insurance premiums

This Part relates to third-party insurance premiums. It provides for the charging of premiums in accordance with premiums filed by insurers with, and not rejected by, the Authority. Premiums that may be filed are subject to Premiums Determination Guidelines issued by the Authority. In addition, the Part sets, at 4% of the premium collected, the maximum amount a licensed insurer may pay to an insurer's agent as a commission. The Part permits the Authority to enter into arrangements with licensed insurers to pool the risks associated with certain high risk third-party insurance policies.

Part 2.4 Uninsured or unidentified motor vehicles

This Part enables claims for damages for a motor vehicle accident to be brought against the Nominal Defendant where a vehicle is uninsured or is not identified. The Authority is designated as the Nominal Defendant, but claims are allocated to licensed insurers to be dealt with. An insurance industry deed between the Government and insurers provides for cost sharing for those claims among insurers according to their market share of third-party insurance business.

Chapter 3 Motor accident injuries

Part 3.1 Preliminary

This Part deals with certain preliminary matters for the operation of Chapter 3. These matters include the definitions of certain words for the purposes of that Chapter, the injuries to which the Chapter applies and the issuing of Medical Guidelines by the Motor Accidents Council as part of the Council's oversight of medical assessment. The Medical Guidelines may approve appropriate treatment for injuries, appropriate rehabilitation procedures and set out procedures for the assessment of permanent impairment and the assessment of medical and related disputes.

Part 3.2 Early payment for treatment of injured persons

This Part deals with the new arrangements outlined above for early notification of injuries and decisions on provisional liability and payment by insurers (of up to \$500) to encourage prompt and appropriate medical and related treatment and discourage formal claims and litigation in respect of minor matters. It sets out procedures for the early submission of an accident notification form and makes related provision for the acceptance of provisional liability by insurers and the payment of treatment expenses. Provisional liability must be accepted for injured passengers and pedestrians.

Part 3.3 Payments to hospitals, doctors and others

This Part deals with the manner in which payments are made by licensed insurers to hospitals, doctors, dentists, ambulance services and others for the treatment expenses of injured persons. The Part formalises the current bulk billing arrangements for public hospital expenses and introduces a power to prescribe scheduled fees for medical and related treatment for which an insurer is liable.

Part 3.4 Medical assessment

This Part provides for the new arrangements outlined above for independent medical assessment in the case of disputes between a claimant and an insurer about certain matters related to medical or related treatment for a motor accident injury and the degree of permanent impairment a person has suffered from such an injury. The Part provides for the appointment of medical assessors, assessment procedures, costs of assessments and the review of such assessments by a review panel.

Chapter 4 Motor accident claims

Part 4.1 Preliminary

This Part deals with certain preliminary matters relating to Chapter 4, such as definitions and the application of the Chapter. The Part also makes it clear that the Chapter applies to all claims regardless of whether or not there is a third-party insurance policy in respect of the claim.

The Part provides for the issuing to insurers of Claims Handling Guidelines by the Authority, and for the issuing of Claims Assessment Guidelines by the Motor Accidents Council as part of the Council's oversight of claims assessment.

Part 4.2 Claims and other preliminary matters

This Part deals with matters relating to the making of claims. These matters include the requirement for claimants to comply with the law relating to the reporting of motor accidents to the police, the time for and notice of making of claims, the making of late claims and certain powers of insurers relating to claims.

Part 4.3 Duties with respect to claims

This Part deals with the duties of insurers, claimants and other parties related to a claim. These duties include the duty of insurers to try to resolve claims expeditiously and to make reasonable offers of settlement (except where liability is wholly denied), the duty of claimants to co-operate with insurers and persons against whom claims are made, and the duty of the owners or drivers of motor vehicles to which claims relate to co-operate with insurers. The Part provides for the new claims handling procedures outlined above, including a 2-months deadline for an insurer to accept or deny liability and a deadline for making a reasonable offer of settlement of 1 month after the injury has stabilised or 2 months after the claimant provides all necessary particulars (whichever is the later).

Part 4.4 Claims assessment and resolution

This Part deals with the new arrangements for the establishment of a Motor Accidents Claims and Resolution Service within the Authority to assess disputed claims before court proceedings can be commenced to assist in the resolution of disputes about claims. The decision of the independent claims assessor on the amount of compensation to be paid will be binding on the insurer, and on the claimant if the claimant accepts the amount within 21 days. Any decision of a claims assessor on liability is not binding. If a claim is not appropriate for assessment, a certificate of exemption will be granted, which will authorise the commencement of court proceedings. The Part deals with the manner of assessment by claims assessors, other disputes that may be referred for assessment (such as late claims) and proceedings before, and the powers of, claims assessors. It also provides that regulations may be made for or with respect to the procedures to be followed under the Part.

Part 4.5 Court proceedings on claims

This Part deals with certain matters relating to court proceedings in respect of claims, such as time limitations on commencement of court proceedings and the prohibitions on commencing proceedings in respect of a claim without a certificate of claims assessment or exemption from claims assessment. The Part retains the existing restriction that court proceedings cannot be commenced after the expiration of 3 years after the motor accident unless the court gives special leave.

Part 4.6 Miscellaneous provisions

This Part deals with a number of miscellaneous matters relating to claims. The Part makes it an offence to knowingly make a statement that is false or misleading in a material particular in certain specified documents, in the course of an assessment or when otherwise furnishing information concerning a motor accident or any claim relating to a motor accident. The maximum penalty for the offence is 50 penalty units (\$5,500) or 12 months' imprisonment or both. The Part also provides for a right of recovery against a person who obtains a financial benefit by means of a fraudulent claim.

The Part continues the provisions for a register of claims for motor accident claims and work-related claims and for the sharing of the information among insurers. In addition, the Part introduces a power to make regulations to regulate advertising by lawyers and agents in connection with claims in similar terms to that applying in workers compensation matters.

Chapter 5 Award of damages

Part 5.1 Application

This Part provides that Chapter 5 applies to and in respect of an award for damages which relates to the death or injury of a person caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle. The Part provides that a court cannot award damages relating to motor accidents contrary to that Chapter.

Part 5.2 Damages for economic loss

This Part relates to awards for damages for economic loss and the method of making such awards. It includes provisions relating to the maximum loss of earnings, the discount rate for lump sum awards and the maximum amount for certain attendant care services.

Part 5.3 Damages for non-economic loss

This Part relates to awards for damages for non-economic loss and the making of such awards. It includes provisions relating to the new threshold test of at least 10% permanent impairment of an injured person and the maximum amount that a court may award for non-economic loss.

Part 5.4 Other matters

This Part deals with other matters that relate to awards for damages including, amongst other things, the duty of an injured person to mitigate his or her damages, interest payments on damages awards, contributory negligence, voluntary assumption of risk, psychological or psychiatric injury, the prohibition on exemplary or punitive damages and indexation of maximum award amounts provided for in the Chapter.

Chapter 6 Costs

This Chapter deals with a number of matters relating to and in respect of legal and associated costs in connection with a motor accident. It includes provisions that allow for regulations to be made fixing maximum costs recoverable by legal practitioners for legal services, and other non-legal services (such as expenses for investigations, witnesses or medical reports) and for maximum fees recoverable by medical practitioners for the provision of medical reports or witness appearances in connection with a claim. The Chapter also provides for a cost recovery limitation for claimants who do not accept the amount of damages assessed by a claims assessor and do not obtain any significant increase in the amount assessed through court proceedings. The Chapter authorises the regulations to prescribe court fees and claims assessment fees in respect of motor accident claims.

Chapter 7 Insurers

Part 7.1 Licensing of insurers

This Part deals with the licensing of insurers authorised to issue third-party policies for the purposes of the proposed Act. It includes provisions relating to applications for licences and the duration, conditions, suspension and cancellation of licences. The Part includes a new procedure for the imposition of a civil penalty of up to \$50,000 for a contravention by a licensed insurer.

Part 7.2 Supervision of insurers

This Part deals with the supervision of licensed insurers by the Authority. It includes provisions relating to accounts, returns and other documents that must be kept by licensed insurers or lodged with the Authority and provisions relating to the powers of entry and inspection of authorised officers of the Authority.

Part 7.3 Insolvent insurers

This Part deals with matters relating to insolvent insurers. It includes provisions relating to the tasks of liquidators of insolvent insurers and the role of the Nominal Defendant as agent and attorney of persons insured under a third-party insurance policy issued by an insolvent insurer.

Chapter 8 Administration

Part 8.1 Motor Accidents Authority

This Part provides for the continuation of the Motor Accidents Authority of New South Wales as a statutory corporation representing the Crown. It contains provisions dealing with the Authority's Board of Directors, its General Manager and other staff. It also provides for the management and general functions of the Authority.

Part 8.2 Motor Accidents Council

This Part provides for the constitution of the new Motor Accidents Council of New South Wales. It contains provisions relating to the membership, procedure and functions of the Council.

Part 8.3 Financial provisions

This Part deals with the establishment of the Motor Accidents Authority Fund, which funds the operations of the Authority. Licensed insurers are required to contribute to the Fund in accordance with the relative amounts of premium income received during the year concerned.

Chapter 9 Miscellaneous

This Part contains miscellaneous provisions, including provisions relating to secrecy of information, the service of documents, proceedings for offences against the proposed Act and the making of regulations in aid of the proposed Act.

Schedule 1 contains provisions relating to the members and procedure of the Board of Directors of the Authority.

Schedule 2 contains provisions relating to the members and procedure of the Motor Accidents Council.

Schedule 3 contains amendments to the *Motor Accidents Act 1988* as a consequence of the enactment of the proposed Act. The amendments limit the operation of that Act to accidents occurring before the commencement of the proposed Act.

Schedule 4 contains amendments to other Acts as a consequence of the enactment of the proposed Act.

Schedule 5 enacts certain savings, transitional and other provisions consequent on the enactment of the proposed Act, and enables further provisions of a similar kind to be made by regulation. The Schedule includes provision for an initial premium of an average of approximately \$330 for passenger vehicles in a metropolitan area.