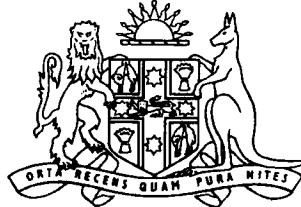


[Act 2000 No 25]



New South Wales

Motor Accidents Compensation Amendment (Medical Assessments) Bill 2000

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 Compensation Act 1999* so as to make it clear that a court does not have an unfettered power to reject a certificate given by a medical assessor under the Act as to whether the degree of permanent impairment of an injured person is greater than 10% and substitute its own determination as to the degree of permanent impairment of the injured person. A court will be able to substitute its own determination only if there has been a denial of procedural fairness in the issue of the certificate and the court is satisfied that admission of the certificate as to that matter would cause a substantial injustice to a party to the proceedings.

Explanatory note

At present, the *Motor Accidents Compensation Act 1999* provides that certain disputes between a claimant and an insurer in respect of a motor accident claim may be referred to a medical assessor for assessment. The medical assessor is to give a certificate as to the matters referred for assessment. Such a certificate is conclusive evidence in any court proceedings as to certain matters, including any assessment by the medical assessor as to whether the degree of permanent impairment of the injured person is greater than 10%. No damages may be awarded for non-economic loss unless the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.

Section 61 (4) of the Act provides that a court may reject the certificate on the grounds of a denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that the admission of the certificate would cause substantial injustice to that party. In such a case, the court must adjourn the proceedings and refer the matter again for assessment under Part 3.4 of the Act.

Section 61 (6) of the Act, which is uncommenced, further provides that a court may reject a certificate as to the degree of permanent impairment of an injured person and either refer the matter again for assessment under Part 3.4 of the Act or substitute a determination of the court as to the degree of permanent impairment of the injured person.

This Bill clarifies the powers of a court with respect to certificates given by medical assessors. The amendments set out in the Bill provide that:

- (a) a court may reject a certificate as to all or any of the matters that are certified in the certificate, but only on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, and only if the court is satisfied that the admission of the certificate as to the matter concerned would cause substantial injustice to that party, and
- (b) if a certificate as to whether or not the degree of permanent impairment of an injured person is greater than 10% is rejected, the court may substitute its own determination as to that matter or refer the matter again for assessment by a medical assessor or assessors, and
- (c) if a certificate as to any other matter (such as a certificate as to whether the injury has stabilised) is rejected, the court must refer that matter again for assessment by a medical assessor or assessors, unless the matter is a matter in respect of which a certificate is not conclusive evidence, and
- (d) the circumstances set out in paragraph (b) are the only circumstances in which the court may substitute its own determination as to a matter in respect of which a certificate is conclusive evidence.

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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 a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Motor Accidents Compensation Act 1999* set out in Schedule 1.

Schedule 1 makes the amendments to the *Motor Accidents Compensation Act 1999* described above.