

# Motor Accidents Act 1988 No 102

[1988-102]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[NSW Self Insurance Corporation Act 2004 No 106](#) (not commenced)
- **See also**  
[Road Transport \(General\) Bill 2004](#)

### Authorisation

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# Motor Accidents Act 1988 No 102



New South Wales

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# Motor Accidents Act 1988 No 102



New South Wales

An Act relating to the recovery of damages, and compulsory insurance against liability, for the death of or injury to persons as a consequence of motor accidents; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Motor Accidents Act 1988*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 2AA Motor Accidents Compensation Act 1999

The *Motor Accidents Compensation Act 1999* makes provision with respect to motor vehicle accidents occurring after the commencement of that Act.

#### Note—

See sections 34B, 39AA, 41 (1) and 69 (1A) which limit the provisions of the Act relating to claims, court proceedings and the award of damages to motor accidents occurring before the commencement of the *Motor Accidents Compensation Act 1999*.

### 2A Objects of Act

(1) The objects of this Act are:

- (a) to repeal the *Transport Accidents Compensation Act 1987* and thereby to abolish the scheme for compensating victims of transport accidents (TransCover) established under that Act, and
- (b) to re-instate a common law based scheme under which damages can only be awarded after a finding of negligence, and
- (c) by the scheme under this Act:
  - (i) to reduce the cost of the former common law based scheme by limiting benefits for non-economic loss in the case of relatively minor injuries, and

- (ii) to introduce a stricter procedure for the making and assessment of claims for damages, and
- (iii) to preserve the benefits payable to persons with more severe injuries involving on-going disability, and
- (iv) to give full weight to the need to identify fraudulent claims, deter their lodgment and prosecute those responsible for them, and
- (v) to encourage recovery from injury and early and effective rehabilitation, where appropriate, as a key feature of the scheme, and
- (vi) to encourage the speedy, efficient and effective provision of benefits balanced by the need to investigate claims properly and the need to encourage an early return to employment.

**Note—**

This statement of objects is based on the introduction to the outline of Option 3 in the TransCover Review, published in *Motor Accidents: The Act and Background Papers* by the Attorney General's Department, 1989, p 101.

- (2) It must be acknowledged in the application and administration of this Act:
  - (a) that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable, and
  - (b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries, and
  - (c) that:
    - (i) the premium pool from which each insurer pays claims consists at any given time of a finite amount of money, and
    - (ii) insurers are obliged under this Act to charge premiums that will fully fund their anticipated liability, and
    - (iii) the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place, and
    - (iv) the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.



## **2B Interpretation and application of Act by reference to objects**

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the object of this Act or the provision is to be preferred to a construction that would not promote that object.
- (2) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the object of this Act or of the provision concerned.

## **3 Definitions**

- (1) In this Act:

**Authority** means the Motor Accidents Authority of New South Wales constituted under Part 8.1 of the *Motor Accidents Compensation Act 1999*.

**death** means death caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during:

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**deceased person** means a person whose death is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the death is a result of and is caused during:

- (a) the driving of the vehicle, or
- (b) a collision, or action taken to avoid a collision, with the vehicle, or
- (c) the vehicle's running out of control, or
- (d) such use or operation by a defect in the vehicle.

**driver** means a person driving a motor vehicle, and includes:

- (a) a person riding and operating a motor cycle, and
- (b) a person for the time being in charge of a motor vehicle.

**excluded area** means a road or road related area within the meaning of the *Road Transport (Vehicle Registration) Act 1997* that is the subject of a declaration made under section 9 (1) (b) of the *Road Transport (General) Act 1999* relating to all of the

provisions of the *Road Transport (Vehicle Registration) Act 1997*.

**fault** means negligence or any other tort.

**GIO** means the Government Insurance Office of New South Wales constituted under the *Government Insurance Act 1927*.

**Industry Deed** means the agreement, as in force for the time being, executed under section 3A.

**injured person** means a person who suffers injury which is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle.

**injury:**

(a) means personal or bodily injury caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if, and only if, the injury is a result of and is caused during:

(i) the driving of the vehicle, or

(ii) a collision, or action taken to avoid a collision, with the vehicle, or

(iii) the vehicle's running out of control, or

(iv) such use or operation by a defect in the vehicle, and

(b) includes:

(i) pre-natal injury, and

(ii) psychological or psychiatric injury, and

(iii) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**insured motor vehicle** means a motor vehicle in relation to which a third-party policy is in force.

**insured person** means a person insured under a third-party policy.

**licensed insurer** means an insurer who is the holder of a licence granted under Part 7.1 of the *Motor Accidents Compensation Act 1999* and in force.

**Ministerial Corporation** means the NSW Insurance Ministerial Corporation constituted under Part 5 of the *Government Insurance Office (Privatisation) Act 1991*.

**motor accident** means an accident caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle which causes the death of or injury to a person.

**motor vehicle** means a motor vehicle or trailer within the meaning of the *Road Transport (General) Act 1999*.

**Note—**

The *Road Transport (General) Act 1999* defines **motor vehicle** to mean a vehicle that is built to be propelled by a motor that forms part of the vehicle.

**Nominal Defendant** means the Nominal Defendant within the meaning of the *Motor Accidents Compensation Act 1999*.

**owner**, in relation to a motor vehicle, means a person who is the owner of the vehicle by virtue of subsections (3)–(5).

**registration** means:

- (a) registration of a motor vehicle under the *Road Transport (Vehicle Registration) Act 1997*, the *Transport Act 1930* or the *Recreation Vehicles Act 1983*, or
- (b) the issue of an unregistered vehicle permit under the *Road Transport (Vehicle Registration) Act 1997* for an unregistered motor vehicle, or
- (c) registration in New South Wales of a motor vehicle under the *Interstate Road Transport Act 1985* of the Commonwealth.

**road** means a road within the meaning of the *Road Transport (Vehicle Registration) Act 1997* (other than an excluded area).

**road related area** means an area (other than an excluded area):

- (a) referred to in paragraph (a), (b), (c), (d) or (e) of the definition of **road related area** in section 4 of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) referred to in paragraph (f) of that definition that has been declared under section 9 (1) (a) of the *Road Transport (General) Act 1999* to be an area to which the *Road Transport (Vehicle Registration) Act 1997* applies.

**spouse** means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**third-party policy** means a policy of insurance under this Act.

**trader's plate** means a trader's plate within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

**trailer** means a trailer within the meaning of the *Road Transport (General) Act 1999*.

**Note—**

The *Road Transport (General) Act 1999* defines **trailer** to mean a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle that is being towed.

**vehicle** means a vehicle within the meaning of the *Road Transport (General) Act 1999*.

**Note—**

The *Road Transport (General) Act 1999* defines **vehicle** to mean any description of vehicle on wheels (including a light rail vehicle) but not including other vehicles used on railways or tramways.

**Workers Compensation Acts** means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of this Act:

- (a) in the case of a motor vehicle that is registered, the owner is:
  - (i) each registered operator of the vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, unless the operator has sold or ceased to have possession of the vehicle, and
  - (ii) each person who, although not a registered operator of the vehicle, is a sole or joint owner of the vehicle, unless that person has sold or ceased to have possession of the vehicle, and
  - (iii) if any such registered operator or owner has sold or ceased to have possession of the vehicle—any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle, or
- (b) in the case of a motor vehicle which is unregistered, the owner is any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle, or
- (c) in the case of a motor vehicle to which a trader's plate is fixed, the owner is the trader to whom the trader's plate is issued.

(4) For the purposes of subsection (3), a person shall be taken not to have ceased to have possession or, as the case may be, not to have acquired possession of a motor vehicle where a change of possession occurs by way of:

- (a) any hiring (not being a hiring under a hire-purchase agreement) or lending of the vehicle for a period not exceeding 3 months, or
  - (b) the passing of the possession of the vehicle to a bailee for the purpose of sale or disposal or for the purpose of alteration, repair, renovation, garaging, storing or other like purpose not involving the use of the motor vehicle for the benefit of the bailee.
- (5) In the application of any provision of this Act to and in respect of a motor vehicle to which a trader's plate is fixed (whether or not with the authority of the trader), a reference in any such provision to the owner shall be read as a reference to the trader, and a reference to the third-party policy in relation to that motor vehicle shall be read as a reference to the third-party policy in relation to motor vehicles to which the trader's plate is fixed (whether or not with the authority of the trader).
- (6) In this Act, a reference to the use or operation of a motor vehicle includes a reference to the maintenance or parking of the vehicle.
- (7) Notes in the text of this Act do not form part of this Act.

### **3A Execution etc of certain agreement**

- (1) The execution by the Attorney General, for and on behalf of Her Majesty in right of the State of New South Wales, and by the Authority, of an agreement substantially in accordance with the form contained in Schedule 5 is authorised by this section.
- (2) The Attorney General and the Authority may exercise the functions conferred on them, respectively, under the agreement.
- (3) In exercising any function under this Act, the Attorney General (or the Minister, if the Minister is not the Attorney General) and the Authority shall have regard to and shall comply with the provisions of the agreement.
- (4) The provisions of the agreement, any arrangements entered into in accordance with the provisions of the agreement and the giving of effect to the provisions of the agreement are approved by this Act.
- (5) The agreement may be amended from time to time by agreement in writing between the parties to it, and the agreement as so amended becomes the agreement in force for the purposes of this section.

### **3B Special provision for trailers**

A reference in this Act to the use or operation of a motor vehicle extends, in the case of a motor vehicle that is not a trailer, to include the use or operation of a trailer attached to the motor vehicle and a trailer running out of control having become detached from the motor vehicle towing it.

**Note—**

The purpose of this section is to extend a motor vehicle's third-party insurance policy so that it will cover a trailer being towed by the vehicle or a trailer that has run out of control while being towed.

**3C Special provision for tow trucks**

A reference in this Act to the use or operation of a motor vehicle extends, in the case of a motor vehicle that is a tow truck, to the use or operation of an uninsured motor vehicle that is being towed or carried by the tow truck.

**3D Parts 4, 5 and 6 not to apply to coal miner work injury claim resulting from uninsured off-road accident**

- (1) Parts 4, 5 and 6 do not apply in respect of the death of or injury to a coal miner caused by a motor accident if:
  - (a) the motor accident did not arise from the use or operation of a motor vehicle on a road or road related area, and
  - (b) there is no motor accident insurer on risk in respect of the motor accident, and
  - (c) the death or injury gives rise to a work injury claim.
- (2) For the purposes of subsection (1) (b), there is no motor accident insurer on risk in respect of a motor accident if:
  - (a) at the time of the motor accident the motor vehicle was not subject to coverage under a third-party policy and was not subject to coverage under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of a place other than New South Wales or under a law of the Commonwealth, and
  - (b) there is no right of action against the Nominal Defendant in respect of the motor accident.
- (3) For the purposes of subsection (1) (c), death or injury gives rise to a work injury claim if it is:
  - (a) a death of a worker resulting from or caused by an injury to the worker (being an injury caused by the negligence or other tort of the worker's employer), or
  - (b) an injury to a worker caused by the negligence or other tort of the worker's employer.
- (4) Expressions used in subsection (3) (a) and (b) have the same meanings as they have in Part 5 of the *Workers Compensation Act 1987*.
- (5) In this section:

**coal miner** has the same meaning as in clause 3 of Part 18 of Schedule 6 to the [Workers Compensation Act 1987](#).

#### **4 Act to bind Crown**

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 Restoration of common law rights**

### **5 Repeal of the [Transport Accidents Compensation Act 1987 No 101](#)**

The [Transport Accidents Compensation Act 1987](#) is repealed.

### **6 Restoration of common law rights**

The law relating to a right to or a claim for damages or compensation or any other benefit (pecuniary or non-pecuniary) against any person for or in respect of the death of or bodily injury to a person caused by or arising out of a transport accident (within the meaning of the [Transport Accidents Compensation Act 1987](#)) occurring on or after 1 July 1987 shall be as if the [Transport Accidents Compensation Act 1987](#) had not been passed and the common law and the enacted law (except that Act) shall have effect accordingly.

### **7 Application of Part 6 (Awarding of damages) from 1 July 1987**

On the commencement of this Part, Part 6 shall be taken to have applied, during the period from and including 1 July 1987 to that commencement, to a transport accident within the meaning of the [Transport Accidents Compensation Act 1987](#) occurring on or after 1 July 1987.

## **Part 3**

### **8-34 (Repealed)**

## **Part 4 Rehabilitation**

### **34A Objects—Part 4**

The objects of this Part are:

- (a) to encourage and support recovery from injury and the use of early and appropriate rehabilitation for people injured in motor accidents so that they can return, as far as possible, to their pre-accident lifestyle, and
- (b) to place obligations on insurers and claimants in order to encourage and facilitate that process, and
- (c) to recognise the importance of rehabilitation in achieving greater cost efficiencies in injury management, and

- (d) to stress that rehabilitation must not be ignored or attempted in a perfunctory way in order to maximise a claim for damages.

### **34B Application of Part**

This Part does not apply to or in respect of motor accidents occurring after the commencement of the *Motor Accidents Compensation Act 1999*.

**Note—**

The application of this Part in respect of coal miner work injury matters is limited by section 3D.

### **35 Definitions**

In this Part:

***claim*** and ***claimant*** have the same meanings as in Part 5.

***rehabilitation***, in relation to an injured person, means the process of restoring or attempting to restore the person, through the combined and co-ordinated use of medical, social, educational and vocational measures, to the maximum level of function of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living.

### **36 (Repealed)**

### **37 Provision of rehabilitation services**

(1)–(3) (Repealed)

(4) If:

- (a) a person is assessed to be suitable for rehabilitation, and
- (b) the licensed insurer or Nominal Defendant agrees to provide the appropriate rehabilitation services, and
- (c) the person fails to accept the provision of those services,

the person's failure shall be taken into account for the purposes of section 39.

(5) A licensed insurer has no responsibility for the rehabilitation of an injured person whose claim has been settled or in relation to whom a judgment has been entered except as provided by the terms of any order referred to in section 81.

### **38 Rehabilitation services to be provided promptly**

(1) In the provision of rehabilitation services, a licensed insurer and the Nominal Defendant shall, as far as practicable, ensure that those services are provided to an injured person as soon as possible after an admission of liability is made by the



licensed insurer or Nominal Defendant.

- (1A) If rehabilitation services are provided to an injured person before an admission of liability is made by the licensed insurer or Nominal Defendant, the provision of those services shall not be taken to be an admission of liability.
- (2) It is a condition of an insurer's licence that the insurer must comply with this section.

### **39 Mitigation of damages**

- (1) An injured person is under a duty to mitigate his or her damages, and, therefore, in assessing damages in respect of a claim, consideration is to be given to the steps taken by the injured person and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages.
- (1A) Those steps include the following:
- (a) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the matters referred to in paragraphs (b)-(d),
  - (b) undergoing medical treatment,
  - (c) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program),
  - (d) pursuing alternative employment opportunities.
- (2) In any proceedings to enforce a claim, the onus of proving that all reasonable steps to mitigate damages have been taken by the injured person lies with the claimant.
- (3) In any such proceedings, a written report by a person who provided medical or rehabilitation services to the injured person is admissible as evidence of any such steps taken by that person.

## **Part 4A Payments to hospitals etc**

### **39AA Application of Part**

This Part does not apply to or in respect of motor accidents occurring after the commencement of the [Motor Accidents Compensation Act 1999](#).

### **39A Definitions**

- (1) In this Part:

**ambulance vehicle** means a vehicle which is fitted or equipped or constructed for use for the conveyance of sick or injured persons and which is controlled by the Health Administration Corporation constituted by the [Health Administration Act 1982](#).

**hospital** means a public hospital, or a private hospital licensed under the [Private](#)

*Health Establishments Act 1982*, and includes a hospital or institution in the nature of a hospital conducted by or on behalf of the State.

**massage treatment** means massage provided by a person who carries on the profession of masseur and includes any ancillary treatment provided by the person, but does not include any massage or treatment provided:

- (a) to a patient in a public hospital, unless the patient has been classified as a private or intermediate patient, or
- (b) to any patient in a hospital by a person who is a paid employee of the hospital and who, in the course of that person's employment at the hospital, normally works for at least 30 hours per week.

**masseur** means a person by whom massage treatment is provided.

**medical treatment** does not include treatment provided:

- (a) to a patient in a public hospital, unless the patient has been classified as a private patient,
- (b) to any patient in a hospital by a resident medical officer of such hospital.

**nursing** includes treatment by a registered nurse.

**public hospital** means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act.

- (2) Where, at a public hospital, a person receives, as an out-patient, treatments of different kinds or at different places, each treatment shall, for the purposes of section 39B (1) (b), be counted as a separate treatment.

### **39B Payments in respect of certain matters**

- (1) When the death of or injury to any person is caused by a motor accident and payment is made (whether or not with an admission of liability) by a licensed insurer or the Nominal Defendant in respect of the death or injury, then:
  - (a) if the person received, in respect of the injury or the injury which caused the person's death, treatment at a public hospital as an in-patient, the licensed insurer or the Nominal Defendant shall pay to the proper officer for each day or part of a day of the treatment of the person, an amount estimated by the Minister for Health and published in the Gazette, as the daily average cost to that hospital of the hospital treatment of in-patients, and

- (b) if the person received, in respect of any such injury, treatment at a public hospital as an out-patient, the licensed insurer or the Nominal Defendant shall pay to the proper officer in respect of each separate treatment of the person, an amount estimated by the Minister for Health and published in the Gazette, as the average cost to the hospital, for each separate treatment, of the hospital treatment of out-patients, and
  - (c) if the person received, in respect of any such injury, treatment (whether as an in-patient or as an out-patient) at a hospital other than a public hospital, the licensed insurer or the Nominal Defendant shall pay to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed, and
  - (d) if the person, as a consequence of any such injury, was conveyed in any ambulance vehicle, the licensed insurer shall pay to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed, and
  - (e) if the person received, in respect of any such injury, reasonably necessary medical treatment by a legally qualified medical practitioner, or reasonably necessary massage treatment by a masseur, or reasonably necessary dental treatment (otherwise than as hospital treatment) by a registered dentist, or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, the licensed insurer shall pay to the medical practitioner, masseur, dentist or nurse, as the case may be, such amount as is reasonably appropriate to the treatment or nursing provided, having regard to the customary charge made in the community for the treatment or nursing.
- (2) Any amount payable under this section by a licensed insurer or the Nominal Defendant may, on notice being given in accordance with section 39E, be recovered as a debt from it by the proper officer, medical practitioner, masseur, dentist, or nurse to whom, under the terms of this section, the amount is payable.
  - (3) The estimated costs referred to in subsection (1) (a) and (b) shall, in respect of any public hospital, be based, wherever practicable, on the costs incurred by that hospital for the year which ended on 30 June next preceding any date on which it is proposed to publish the costs, pursuant to either of those paragraphs, in respect of that hospital.
  - (4) The Minister shall not publish an amount estimated under subsection (1) (a) or (b) and a scale shall not be prescribed under subsection (1) (c) or (d) while a bulk billing agreement of the type referred to in the Industry Deed has been entered into and remains in force and relates to those amounts.
  - (5) In this section, **proper officer** means the officer or person generally or specially authorised by law or by the person or body governing or controlling the hospital or the

ambulance vehicle, as the case may be, to receive any amount payable under subsection (1) (a), (b), (c) or (d).

**39C Right of action against insured person by hospital etc**

- (1) Where liability at law is incurred in respect of the death of or injury to a person caused by a motor accident, a person referred to in section 39B (1) (a)–(e) to whom a licensed insurer or the Nominal Defendant may be required to make a payment under that section, may, in the name of the injured or dead person and on notice being given in accordance with section 39E, recover the amount of the payment by way of damages:
  - (a) from the person who, at the time of the occurrence out of which the liability arose, was the owner of the motor vehicle, or
  - (b) where at the time of the occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally, or
  - (c) in the case of an uninsured or unidentified motor vehicle, from the Nominal Defendant.
- (2) No action under this section for the recovery of any amount shall be commenced:
  - (a) in any case where the licensed insurer or the Nominal Defendant has made a payment (whether or not with an admission of liability) in respect of the death or injury, or
  - (b) in any case where, in respect of the death or injury, proceedings have been taken for compensation under the Workers Compensation Acts, or for the recovery of damages, and those proceedings have not been dismissed or discontinued, or
  - (c) in any case, at least until 6 months after the occurrence out of which the death or injury arose.
- (3) Where:
  - (a) action has been taken under this section, and
  - (b) before the action has been completed proceedings are commenced by any other person in respect of the death or injury for compensation under the Workers Compensation Acts or for the recovery of damages,the action shall be stayed pending completion of the proceedings.
- (4) If:
  - (a) as a result of the proceedings compensation is paid, or
  - (b) payment is made under section 39B,

the action shall abate.

- (5) Any payment by a licensed insurer or the Nominal Defendant in settlement of any claim made or in satisfaction of any judgment recovered under this section shall be made direct to the claimant.

### **39D Payments by licensed insurer or Nominal Defendant**

Any payment by a licensed insurer or the Nominal Defendant in accordance with this Part in respect of treatment, conveyance or nursing shall, to the extent of the payment, but subject to section 39 of the *Motor Accidents Compensation Act 1999*, be a discharge of the liability of any person in respect of the treatment, conveyance or nursing.

### **39E Notice of claims**

Notice of a claim under this Part shall be given in writing:

- (a) in the case of a notice given to a licensed insurer, as soon as practicable after the person entitled to make the claim becomes aware of the identity of the licensed insurer, but not in any case later than 30 days after the person giving the notice could, with reasonable diligence, have ascertained the identity, and
- (b) in the case of a notice given to the Nominal Defendant, as soon as practicable after the person entitled to make the claim becomes aware of the fact that the motor vehicle was an uninsured vehicle or that the identity of the vehicle could not be established, but not in any case later than 30 days after the person giving the notice could, with reasonable diligence, have ascertained that fact.

## **Part 5 Claims and court proceedings to enforce claims**

### **Division 1 Preliminary**

#### **40 Definitions**

(1) In this Part:

**claim** means a claim for damages in respect of the death of or injury to a person caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle.

**claimant** means a person who makes or is entitled to make a claim.

**insurer**, in relation to a person, means the insurer who insures the person against the person's liability for damages in respect of a claim, whether or not under a third-party policy, and includes (except in section 43) the Nominal Defendant and, where a claim is handled on behalf of an insurer by another insurer, the other insurer.

**third-party insurer** means an insurer under a third-party policy.

- (2) In this Part, a reference to a full and satisfactory explanation by a claimant for non-compliance with a duty or for delay is a reference to a full account of the conduct, including the actions, knowledge and belief of the claimant, from the date of the accident until the date of providing the explanation. The explanation is not a satisfactory explanation unless a reasonable person in the position of the claimant would have failed to have complied with the duty or would have been justified in experiencing the same delay.

**Note—**

The requirement for “a full and satisfactory explanation” is made in sections 42 (4), 43A (2), (4), (6) (a) and (7) and 52 (4B).

**40A Objects—Part 5**

The objects of this Part are:

- (a) to ensure that claims are quickly brought to the attention of insurers:
- (i) to enable early investigation and assessment of claims, and
  - (ii) to enable the early identification of the nature and severity of the injuries sustained in the motor accident and of the likely treatment and rehabilitation needs of the injured person, and
  - (iii) so that insurers can readily predict claim frequency and hence make appropriate provision for the calculation of premiums, and
  - (iv) to enable accident victims to receive prompt treatment and rehabilitation and prompt payment of lost earnings where liability is clear, and
- (b) to promote negotiation between the parties and, by means of alternate dispute resolution, to ensure that the resolution of disputed claims by the courts is kept to a minimum, and
- (c) to underscore the need to deter and prevent the making of fraudulent and exaggerated claims.

**41 Application of Part**

- (1) This Part does not apply to or in respect of motor accidents occurring after the commencement of the *Motor Accidents Compensation Act 1999*.
- (2) This Part applies to and in respect of a claim whether or not there is a third-party policy in respect of the claim.

**Note—**

The application of this Part in respect of coal miner work injury matters is limited by section 3D.

## **Division 2 Claims and other matters preliminary to court proceedings**

### **42 Accident must be reported within 28 days**

- (1) It is the duty of a person who is entitled to make a claim to ensure that a written report of the motor accident concerned is made to a member of the Police Force (whether under the regulations made under the *Road Transport (Safety and Traffic Management) Act 1999* or otherwise) within 28 days after the date of the accident.
- (2) (Repealed)
- (3) If, because of injuries received in a motor accident, a person is unable to make a written report of the accident within the 28-day period, the written report may be made within 28 days after the date on which the person might reasonably be expected to have been able to make the written report.
- (4) If a person commences proceedings in respect of a claim without having complied with the duty under this section, the person must provide a full and satisfactory explanation to the court for the non-compliance.
- (5) If the court is satisfied that sufficient cause existed to justify the delay in making the written report and that a written report of the accident was made within such period as the court considers reasonable, having regard to the duty under this section, the court may allow the proceedings to continue.

### **42A Authority's access to police information**

- (1) At the written request of the Authority with respect to a motor accident specified by it, the Commissioner of Police must provide a statement to the Authority in relation to the following matters if information as to those matters is held by a member of the Police Service:
  - (a) the registration numbers of all motor vehicles involved in the accident,
  - (b) the names of all persons killed or injured in the accident,
  - (c) the names of the hospitals to which the injured persons were taken,
  - (d) the vehicle or vehicles most likely to have been at fault in the accident.
- (2) The Authority is authorised to give a copy of a statement provided to it under this section to the next of kin of a person killed in the accident or a person injured in the accident (or to an appropriate representative of either such person), or to an insurer.
- (3) A statement or copy of a statement provided to or by the Authority under this section is not admissible in legal proceedings concerning a claim made under this Act.

### 43 Time for and notice of making of claims

- (1) The object of this section is to promote the early making of claims to enable the insurer:
  - (a) to commence investigations while evidence relating to a claim is available, and
  - (b) to identify injuries and facilitate the access of claimants to appropriate injury management and rehabilitation services and thus to expedite the claimant's recovery, and
  - (c) to allow the insurer to more accurately predict claim frequency and hence formulate premiums.
- (2) A claim must be made within 6 months after the relevant date for the claim. The relevant date is the date of the motor accident to which the claim relates unless the claim is made in respect of the death of a person, in which case the relevant date is the date of the person's death.
- (3) (Repealed)
- (4) A claim is made by giving notice of the claim to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.
- (5) The requirement under subsection (4) (only in so far as it is a requirement to give notice of a claim to the person against whom the claim is made and without affecting the requirement to give notice to the insurer) does not apply if:
  - (a) that person is dead, or
  - (b) that person cannot be given notice.

### 43A Late making of claims

- (1) The objects of this section are:
  - (a) to ensure that the issue of the lateness of a claim is dealt with as soon as possible after receipt of the claim, and
  - (b) to ensure that any delay caused to the consideration of the substantive claim by the lateness issue is kept to a minimum, and
  - (c) to ensure that the lateness issue is either resolved or made a mutually apparent substantive issue at an early date.
- (2) A claim may be made more than 6 months after the relevant date for the claim under section 43 (in this section called **a late claim**) if the claimant provides a full and satisfactory explanation for the delay in making the claim. The explanation is to be provided in the first instance to the third-party insurer concerned (if there is one) or to



the Nominal Defendant.

- (3) Evidence as to any delay in the onset of symptoms relating to the injury suffered by the injured person as a result of the motor accident may be given in any such explanation.
- (4) A late claim may not be made more than 12 months after the relevant date for the claim under section 43 unless, in addition to the provision of a full and satisfactory explanation, the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.
- (5) Subsection (4) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity.
- (6) This subsection applies if the late claim is made against the Nominal Defendant or a person who is insured by a third-party insurer. A reference in this subsection to an insurer includes a reference to the Nominal Defendant.
  - (a) If, within 2 months after receiving a late claim for which no explanation for delay is provided, the insurer does not reject the claim or ask the claimant to provide a full and satisfactory explanation for the delay in making the claim, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay.
  - (b) If, within 2 months after receiving an explanation for delay in the making of a late claim, the insurer does not reject the explanation, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay.
  - (c) If court proceedings are commenced in respect of a late claim, an insurer (or the person against whom the claim is made) may apply to have the proceedings dismissed on:
    - (i) the ground of delay, or
    - (ii) in the case of a late claim that is made more than 12 months after the relevant date for the claim under section 43, the ground of the amount of damages,or both, only within 2 months after the statement of claim is served on the defendant and received by the insurer. The insurer (or the person against whom the claim is made) may only apply to have the proceedings dismissed on the ground of delay if the insurer (or the person) has not lost the right to challenge the claim on the ground of delay.

- (7) A court must dismiss proceedings commenced in respect of a late claim if the court is satisfied that the claimant does not have a full and satisfactory explanation for the delay in making the claim and, alternatively or in addition in the case of a late claim that is made more than 12 months after the relevant date for the claim under section 43, that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are less than 10 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.

**Note—**

The combined effect of sections 43 and 43A is as follows:

A claim generally must be made within 6 months after the date of the accident or the date of death.

If, however, a claim is made between 6 months and 12 months after the date of the accident or death, a full and satisfactory explanation for the delay in making the claim must be provided.

A claim cannot be made after 12 months unless a full and satisfactory explanation for the delay is provided AND the damages of all kinds that would be awarded were the claim to succeed are at least 10% of the maximum damages that could be awarded for non-economic loss (see sections 79 and 79A) as at the date of the accident.

**44 Form of notice of claim**

- (1) A notice of a claim under section 43 (4) must:
- (a) be in the form approved by the Authority, and
  - (b) set out or be accompanied by such particulars and information as may be required by that form.
- (1A) A notice of claim given to an insurer may, if approved by the Authority, require the claimant to do either or both of the following:
- (a) furnish a medical certificate relating to the claim signed by a medical practitioner,
  - (b) authorise the insurer to obtain information and documents relevant to the claim from persons specified in the authorisation.
- (2) The Authority may approve different forms according to the persons to whom the notice is to be given.
- (3) A notice of a claim given to a third-party insurer must be verified by statutory declaration.

**44A Other approved forms**

- (1) The Authority may approve forms (other than the form for a notice of claim) for use by insurers for the purposes of this Part.

- (2) Approved forms may include, but are not limited to, a certificate of earnings and a rehabilitation plan.

**44B Challenging claims for failure to comply with sec 44 or 44A**

- (1) If, within 2 months after receiving notice of a claim under section 43 (4), the insurer does not reject the claim for non-compliance with section 44, the insurer loses the right to challenge the claim on the ground of non-compliance with that section.
- (2) If court proceedings are commenced in respect of a claim, an insurer who has not lost the right to challenge for non-compliance with section 44 may apply to have the proceedings dismissed on the ground of the relevant non-compliance only within 2 months after the statement of claim is served on the defendant and received by the insurer.
- (3) A court may not dismiss proceedings if the relevant non-compliance is technical and of no significance.
- (4) In this section, a reference to an insurer includes, in the case of a third-party insurer, a reference to the person against whom the claim is made.

**45 Duty of insurer to try to resolve claim etc**

- (1) It is the duty of an insurer to endeavour to resolve a claim, by settlement or otherwise, as expeditiously as possible.
- (2) Once liability has been admitted (wholly or in part) or determined (wholly or in part) against the person against whom the claim is made, it is the duty of an insurer to make payments to or on behalf of the claimant in respect of:
  - (a) hospital, medical and pharmaceutical expenses, and
  - (b) rehabilitation expenses, subject to Part 4, and
  - (c) respite care in respect of a claimant who is seriously injured and in need of constant care over a long term,  
as incurred.
- (2A) The duty of an insurer under subsection (2) to make payments applies only to the extent to which those payments:
  - (a) are reasonable and necessary, and
  - (b) are properly verified, and
  - (c) relate to the injury caused by the fault of the owner or driver of the motor vehicle to which the third-party policy taken to have been issued by the insurer relates.

- (3) It is a condition of a third-party insurer's licence that the insurer must comply with this section.
- (4) A payment made under this section to or on behalf of a claimant before the claimant obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the claimant against the defendant for damages.

**Note—**

Section 45 places obligations on insurers to act as expeditiously as possible, and to make certain payments of an interim nature once liability has been admitted or determined. The obligations are consistent with the insurer's obligations regarding the rehabilitation of the claimant under sections 37 and 38.

Failure to observe the obligations in individual cases exposes the insurer to an award of interest under section 73. Continual failure to observe the obligations places an insurer's licence at risk (section 45 (3)).

In order to meet its obligations, the insurer must have sufficient information to enable it to properly investigate and assess the claim, and make an appropriate offer of settlement. This requires early notice of the claim under section 43, and the provision of full particulars of the claim under section 48.

**46 Insured not to admit liability etc**

- (1) A person shall not, without the consent in writing of the person's insurer:
  - (a) enter upon, or incur any expense in, any litigation, or
  - (b) make any offer or promise of payment or settlement, or
  - (c) make any payment or settlement, or
  - (d) make any admission of liability,in respect of a claim, but this section shall not prevent any person from truthfully answering any question reasonably asked of the person by a member of the Police Force.
- (2) An offer, promise or admission made in contravention of this section is of no effect.
- (3) (Repealed)

**47 Power of insurer to act for insured**

- (1) When a claim is made against a person, the person's insurer may:
  - (a) conduct and control negotiations in respect of the claim, and
  - (b) conduct, or take over the conduct of, any legal proceedings in respect of the claim and may conduct those proceedings in the name and on behalf of the person, and
  - (c) at any stage of those negotiations or proceedings, compromise or settle the claim, and

- (d) exercise any function conferred by this Part on the person in respect of the claim.
- (2) The person against whom the claim is made shall sign all such warrants, authorities and other documents as may be necessary to give effect to this section.
- (3) If the person fails to do so or is absent or cannot be found, the insurer may sign the warrants, authorities or other documents on behalf of the person.
- (4) Nothing said or done by an insurer under this section in connection with the settlement of a claim or the conduct of proceedings in respect of a claim shall be regarded as an admission of liability in respect of or in any way prejudice any other claim, action or proceeding arising out of the same occurrence.

#### **47A Power of insurer to intervene in legal proceedings**

An insurer may apply to the court to be joined as a party to legal proceedings brought against a defendant who is insured under a third-party policy with the insurer in order to argue that in the circumstances of the case it has no obligation under the policy to indemnify the defendant.

### **Division 3 Duties of co-operation**

#### **48 Duty of claimant to co-operate with other party**

- (1) The object of this section is to maximise communication between the parties so that sound and timely information is available and disputes are minimised.
- (1A) A claimant must co-operate fully in respect of the claim with the person against whom the claim is made and the person's insurer for the purpose of giving the person and the insurer sufficient information:
  - (a) to be satisfied as to the validity of the claim and, in particular, to assess whether the claim or any part of the claim may be fraudulent, and
  - (b) to be able to make an early assessment of liability, and
  - (c) to be able to make an informed offer of settlement.
- (2) In particular, the claimant must comply with any reasonable request by the other party or the other party's insurer:
  - (a) to furnish specified information (in addition to the information furnished in the claim form) or to produce specified documents or records, or
  - (b) to provide a photograph of and evidence as to the identity of the claimant.
- (2A) The reasonableness of a request may be assessed having regard to criteria including the following:

- (a) the amount of time the claimant needs to comply with the request,
  - (b) whether the information sought is cogent and relevant to a determination of liability or quantum of loss, having regard to the nature of the claim,
  - (c) the amount of information which has already been supplied to or is available to an insurer to enable liability and quantum of loss to be assessed and an offer of settlement made,
  - (d) how onerous it will be for the claimant to comply with the request,
  - (e) whether the information is privileged,
  - (f) whether the information sought is sufficiently specified,
  - (g) the time of the request and whether the claimant will be delayed in commencing proceedings by complying with the request.
- (3) The duty under this section applies only until court proceedings are commenced in respect of the claim but if the claimant fails without reasonable excuse to comply with this section, court proceedings cannot be commenced in respect of the claim while the failure continues.

#### **49 Medical etc examination of claimant**

- (1) A claimant must comply with any request by the person against whom the claim is made or the person's insurer:
- (a) to undergo a medical examination by one or more medical practitioners nominated by that person or insurer (not being an examination that is unreasonable, unnecessarily repetitious or dangerous), or
  - (b) to undergo an assessment to determine functional and vocational capacity by an assessor nominated by that person or insurer and approved by the Authority, or
  - (c) to undergo a rehabilitation assessment in accordance with the guidelines referred to in section 37 (1).
- (2) If the claimant fails without reasonable excuse to comply with such a request, court proceedings cannot be commenced or continued in respect of the claim while the failure continues.
- (3) An examination or assessment under this section is at the cost of the person who requests it.

#### **50 Duty of owner and driver to co-operate with insurer**

- (1) A person who at the time of the motor accident to which a claim relates was the owner or driver of the motor vehicle concerned shall co-operate fully with the vehicle

owner's insurer in respect of the claim.

- (2) In particular, the owner or driver of any vehicle involved in a motor accident shall:
- (a) within 28 days after the accident, give written notice of the accident to the vehicle owner's insurer, unless the owner or driver had no reason to suspect that the accident could have given rise to a claim against the owner or driver, and
  - (b) within 28 days after the receipt of:
    - (i) any claim made against the owner or driver, or
    - (ii) any written notice received from any claimant that the claimant intends to make a claim against the owner or driver,give notice of the claim or intention to make the claim to the vehicle owner's insurer.
- (3) The owner or driver of a vehicle at the time of the motor accident to which a claim relates shall furnish such information as the insurer may reasonably request in connection with the claim.

Maximum penalty: 20 penalty units.

#### **50A Provision of information to facilitate settlement of claim before commencing court proceedings**

Subject to section 52 (1A), a claimant is not entitled to commence court proceedings against another person in respect of a claim until the claimant has given the other person's insurer (if any) full details of:

- (a) the injuries sustained by the claimant in the motor accident, and
- (b) all disabilities and impairments arising from those injuries, and
- (c) if those injuries, or any of them, have not stabilised, the prognosis for future recovery, and
- (d) any economic losses and other losses that are being claimed as damages,

sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimant's full entitlement to damages.

### **Division 4 Court proceedings on claims**

#### **51 Forum for court proceedings**

Proceedings in respect of a claim may be taken in any court of competent jurisdiction.

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

(1) The objects of this section are:

- (a) to encourage and facilitate the investigation, assessment and negotiation of a claim for damages without the commencement of court proceedings, and
- (b) to impose a limitation period of 3 years for the commencement of legal proceedings for damages under this Act and to enable the extension of that period only if:
  - (i) the claimant can explain the reasons for the delay in not commencing the proceedings within the 3-year period, and
  - (ii) the claim is likely to result in an award of substantial damages, or in the circumstances described in subsection (4A).

(1A) A claimant is not entitled to commence court proceedings against another person in respect of a claim until:

- (a) 6 months have elapsed since notice of the claim was given to the other person and (if required by section 43 (4)) to the other person's insurer, or
- (b) 90 days have elapsed since the details required by section 50A were given to the other person's insurer, or
- (c) if the other person's insurer has made an offer of settlement to the claimant before the claimant commences court proceedings, 28 days have elapsed from the date on which the claimant's response to the offer is communicated to the other person's insurer,

whichever is the later or latest.

(1B) Subsection (1A) (c) applies only to the first offer made by the other person's insurer and not to any subsequent offer.

(2) If notice is given to the other person's third-party insurer then despite subsection (1A) the claimant is entitled to commence court proceedings if any of the following occurs:

- (a) the insurer denies all liability in respect of the claim,
- (b) the insurer admits partial liability in respect of the claim but the claimant is dissatisfied with the extent to which liability is admitted,
- (c) in the case of a late claim within the meaning of section 43A, the insurer rejects the claimant's explanation for delay in making the claim or rejects the claim on the ground that the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are less than 10% of the maximum amount that may be



awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.

- (3) (Repealed)
- (4) A claimant is not entitled to commence proceedings in respect of a claim more than 3 years after:
- (a) the date of the motor accident to which the claim relates, or
  - (b) if the claim is made in respect of the death of a person, the date of death,
- except with the leave of the court in which the proceedings are to be taken.
- (4A) However, if at the end of the 3-year period referred to in subsection (4), the claimant has complied with section 50A but is unable to commence court proceedings because of the effect of subsection (1A) (b) or (c), the claimant may commence court proceedings within 28 days after the period under subsection (1A) (b) or (c), or the later of those periods, has elapsed.
- (4B) The leave of the court must not be granted unless:
- (a) the claimant provides a full and satisfactory explanation to the court for the delay, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25 per cent of the maximum amount that may be awarded for non-economic loss under section 79 or 79A as at the date of the relevant motor accident.
- (4C) Subsection (4B) (b) does not apply to a claimant who is legally incapacitated because of the claimant's age or mental capacity.
- (5) The *Limitation Act 1969* does not apply to or in respect of proceedings in respect of a claim.

### **53 Presumption of agency**

- (1) For the purposes of:
- (a) any proceedings against the owner of a motor vehicle, whether severally or jointly with the driver of the vehicle, for the recovery of damages for liability in respect of the death of or injury to a person caused by the fault of the driver of the vehicle in the use or operation of the vehicle, and
  - (b) the third-party policy, if the vehicle concerned is an insured motor vehicle,
- any person (other than the owner) who was, at the time of the occurrence out of which the proceedings arose, the driver of the vehicle (whether with or without the

authority of the owner) shall be taken to be the agent of the owner acting within the scope of the agent's authority in relation to the vehicle.

- (2) Nothing in this section shall be taken to imply any ratification by the owner of the motor vehicle of the acts of the person driving the motor vehicle.
- (3) The presumption of agency under this section is applicable not only with respect to proceedings taken against the owner of the motor vehicle, whether severally or jointly with the driver, but also:
  - (a) where the owner or driver is dead, with respect to proceedings against the owner or driver's estate pursuant to Part 2 of the *Law Reform (Miscellaneous Provisions) Act 1944*, and
  - (b) where the owner or driver is dead or cannot be served with process, with respect to:
    - (i) proceedings against the person's insurer under section 54 or the Nominal Defendant, and
    - (ii) proceedings in which the owner or driver, the owner or driver's estate, the insurer or the Nominal Defendant, as the case may be, is involved as alternative defendant or as a person on whom notice in writing has been served pursuant to Part 2 of the *Law Reform (Miscellaneous Provisions) Act 1946*, or as a party to proceedings for recovery of contribution by or against a joint tort-feasor pursuant to Part 3 of that Act.

#### **54 Proceedings against insurer if insured dead or unable to be served**

- (1) If a person against whom a claim can be made is dead or cannot be served with process, the claimant and a person claiming contribution or indemnity between joint tortfeasors may:
  - (a) take proceedings in respect of the claim against the person's insurer, and
  - (b) recover in those proceedings an amount for which the claimant or the person claiming contribution or indemnity could have obtained a judgement against the insured person.
- (2) The fact that a person cannot be served with process shall not be regarded as having been proved unless it is established that all reasonable inquiries have been made in an effort to effect service.

#### **55 Proof of inability to serve process etc**

The fact that a person cannot be served with process or given notice of a claim may be proved orally or by the affidavit of the person who endeavoured to effect service.

#### **56 (Repealed)**

## **Division 5**

### **57-64 (Repealed)**

## **Division 6 Miscellaneous**

### **64A Licensed insurers to deter fraudulent claims**

A licensed insurer shall take all such steps as may be reasonable to deter and prevent the making of fraudulent claims.

### **65 False claims**

A person who makes a statement knowing that it is false or misleading in a material particular:

- (a) in a report under section 42 (report of motor accident), or
- (b) in a notice of a claim given to a person or an insurer for the purposes of section 43, or
- (c) when otherwise furnishing information to any person concerning a motor accident or any claim relating to a motor accident,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

### **66 Remedy available where claim fraudulent**

- (1) This section applies to a claimant if it is established that, for the purpose of obtaining a financial benefit, the claimant did or omitted to do anything (including the making of a statement) concerning a motor accident or any claim relating to a motor accident with knowledge that the doing of the thing or the omission to do the thing was false or misleading.
- (2) If this section applies to a claimant:
  - (a) a person who has a liability in respect of a payment, settlement, compromise or judgment relating to the claim is relieved from that liability to the extent of the financial benefit so obtained by the claimant, and
  - (b) a person who has paid an amount to the claimant in connection with the claim (whether under a settlement, compromise or judgment, or otherwise) is entitled to recover from the claimant the amount of the financial benefit so obtained by the claimant and any costs incurred in connection with the claims.

### **66A Joinder of insurer where false claim alleged**

- (1) Where:

- (a) court proceedings have been commenced against a person in respect of a claim, and
  - (b) the person's insurer has given the plaintiff particulars alleging that the claim has not been made in good faith,
- the insurer may apply to the court to be joined as a party to the proceedings.
- (2) If the court gives the insurer leave to be joined as a party, the insurer may call as a witness any person able to give evidence relating to the occurrence out of which the claim arose or evidence of other matters relating to the claim, including a person who was, at the time of the occurrence, the owner or the driver of the vehicle.
  - (3) The insurer may examine the witness as to the occurrence out of which the claim arose and may also, with the leave of the court, examine the witness as to:
    - (a) any other claim in which the witness was involved either as a claimant, a witness or an owner or driver of the motor vehicle, and
    - (b) the credibility of the witness.
  - (4) If the court gives leave to do so, the insurer may:
    - (a) cross-examine the witness, and
    - (b) lead other evidence to refute the evidence given by the witness,as to any or all of the matters as to which the insurer might have examined the witness under subsection (3).
  - (5) Any right to examine or cross examine a witness arising under this section is additional to and not in diminution of any right to examine or cross-examine the person arising under any other law.
  - (6) This section applies despite section 53 of the *Evidence Act 1898*.
  - (7) Subsections (3)–(6) apply to:
    - (a) the Ministerial Corporation as defendant in relation to claims referred to in section 147B, and
    - (b) a licensed insurer as defendant in relation to any claim,in the same way as those subsections apply to a licensed insurer who is granted leave to be joined as a party.
  - (8) This section applies to court proceedings commenced before or after the date of commencement of this section.

**67 (Repealed)**

## Part 6 Awarding of damages

### 68 Definitions

In this Part:

**motor accident** includes a transport accident referred to in section 69 (2).

**motor vehicle** includes (except in section 69) a form of transportation or conveyance included, immediately before the date of commencement of Part 2, within section 4 of the [Transport Accidents Compensation Act 1987](#).

**non-economic loss** means:

- (a) pain and suffering, and
- (b) loss of amenities of life, and
- (c) loss of expectation of life, and
- (d) disfigurement.

### 68A Objects—Part 6

The objects of this Part are:

- (a) to control the amount of damages that may be awarded to a claimant for the purpose of ensuring that the scheme under this Act is affordable, and
- (b) to achieve this control by the deliberate strategy of placing the burden of ensuring affordability on those who suffer relatively minor injuries so that sufficient funds are available to more fully compensate those who suffer more severe injuries.

### 69 Application

- (1A) This Part does not apply to or in respect of motor accidents occurring after the commencement of the [Motor Accidents Compensation Act 1999](#).
- (1) This Part applies to and in respect of an award of damages which relates to the death of or injury to a person caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle.
- (2) This Part also applies to and in respect of an award of damages which relates to the death of or bodily injury to a person caused by or arising out of a transport accident (within the meaning, immediately before the date of commencement of Part 2, of the [Transport Accidents Compensation Act 1987](#)), not being an award of damages to which subsection (1) applies.

**Note—**

The application of this Part in respect of coal miner work injury matters is limited by section 3D.

## **70 General regulation of court awards**

A court shall not award damages to a person in respect of a motor accident contrary to this Part.

### **70A Claimant's prospects of future economic loss**

A court shall not award 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 a future economic loss or that there is at least a 25 per cent likelihood that the claimant will sustain a diminution of future economic capacity, as the case requires.

### **71 Discount rate applicable to certain awards of damages**

- (1) Where an award of damages is to include compensation, assessed as a lump sum, in respect of damage for future economic loss which is referable to:
  - (a) deprivation or impairment of earning capacity, or
  - (b) loss of expectation of financial support, or
  - (b1) the value of future services of a domestic nature or services relating to nursing and attendance, or
  - (c) a liability to incur expenditure in the future,the present value of the future economic loss shall be qualified by adopting:
  - (d) a discount rate of the percentage prescribed by the regulations, or
  - (e) if no percentage is prescribed as referred to in paragraph (d), a discount rate of 5 per cent.
- (2) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

### **72 Maximum amount of damages for provision of certain home care services**

- (1) The objects of this section are:
  - (a) to limit to average weekly earnings the level of payment for services for additional domestic assistance, and
  - (b) to restrict access to those payments to claims where the need is long term, and
  - (c) to exclude claims where the services provided would have been rendered as a matter of course regardless of the relevant motor accident.

- (1A) Compensation, included in an award of damages, for the value of services of a domestic nature or services relating to nursing and attendance:
- (a) which have been or are to be provided by another person to the person in whose favour the award is made, and
  - (b) for which the person in whose favour the award is made has not paid and is not liable to pay,
- must not exceed the amount determined in accordance with this section.
- (2) No compensation is to be awarded if the services are provided, or are to be provided:
- (a) for less than 6 hours per week, and
  - (b) for less than 6 months.
- (3) If the services provided or to be provided are not less than 40 hours per week, the amount of compensation must not exceed:
- (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for:
    - (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter, or
    - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award, or
  - (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.
- (4) If the services provided or to be provided are less than 40 hours per week, the amount of compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (3) (a) or (b), as the case may be.
- (5) Unless evidence is adduced to the contrary, the court is to assume that the value of the services is the maximum amount determined under subsection (3) or (4), as the case requires.

(6) No compensation is to be awarded if the services would have been provided to the person even if the person had not been injured by the motor accident.

(7) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1A).

### **72A Respite care**

An award of damages may include compensation for necessary and reasonable respite care in respect of a claimant who is seriously injured and in need of constant care over a long term.

### **73 Payment of interest**

(1) **Limited statutory entitlement** A plaintiff has only such right to interest on damages payable in relation to a motor accident as is conferred by this section.

(2) **Domestic services, nursing and attendance** No interest is payable on damages comprising compensation under section 72. A court cannot order the payment of interest on such damages.

(3) **Non-economic loss** No interest is payable on damages awarded under section 79 or 79A. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages** The following provisions apply to damages, other than damages to which subsection (2) or (3) applies, payable in relation to a motor accident:

(a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless:

(i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or

(ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer, or

(iii) if the defendant is insured under a third-party policy or is the Nominal Defendant, the insurer has failed to comply with its duty under section 45 (2) and (2A), or

(iv) the defendant has made an offer of settlement, the amount of all damages of



any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

(b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind.

(c) For the purposes of this subsection, an offer of settlement must be in writing.

(5) **Calculation of interest** If a court is satisfied that interest is payable under subsection (4) on damages:

(a) the amount of interest is to be calculated for the period from when the loss to which the damages relate was first incurred until the date on which the court determines the damages, and

(b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) **Rate of interest** The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned.

(7) **Judgment debts** Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

#### **74 Contributory negligence—generally**

(1) The common law and enacted law as to contributory negligence apply to claims in respect of motor accidents, except as provided by this section.

(2) A finding of contributory negligence shall be made in the following cases:

(a) where the injured person or deceased person has been convicted of an offence in relation to the motor accident under:

(i) section 9 of the *Road Transport (Safety and Traffic Management) Act 1999*, or

(ii) section 12 of *Road Transport (Safety and Traffic Management) Act 1999*,

(iii) (Repealed)

unless the plaintiff satisfies the court that the concentration of alcohol in the person's blood or the alcohol or other drug, as the case requires, involved in the commission of the offence did not contribute in any way to the accident,

(b) where:

- (i) the injured person (not being a minor) or the deceased person was, at the time of the motor accident, a voluntary passenger in or on a motor vehicle, and
  - (ii) the driver's ability to drive the motor vehicle was impaired as a consequence of the consumption of alcohol or any other drug and the injured person or the deceased person was aware, or ought to have been aware, of the impairment,
- (c) where the injured person (not being a minor) or the deceased person was, contrary to the requirements of regulations made under the *Road Transport (Safety and Traffic Management) Act 1999*, not wearing a seat belt as required by those regulations at the time of the motor accident,
- (d) where the injured person or the deceased person was, at the time of the motor accident, contrary to the requirements of regulations made under the *Road Transport (Safety and Traffic Management) Act 1999*, not wearing a protective helmet.
- (3) The damages recoverable in respect of the motor accident shall be reduced by such percentage as the court thinks just and equitable in the circumstances of the case.
- (4) The court must state its reasons for determining the particular percentage.
- (5) If, in relation to the motor accident, the injured person or deceased person is convicted of an offence under the *Road Transport (Safety and Traffic Management) Act 1999* of:
- (a) refusing or failing to submit to breath analysis, to undergo a breath test, to submit to an assessment of sobriety or to provide samples of the person's blood and urine, or
  - (b) wilfully altering the concentration of alcohol in the person's blood, or
  - (c) preventing a sample of the person's blood from being taken,
- the person is taken, for the purposes of this section, to have been convicted of an offence under section 9 (4) of the *Road Transport (Safety and Traffic Management) Act 1999*.
- (6) A person shall not be regarded as a voluntary passenger in or on a motor vehicle for the purposes of subsection (2) (b) if, in the circumstances of the case, the person could not reasonably be expected to have declined to become a passenger in or on the vehicle.
- (7) For the purposes of this Act, a deceased person shall be taken to have been convicted of an offence if any circumstances exist in respect of the deceased person which, but for the deceased person's death, would have resulted in the conviction of the deceased person for the offence or the proving of the offence against the deceased

person.

- (8) This section does not exclude any other ground on which a finding of contributory negligence may be made.

**75 (Repealed)**

**76 Defence of voluntary assumption of risk**

- (1) Except as provided by subsection (2), the defence of volenti non fit injuria is not available in proceedings for damages arising from a motor accident but, where that defence would otherwise have been available, the amount of any damages shall be reduced to such extent as is just and equitable on the presumption that the injured person or deceased person was negligent in failing to take sufficient care for his or her own safety.
- (2) If a motor accident occurs while a motor vehicle is engaged in motor racing, the defence of volenti non fit injuria is available in proceedings for damages brought in respect of the death of or injury to:
- (a) the driver of the vehicle so engaged, or
  - (b) a passenger in the vehicle so engaged, other than a passenger who is less than 18 years of age or who otherwise lacked capacity to consent to be a voluntary passenger.
- (3) For the purposes of subsection (2), a motor vehicle is engaged in motor racing if it is participating in an organised motor sports event or an activity that is an offence under section 40 of the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

**77 (Repealed)**

**78 Determination of economic loss**

A court shall reduce the amount of economic loss of an injured person or deceased person as a consequence of a motor accident by the amount of any entitlement to or payment of:

- (a) (Repealed)
- (b) compensation for expenses under the [Victims Compensation Act 1996](#) for the injury suffered in the accident, and
- (c) amounts, payments or benefits comprising payments made to or on behalf of the claimant by an insurer or Nominal Defendant in relation to a claim made by the claimant (including amounts, costs and expenses paid under section 37 and payments made under section 45), and
- (d) an amount, payment or benefit of a class or description of amounts, payments or benefits prescribed for the purposes of this section.

**79 Determination of non-economic loss—accidents occurring before midnight on 26.9.95**

- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995.
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.
- (1B) No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months by the injury suffered in the accident.
- (2) The amount of damages to be awarded for non-economic loss shall be a proportion, determined according to the severity of the non-economic loss, of the maximum amount which may be awarded.
- (3) The maximum amount which may be awarded for non-economic loss is \$180,000, but the maximum amount shall be awarded only in a most extreme case.
- (4) If the amount of non-economic loss is assessed to be \$15,000 or less, no damages for non-economic loss shall be awarded.
- (5) If the amount of damages to be awarded for non-economic loss in accordance with this section is more than \$15,000 but less than \$55,000, the following deductions shall be made from that amount:
  - (a) if the amount of damages is less than \$40,000—the amount to be deducted is \$15,000,
  - (b) if the amount of damages is not less than \$40,000—the amount to be deducted is \$15,000, or \$15,000 reduced by \$1,000 for every \$1,000 by which the amount of damages exceeds \$40,000.

**79A Determination of non-economic loss—accidents occurring after midnight on 26.9.95**

- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.
- (3) No damages are to be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal

life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 12 months by the injury suffered in the accident.

- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case.
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table:

**Table**

<b>Severity of the non-economic loss (as a proportion of a most extreme case)</b>	<b>Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)</b>
15%	1%
16%	1.5%
17%	2%
18%	2.5%
19%	3%
20%	3.5%
21%	4%
22%	4.5%
23%	5%
24%	5.5%
25%	6.5%
26%	8%
27%	10%
28%	14%
29%	18%
30%	23%
31%	26%
32%	30%

33%

33%

34%–100%

34%–100% respectively

- (7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

**Note—**

The following are the steps required in the assessment of non-economic loss in accordance with this section:

Step 1: Has the claimant demonstrated that his or her ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2.

Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act.

Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80.

Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table.

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

## **80 Indexation of amounts relating to non-economic loss**

- (1) The Minister shall, on or before 1 October 1990 and on or before 1 October in each succeeding year, declare, by order published in the Gazette, the amounts which are to apply, as from the date specified in the order, for the purposes of section 79 or 79A.

**Editorial note—**

See orders published in Gazettes No 120 of 28.9.1990, p 8681; No 134 of 27.9.1991, p 8354; No 119 of 25.9.1992, p 7040; No 104 of 24.9.1993, p 5917; No 132 of 30.9.1994, p 6060; No 119 of 29.9.1995, p 6939; No 107 of 20.9.1996, p 6434; No 104 of 26.9.1997, p 8212; No 139 of 25.9.1998, p 7698; No 114 of 1.10.1999, p 9659; No 127 of 29.9.2000, p 10835; No 135 of 7.9.2001, p 7576; No 154 of 27.9.2002, p 8397; No 154 of 26.9.2003, p 9621 and No 149 of 24.9.2004, p 7662.

- (2) The amounts declared shall be each of the amounts applicable under section 79 or 79A (or those amounts as last adjusted under this section) adjusted by the percentage change in the amounts estimated by the Australian Statistician of the average weekly total earnings of full-time adults in New South Wales over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available.
- (3) An amount declared for the time being under this section shall apply to the exclusion of the corresponding amount under section 79 or 79A.

- (4) If the Australian Statistician fails or ceases to estimate the amounts referred to in subsection (2), the amounts declared shall be the amounts determined in accordance with the regulations.
- (5) In adjusting an amount to be declared for the purpose of section 79 (3) or 79A (5), the amount determined in accordance with subsection (2) is to be rounded to the nearest \$1,000 (with the amount of \$500 being rounded up).
- (6) In adjusting an amount to be declared for the purpose of section 79 (4) or (5), the amount determined in accordance with subsection (2) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

### **80A Regulations concerning the determination of non-economic loss**

The regulations may make provision for or with respect to the adoption of guidelines as in force from time to time relating to the determination of non-economic loss.

### **81 Structured settlements**

- (1) This section applies to an award of damages if the plaintiff and the defendant's insurer or, as the case may be, the Nominal Defendant have agreed that it will apply.
- (2) If this section applies to an award of damages, the court may:
  - (a) separately determine the amount of damages for non-economic loss, the amount of damages for future economic loss and the amount of damages for past economic loss, and
  - (b) order that any damages determined by the court for future economic loss (other than damages for impairment of earning capacity), including:
    - (i) reasonable hospital, medical, pharmaceutical and rehabilitation expenses, and
    - (ii) any compensation payable under section 72,shall be paid in accordance with such arrangements as the court determines or approves, and
  - (c) order that any damages determined by the court for impairment of earning capacity shall be paid in accordance with such arrangements as the court determines or approves.
- (3) In making an order under this section, the court shall have regard to:
  - (a) the ability of the plaintiff to manage and invest any lump sum award of damages,
  - (b) the need to ensure that expenses incurred by the plaintiff which are required to be met by the defendant:
    - (i) are not unreasonable having regard to the circumstances of the plaintiff,

- (ii) are properly verified, and
  - (iii) relate to the injury caused by the fault of the defendant,
- (c) the principle that costs and expenses are only recoverable by the plaintiff from the defendant in relation to hospital, medical, pharmaceutical and rehabilitation services, services of a domestic nature and services relating to nursing and attendance if the provision of those services is likely to, or is reasonably likely to, advantage the plaintiff,
- (d) the views of the insurer or the Nominal Defendant in relation to the proposed order, and
- (e) such other matters as the court thinks fit.
- (4) In making an order under subsection (2) (c) relating to damages for impairment of earning capacity, the court may order that the damages be used to purchase an annuity for the plaintiff on such terms as the court thinks fit.
- (5) The court shall not make an order under subsection (2) (c) unless the court considers there is good cause for making the order.
- (6) Arrangements determined or approved under subsection (2) (c) may include provision that payments of damages for impairment of earning capacity shall be made at intervals of not more than 12 months.
- (7) A party to any arrangements determined or approved under this section may apply to the court at any time for an order varying or terminating the arrangements. An order cannot be made to vary or terminate the arrangements if those arrangements involve, for the purpose of giving effect to all or part of the original order, an investment that cannot readily be varied or terminated by the parties to the investment (for example, an annuity).
- (8) The court may, on an application under subsection (7), make such order as it thinks fit having regard to the provisions of this section.
- (9) The regulations may make provision for and with respect to any matter dealt with in this section and, in particular, may impose conditions or limitations on the orders that may be made under this section or otherwise regulate the making of those orders.
- (10) Any such regulations shall not be made unless recommended by the Authority.

### **81A Exemplary or punitive damages**

A court shall not award exemplary or punitive damages to a person in respect of a motor accident.



## **82 Court to apportion damages etc**

Where a judgment is obtained for payment of damages in respect of the death of or injury to any person caused by the fault of the owner or driver of an insured motor vehicle in the use or operation of the vehicle as well as for damages in respect of any other matter, the court shall, as part of the judgment, declare what portion of the sum awarded by the judgment is in respect of the death or injury and shall apportion any costs awarded.

### **82A Costs**

- (1) Subject to the rules of court, if a court awards costs to a plaintiff by reference to the amount recovered by the plaintiff, that amount shall be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with this Part.
- (2) The rules of court may make provision for or with respect to the determination and payment of costs otherwise than by taxation.

## **Parts 7, 8**

### **83-131 (Repealed)**

## **Part 9 Miscellaneous**

### **132 No contracting out of Act**

This Act applies despite any contract to the contrary.

### **132A (Repealed)**

### **133 Service of documents**

- (1) If by or under this Act a notice or other document is required to be, or may be, given to or served on a person other than the Authority, that notice or other document may be given to or served on:
  - (a) an individual:
    - (i) by delivering it to the individual personally, or
    - (ii) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years, or
    - (iii) by sending it by prepaid post addressed to the individual at that place of residence, or
  - (b) a corporation:

- (i) by delivering it to a person who is or apparently is concerned in the management of the corporation, or
  - (ii) by leaving it at the registered office in the State of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years, or
  - (iii) by sending it by prepaid post addressed to the corporation at that registered office.
- (2) A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be taken to have been given or served on its being so delivered or left or, if it is sent by post, shall, in the absence of evidence to the contrary, be prima facie taken to have been given or served when it would have been delivered in the ordinary course of post.

### **134 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **135 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against section 65 may be commenced at any time within 2 years after the date of commission of the offence.

### **136 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **137 Savings, transitional and other provisions**

Schedule 4 has effect.

## **Part 10 Funding and administration of previous schemes**

### **138 Definitions**

In this Part:

**intermediate transport accident** means a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before 1 July 1989, being the date of commencement of Part 2:

- (a) in relation to which a person is entitled to benefits under the 1987 Act, or
- (b) in relation to which a person would be entitled to damages assessed in accordance with this Act if the person at fault had, on the occurrence of the accident, been an insured person.

**the 1987 Act** means the [Transport Accidents Compensation Act 1987](#).

**the TAC Fund** means the Transport Accidents Compensation Fund established under section 15 of the 1987 Act.

### **139 Continuation of the TAC Fund**

- (1) Despite the repeal of the 1987 Act, the TAC Fund shall continue in accordance with this Part.
- (2) The TAC Fund is to be administered by the Ministerial Corporation.
- (3) (Repealed)

### **140 Payments into TAC Fund**

- (1) There shall be paid into the TAC Fund:
  - (a) amounts paid to the Ministerial Corporation under section 149,
  - (b) any money appropriated by Parliament for the purposes of the Fund,
  - (b1) any amount paid to the Ministerial Corporation under a sharing agreement made with another person in respect of compensation or damages for death or personal injury arising from an accident in New South Wales or elsewhere in Australia involving a motor vehicle which occurred before 1 July 1989,
  - (c) the interest from time to time accruing from the investment of the Fund, and
  - (d) such amounts, if any, as may be prescribed.

- (2) There may be paid into the TAC Fund money, other than money referred to in subsection (1), which may be lawfully paid into the Fund.

#### **141 Payments out of TAC Fund**

- (1) There shall be paid out of the TAC Fund:
- (a) amounts payable under this Part, and
    - (a1) any amount payable by the Ministerial Corporation under a sharing agreement made with another person in respect of compensation or damages for death or personal injury arising from an accident in New South Wales or elsewhere in Australia involving a motor vehicle which occurred before 1 July 1989, and
    - (a2) an amount (payable into the Consolidated Fund) equal to \$3 for every \$43 that is received by the Roads and Traffic Authority from the payment of short-fall levies under section 148 in relation to an application made for the registration or renewal of registration of a motor vehicle, and
  - (b) all charges, costs and expenses incurred by the Ministerial Corporation in the exercise of its functions under this Part.
- (2) There may be paid out of the TAC Fund all other amounts required or authorised by the regulations to be paid out of the Fund.

#### **142 Investment**

Any money in the TAC Fund which is not immediately required for the purposes of the Fund may be invested by the Ministerial Corporation or any prescribed person:

- (a) in any manner in which trustees are for the time being authorised to invest trust funds, or
- (b) in any manner approved by the Treasurer.

#### **143 Payment of damages out of TAC Fund**

Damages payable:

- (a) (without limiting section 14D of the *Motor Vehicles (Third Party Insurance) Act 1942*) in respect of claims made under section 14 or 14A of that Act, or
- (b) in respect of intermediate transport accidents,

shall be paid out of the TAC Fund.

#### **144 Reassessment of benefits under 1987 Act**

- (1) As soon as practicable after the date of commencement of Part 2, the Ministerial Corporation shall:

(a) make an assessment of the entitlement to damages under this Act of a person who was, immediately before that date, receiving benefits under the 1987 Act in respect of an intermediate transport accident, and

(b) take such steps (if any) as may be reasonable and appropriate to effect settlement of the person's entitlement.

(2) Until the assessment is made under this section in respect of a person's entitlement, the person shall continue to receive benefits determined under the 1987 Act.

**145 Entitlement to claim under this Act of recipient of benefits under the 1987 Act**

A person who has received benefits under the 1987 Act in respect of an intermediate transport accident is not prevented from making a claim under this Act.

**145A Claims in respect of certain intermediate transport accidents**

(1) This section applies to an intermediate transport accident in respect of which a claim had not been made under the 1987 Act before 1 July 1989.

(2) A claim relating to an intermediate transport accident to which this section applies and any proceedings brought to enforce the claim may, in respect of a form of transportation or conveyance described in Column 1 of the Table to this subsection, be made or taken against the person (or, as the case may be, one or more of the persons) specified in Column 2 of that Table opposite that form of transportation or conveyance as if a person specified in Column 3 of that Table opposite that form of transportation or conveyance were the insurer under a third-party policy of the owner and driver of that form of transportation or conveyance.

**Table**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
New South Wales registered motor vehicle	Owner, driver	Ministerial Corporation
Unidentified motor vehicle	Ministerial Corporation	Ministerial Corporation
Uninsured motor vehicle	Ministerial Corporation	Ministerial Corporation
Motor vehicle registered in Australia elsewhere than in New South Wales	Owner, driver, Ministerial Corporation	The insurer of, or compensation authority in respect of, the vehicle, Ministerial Corporation
A form of transportation or conveyance, not being a motor vehicle	Owner, driver, operator	Ministerial Corporation

(3) This section is taken to have commenced on 1 July 1989.

**145B Contribution from other insurers in respect of intermediate transport accident claims**

- (1) For the purposes of assessing and apportioning any liability for contribution between the Ministerial Corporation as manager of the TAC Fund and an insurer of a person at fault in respect of an intermediate transport accident, the Ministerial Corporation is taken to be the insurer of the person under a third-party policy.
- (2) This section is taken to have commenced on 1 July 1989.

**146 Provisions applicable to claims concerning intermediate transport accidents**

- (1) Parts 4, 4A, 5, 6, 9 and 10 apply to and in respect of a claim relating to an intermediate transport accident in the same way as they apply to a claim within the meaning of Part 5, subject to this section.
- (2) A person who has made a claim under the 1987 Act before the date of commencement of Part 2 which has not been determined before that date shall be taken to have complied with section 43.
- (2A) Notice of a claim to which subsection (2) applies shall, for the purposes of section 52 (1) (as inserted by the *Motor Accidents (Amendment) Act 1989*) be taken to have been given when the claim was made under the 1987 Act.
- (3) For the purposes of the application of section 52 (Time limitations on commencement of court proceedings), a reference to the date on which the claim must be made shall be construed as a reference to the date on which Part 2 commences.

**146A Privileged information and records**

- (1) A person who has made a claim under the 1987 Act in respect of an intermediate transport accident is not entitled to have access to or to make copies of or take extracts from any information obtained or record made concerning the accident which is in the possession or under the control of the Ministerial Corporation.
- (2) This section does not apply to:
  - (a) a document signed by or on behalf of the person concerned, or
  - (b) a medical report furnished by or on behalf of the person, or
  - (c) information furnished by an employer of the person, or
  - (d) prescribed information or prescribed documents.

**147 Deduction of benefits provided under the 1987 Act**

The value of any benefit provided to or on behalf of a person under the 1987 Act in relation to an intermediate transport accident shall be deducted from the amount of any

damages payable to the person in accordance with this Act in relation to the accident, but no person shall, by the operation of this Part, be liable to repay any money paid to or on behalf of the person under the 1987 Act.

**147A Right of recovery from certain persons**

Nothing in this Act prevents or restricts any right or entitlement of the Ministerial Corporation to recover any damages or compensation from a person:

- (a) whose fault in the use or operation of a motor vehicle or other form of transportation or conveyance caused the death of or injury to a person in an intermediate transport accident, and
- (b) who has not paid a contribution into the TAC Fund in relation to the motor vehicle or other form of transportation or conveyance concerned,

and the Ministerial Corporation is entitled to recover any such damages and compensation.

**147B Administration of claims under previous schemes**

- (1) The Ministerial Corporation is to determine and administer claims relating to intermediate transport accidents and claims under section 14 or 14A of the *Motor Vehicles (Third Party Insurance) Act 1942*.
- (2) Any cost or expense incurred under this section by the Authority shall be paid out of the TAC Fund.

**148 Payment of short-fall levy at time of registration of motor vehicle**

- (1) This section applies only if an order is made under section 150 and while the order is in force.
- (2) A person who applies for the registration or the renewal of registration of a motor vehicle shall, at the time the application is made, pay to the Roads and Traffic Authority the short-fall levy determined under this Part in respect of the motor vehicle.
- (3) A person who applies for the issue of a trader's plate shall, at the time the application is made, pay to the Roads and Traffic Authority the short-fall levy determined under this Part in respect of motor vehicles to which the trader's plate is fixed.
- (4) The registration or the renewal of registration of a motor vehicle shall not be issued by the Roads and Traffic Authority until the short-fall levy required to be paid under this section has been paid.
- (5) The regulations may make provision for or with respect to:
  - (a) the payment of short-fall levies by instalments, including provision for the cancellation of registration for failure to pay instalments when they fall due, and

(b) the refund of short-fall levies.

(6) A person who applies for the registration or the renewal of registration of a motor vehicle that takes effect on or after 1 July 1998 and who:

(a) is the holder of a Senior's Card (being a card of that name issued by the New South Wales Government), or

(b) is the recipient of, or the spouse of the recipient of, a family allowance from the Commonwealth under Part 2.17 of the *Social Security Act 1991* of the Commonwealth, or

(c) uses the motor vehicle as a primary producer's vehicle within the meaning of the *Motor Vehicles Taxation Act 1988*,

is not liable to pay the short-fall levy determined under this Part.

(7) A person who applies for the registration or the renewal of registration of a motor vehicle that takes effect on or after 1 July 1999, being a motor vehicle that is used for private purposes within the meaning of the *Motor Vehicles Taxation Act 1988*, is not liable to pay the short-fall levy determined under this Part.

(8) A person who applies for the registration or the renewal of registration of a motor vehicle that takes effect on or after 1 July 2000 is not liable to pay the short-fall levy determined under this Part.

#### **149 Payment of short-fall levies to Ministerial Corporation**

(1) The Roads and Traffic Authority shall, at such time or times as may be agreed on by the Roads and Traffic Authority and the Ministerial Corporation, pay to the Ministerial Corporation the short-fall levies received by the Roads and Traffic Authority under section 148.

(2) The Roads and Traffic Authority may retain from any such short-fall levies such commission as may be agreed on by the Roads and Traffic Authority and the Ministerial Corporation.

(3) Payments made to the Ministerial Corporation under this section shall be paid into the TAC Fund.

#### **150 Determination by Minister of short-fall levy**

(1) The Minister may, by order published in the Gazette, determine the short-fall levies payable under this Part for motor vehicles of such classes as are specified in the order.

(2) The short-fall levies determined by any such order apply to registrations and renewals of registrations of motor vehicles effected, and traders' plates issued, after the order takes effect and while the order is in force.



- (3) An order under this section takes effect on such date after the publication of the order in the Gazette as is specified in the order.

## **Schedules 1-3 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 137)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

the *Miscellaneous Acts (Motor Accidents) Amendment Act 1988*

the *Motor Accidents (Amendment) Act 1989*

the *Motor Accidents (Amendment) Act 1990*

the *Statute Law (Miscellaneous Provisions) Act 1991*

the *Motor Accidents (Amendment) Act 1993*

the *Motor Accidents (Amendment) Act 1994*

the *Motor Accidents Amendment Act 1995*

the *Motor Accidents Amendment Act 1997*

the *Traffic Legislation Amendment Act 1997*

the *Road Transport (Vehicle Registration) Act 1997*, but only in relation to the amendments made to this Act

the *Road Transport (Vehicle Registration) Amendment Act 1998*, but only in relation to the amendments made to this Act

the *Motor Accidents Amendment Act 1998*

the *Motor Accidents Legislation Amendment Act 2004*

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions arising from the enactment of this Act and the [Miscellaneous Acts \(Motor Accidents\) Amendment Act 1988](#)**

### **2 Recovery of certain contributions**

- (1) The GIO may, after the date of commencement of Part 2 of this Act, recover a contribution required to be paid by any person under Part 3 of the [Transport Accidents Compensation Act 1987](#) in relation to an intermediate transport accident within the meaning of section 138 of this Act as if the [Transport Accidents Compensation Act 1987](#) had not been repealed.
- (2) Any such contribution may be increased by the amount of any additional liability imposed as a consequence of the enactment of this Act.

### **3 Early assessment of claims**

- (1) The GIO may, before the date of commencement of Part 2, receive and assess claims in respect of intermediate transport accidents (within the meaning of Part 10) as if the whole of this Act had been in force at the time the claim is made.
- (2) The GIO shall not, before the date of commencement of Part 2, make any payment in respect of any such claim.

## **Part 3 Provisions arising from the enactment of the [Motor Accidents \(Amendment\) Act 1989](#)**

### **4 Constitution of Board of Directors**

- (1) The amendments to section 84 made by the [Motor Accidents \(Amendment\) Act 1989](#) do not affect the appointment or term of office of a person who held office as a part-time director of the Board of Directors of the Authority immediately before the amendments took effect.
- (2) For the purposes of section 84 (2A), as inserted by the [Motor Accidents \(Amendment\) Act 1989](#):
  - (a) Robert Avison Scott shall be taken to be a person who, at the time of his appointment, was nominated or approved by licensed insurers, and
  - (b) Raymond Bruce Willing shall be taken to be a person who, at the time of his

appointment, was nominated by the National Roads and Motorists' Association.

## 5 Transitional insurance arrangements

(1) In this clause and clause 6:

**registered motor vehicle** means a registered motor vehicle within the meaning of this Act, the registration of which expires after the date on which Part 2 of this Act commences and in relation to which a contribution has been paid under the 1987 Act to the TAC Fund.

**the 1987 Act** means the *Transport Accidents Compensation Act 1987*.

**the TAC Fund** means the Transport Accidents Compensation Fund established under section 15 of the 1987 Act.

- (2) On or before the date on which Part 2 of this Act commences, the Authority shall allocate registered motor vehicles among licensed insurers in accordance with the following provisions:
- (a) Registered motor vehicles shall be allocated among licensed insurers on such basis as may be determined by the Authority.
  - (b) The allocation shall, as far as practicable, be made in accordance with the market share of each insurer.
  - (c) Registered motor vehicles shall be allocated so that, as far as practicable, an equitable distribution is made of registered motor vehicles in each category for which a different amount of contribution has been paid under the 1987 Act to the TAC Fund.
- (3) On the date on which Part 2 of this Act commences, a licensed insurer to which a registered motor vehicle has been allocated shall be taken to have issued a third-party policy in respect of the vehicle for the balance of the period for which the vehicle is registered.
- (4) The Authority shall, on request by any person, inform the person of the name and business address of the licensed insurer to which a registered motor vehicle has been allocated.
- (5) This clause applies, with any necessary modifications, to the allocation of a trader's plate current on the date on which Part 2 of this Act commences in the same way as it applies to the allocation of a registered motor vehicle and applies so as to cause a third-party policy to be taken to have issued in respect of motor vehicles to which the trader's plate is to be fixed before the termination of the period for which the trader's plate is issued.

### 5A Granting of licences before 1.7.91 which enable insurance to be effected for periods

### **commencing on or after 1.7.91**

- (1) The Authority may grant a licence under Division 1 of Part 8 before 1 July 1991 which authorises the applicant to effect third-party insurance, before or after 1 July 1991, but only for periods of insurance which commence on or after 1 July 1991.
- (2) Section 102 (6) does not apply to a licence granted in accordance with this clause.
- (3) Where the Authority proposes to grant a licence in accordance with this clause, it must give 14 days' notice of the proposal to all licensed insurers specifying the name of the corporation making the application.

### **6 Funding of transitional insurance arrangements**

- (1) Each licensed insurer shall, on the date on which Part 2 of this Act commences, be paid out of the TAC Fund such sum as the Minister determines towards meeting claims that are likely to arise under third-party policies taken to have been issued under clause 5 by the insurer.
- (2) Before making a determination under this clause in relation to a licensed insurer, the Minister shall obtain the advice of an actuary as to the sum to be paid and shall consult with the insurer.

## **Part 4 Provisions arising from the enactment of the [Motor Accidents \(Amendment\) Act 1990](#)**

### **7 Operation of certain amendments**

- (1) The amendments made by section 3 of, and Schedule 1 (2), (3) and (6) to, the [Motor Accidents \(Amendment\) Act 1990](#) do not apply to registrations (and renewals of registrations) which expire on or before 30 June 1991 but only to those which expire on or after 1 July 1991.
- (2) This Act, as in force immediately before 1 July 1991, continues to apply to the renewal of registration of a motor vehicle where the registration expires on or before 30 June 1991.

### **8 Premiums for insurance**

For the purpose of enabling a licensed insurer, before 1 July 1991, to accept a premium and issue a certificate of insurance in relation to a period of insurance which commences on or after that date, section 10 (as proposed to be substituted by the [Motor Accidents \(Amendment\) Act 1990](#)) is taken to have commenced on the date of assent to that Act.

## **Part 5 Provisions arising from the enactment of the [Motor Accidents](#)**

## **(Amendment) Act 1993**

### **9 General application of amendments**

An amendment made by the *Motor Accidents (Amendment) Act 1993* applies to:

- (a) motor accidents occurring before the commencement of the amendment as well as to motor accidents occurring after that commencement, and
- (b) claims made and proceedings brought before the commencement of the amendment that have not been finally determined before that commencement as well as to claims made and proceedings brought after that commencement,

except as provided by this Part.

### **10 Commencement and duration of third-party policies**

Section 12, as substituted by the *Motor Accidents (Amendment) Act 1993*, does not apply to a third-party policy that is taken to have been issued before the commencement of Schedule 1 (1) to that Act.

### **11 Late making of claims**

Section 43A does not apply to a claim made before the commencement of that section.

### **12 Challenging claims for failure to comply with sec 44 or 44A**

Section 44B does not apply to a claim made before the commencement of that section.

### **13 Maximum amount of damages for provision of certain home care services**

Section 72, as substituted by the *Motor Accidents (Amendment) Act 1993*, does not apply to a motor accident occurring before the commencement of Schedule 1 (13) to that Act.

### **14 Respite care**

Section 72A does not apply to a motor accident occurring before the commencement of that section.

### **15 Determination of non-economic loss**

Section 79, as amended by the *Motor Accidents (Amendment) Act 1993*, does not apply to a motor accident occurring before the commencement of Schedule 1 (15) to that Act.

## **Part 6 Provisions arising from the enactment of the Motor Accidents (Amendment) Act 1994**

### **16 Payment of interest**

Section 73, as substituted by the *Motor Accidents (Amendment) Act 1994*, applies to

claims for damages:

- (a) in respect of motor accidents, within the meaning of Part 6, occurring after 30 June 1987, and
- (b) that were not settled or finally determined as at the date on which that section was so substituted.

## **Part 7 Provisions arising from the enactment of the [Motor Accidents Amendment Act 1995](#)**

### **17 Application of amendments**

- (1) The provisions of sections 2A, 2B, 34A, 40A, 43 (1), 48 (1), 68A, 72 (1) and 79 (1A), as inserted by the [Motor Accidents Amendment Act 1995](#), apply to claims made on or after the commencement of the relevant provision.
- (2) The amendments to this Act made by Schedule 1 [2], [3], [4], [7], [10], [12], [13], [15], [19], [20], [23], [24], [25] and [27] to the [Motor Accidents Amendment Act 1995](#) apply only in relation to motor accidents occurring on or after the commencement of the amendment.
- (3) The amendments to this Act made by Schedule 1 [6] and [41] to the [Motor Accidents Amendment Act 1995](#) do not apply to limit the insurance under a third-party policy in respect of a permit issued under Regulation 53A of the *Motor Traffic Regulations 1935* before the commencement of the amendments.
- (4) The amendments to this Act made by Schedule 1 [9], [16], [17], [18] and [31] to the [Motor Accidents Amendment Act 1995](#) apply only in relation to claims made on or after the commencement of the amendment.
- (5) Section 47A, as inserted by the [Motor Accidents Amendment Act 1995](#), extends to legal proceedings brought before the commencement of the section.
- (6) (Repealed)
- (7) A claimant who was subject to the requirements of section 52 (3) immediately before its repeal by the [Motor Accidents Amendment Act 1995](#) does not have to provide a full and satisfactory explanation to the court for the delay in commencing proceedings.
- (7A) Section 70A extends to a claim arising out of a motor accident that occurred after midnight on 26 September 1995, but not so as to affect any award of damages made before the commencement of this subclause.
- (8) An amount under section 79A, as inserted by the [Motor Accidents Amendment Act 1995](#), does not have to be adjusted under section 80 before 1 October 1996.
- (9) Section 135 (2), as inserted by the [Motor Accidents Amendment Act 1995](#), applies

only in relation to offences committed after the commencement of the subsection.

- (10) Except to the extent provided by this clause or the regulations, a provision of this Act, as in force immediately before its amendment by the *Motor Accidents Amendment Act 1995*, continues to apply to and in respect of anything to which it then applied.

## **Part 7A Provisions arising from the enactment of the *Property (Relationships) Legislation Amendment Act 1999***

### **17A Damages for psychological or psychiatric injury**

The amendments made by the *Property (Relationships) Legislation Amendment Act 1999* do not have effect so as to confer on any person a right that the person would not otherwise have had to recover damages of the kind referred to in section 77 in respect of a motor accident that occurred before those amendments took effect.

## **Part 8 Provisions arising from the enactment of the *Motor Accidents Amendment Act 1997***

### **18 Meaning of “1997 amending Act”**

In this Part:

**1997 amending Act** means the *Motor Accidents Amendment Act 1997*.

### **19 Trailer amendments**

An amendment made by the 1997 amending Act with respect to trailers (that is, an amendment made by Schedule 1 [2], [5], [6], [8], [9], [10], [11], [12] or [27] to that Act) extends to motor accidents occurring on or after 1 January 1996.

### **20 Structured settlement amendments**

The amendment made to section 81 by the 1997 amending Act extends to arrangements determined or approved under that section before the commencement of the amendment, but not so as to affect any order of a court made before that commencement.

### **21 Amendment of agreement**

Section 3A (5) (as inserted by the 1997 amending Act) extends to any amendment to the agreement referred to in that section made or purporting to have been made before the commencement of that subsection, with the effect that any amendment made or purporting to have been made to that agreement before the commencement of that subsection that could have been validly made after that commencement is validated and takes effect from the date on which it purported to take effect.

## 22 Unregistered vehicle permits

The amendments made to section 9 (a) (ii) and clause 1 (b) of Schedule 1 by the 1997 amending Act extend to liability arising in respect of the use or operation of a motor vehicle on or after 1 January 1996.

## Part 9 Provisions arising from enactment of **Motor Accidents Amendment (Board of Directors) Act 1997**

### 23 Constitution of Board of Directors

The amendments to section 84 made by the *Motor Accidents Amendment (Board of Directors) Act 1997* do not affect the appointment or term of office of a person who held office as a part-time director of the Board of Directors of the Authority immediately before the amendments took effect.

## Part 10 Provisions arising from the enactment of the **Traffic Legislation Amendment Act 1997**

### 24 Definitions

In this Part:

**amending Act** means the *Traffic Legislation Amendment Act 1997*.

**public street** means a public street as defined in section 3 (1) of this Act immediately before the commencement of Schedule 4.10 [1] to the amending Act.

### 25 Savings

(1) Any act, matter or thing:

- (a) that, immediately before the commencement of Schedule 1 to the amending Act, had effect under this Act in relation to a public street is taken to have effect under this Act in relation to a road or road related area, or
- (b) that, immediately before the commencement of Schedule 1 to the amending Act, was done or omitted to be done on or in relation to a public street is taken to have been done or omitted to be done on or in relation to a road or road related area, or
- (c) that, immediately before the commencement of Schedule 4.10 [1] to the amending Act, had effect under this Act in relation to a road, motor vehicle, trailer or vehicle (as defined by this Act, or having the meaning it otherwise had, immediately before the commencement of that Schedule) is taken to have effect under this Act in relation to a road, motor vehicle, trailer or vehicle within the meaning of this Act (as amended by the amending Act), or
- (d) that, immediately before the commencement of Schedule 4.10 [1] to the



amending Act, was done or omitted to be done with, on or in relation to a road, motor vehicle, trailer or vehicle (as defined by this Act, or having the meaning it otherwise had, immediately before the commencement of that Schedule) is taken to have been done or omitted to be done with, on or in relation to a road, motor vehicle, trailer or vehicle within the meaning of this Act (as amended by the amending Act).

(2) Nothing in the amending Act affects the validity of any policy.

## **26 References to public street**

Any reference in any Act (other than this Act or the amending Act) or instrument made under any Act or in a third party policy under this Act or any other instrument of any kind to a public street within the meaning of this Act is taken to be a reference to a road or road related area within the meaning of this Act.

## **27 References to motor vehicles**

(1) Any reference in any Act (other than this Act or the amending Act) or instrument made under any Act or in a third party policy under this Act or any other instrument of any kind to a motor vehicle within the meaning of this Act (as defined immediately before the commencement of Schedule 4.10 [1] to the amending Act) is taken to be a reference to a motor vehicle or trailer within the meaning of this Act (as amended by the amending Act).

(2) This clause does not apply to the Acts and Regulations amended by Schedules 4 and 5 to the amending Act.

## **28 References to trailers**

(1) Any reference in any Act (other than this Act or the amending Act) or instrument made under any Act or in a third party policy under this Act or any other instrument of any kind to a trailer within the meaning of this Act (as defined immediately before the commencement of Schedule 4.10 [1] to the amending Act) is taken to be a reference to a trailer within the meaning of this Act (as amended by the amending Act).

(2) This clause does not apply to the Acts and Regulations amended by Schedules 4 and 5 to the amending Act.

## **29 Existing claims**

Any claim arising from a motor accident occurring before the commencement of Schedule 4.10 [1] to the amending Act is to be determined as if the amending Act had not been enacted.

## **Part 11 Provisions arising from the enactment of the [Motor Accidents](#)**

## Amendment Act 1998

### 30 Definitions

In this Part:

**amending Act** mean the *Motor Accidents Amendment Act 1998*.

### 31 Cancellation of third-party policies

The amendment of section 13 (4) by the amending Act applies to credit card transactions entered into after the commencement of Schedule 1 [5] to the amending Act.

### 32 Rejection of premiums by Authority

Section 15B (6) as in force before the commencement of Schedule 1 [9] to the amending Act continues to apply in relation to premiums filed under Division 3 of Part 3 before that commencement as if that item had not been enacted.

### 33 Conciliation

Division 3A of Part 5 does not apply in relation to a claim arising out of a motor accident that occurred before the commencement of section 44C (which was inserted by the amending Act), being a motor accident in respect of which notice under section 43 (4) had been given to an insurer before that commencement.

### 34 Costs

The amendments made by the amending Act do not affect costs in connection with claims in respect of which a notice under section 43 (4) was given before the commencement of any of the provisions of Part 6A (which was inserted by the amending Act).

## Part 12 Provisions arising from the enactment of the **Motor Accidents Legislation Amendment Act 2004**

### 35 Application of section 3D

Section 3D extends to motor accidents occurring before the section commences. However, section 3D does not affect court proceedings commenced before 5 December 2002 or any decision of a court made before the section commences.

## Schedule 5 Industry Deed

(Section 3A)

THIS DEED is made the            day of            1989.

**BETWEEN:** The HONOURABLE JOHN ROBERT ARTHUR DOWD, the Attorney General of the State of New South Wales for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES (the "Crown") of the first part;

**AND:** THE MOTOR ACCIDENTS AUTHORITY OF NEW SOUTH WALES a corporation constituted by the *Motor Accidents Act 1988* (the "Authority") of the second part;

**AND:** The Persons specified in Schedule 1 and all other persons who agree to become parties to this Deed in accordance with its terms (the "Insurance Parties") of the third part.

## **RECITALS**

### **A.**

The *Motor Accidents Act 1988* (the "1988 Act") relates to the recovery of damages, and compulsory insurance against liability, for the death of or injury to persons as a consequence of motor accidents and to other matters.

### **B.**

The Insurance Parties have applied to the Authority for licences under the 1988 Act.

### **C.**

The Crown and the Authority have agreed to exercise their powers and authority under the 1988 Act, in the manner set out in this Deed and the parties have agreed on various matters relating to the licences, the conduct of compulsory third-party insurance business in New South Wales and other matters arising under the Act in the terms set out in this Deed.

NOW THIS DEED WITNESSES:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Deed, unless the contrary intention appears:

"Act" means the *Motor Accidents Act 1988*, and includes any regulations, orders or proclamations made under it;

"accession deed" means the accession deed referred to in clause 2;

"accident year" means, in relation to a claim, the year commencing 1 July and ending on the next 30 June in which the motor accident giving rise to the claim occurred;

"arbitrator" means a consulting actuary who is a Fellow of The Institute of Actuaries of Australia appointed by the President for the time being of The Institute of Actuaries of Australia;

"business day" means a day upon which banks or a majority of them are open for normal business in Sydney and for this purpose a bank is a trading bank as defined in subsection 5 (1) of the *Banking Act 1959*;

"claim" means a claim for damages in respect of the death of, or injury to, a person caused by the

fault of the owner or driver of a motor vehicle in the use or operation of the motor vehicle;

“claimant” means a person who makes, or is entitled to make, a claim;

“claim cost” means the amount paid by an insurer or the Nominal Defendant to or on behalf of a claimant in relation to a claim or the legal costs (including disbursements) of the claimant relating to the claim as the result of the final settlement or verdict in relation to a claim;

“Deed” means this Deed as amended from time to time together with any accession deed executed in accordance with clause 2;

“deregulation date” means 1 July 1991;

“facility agreement” means an agreement under which insurers will provide a financial facility to the New South Wales Treasury Corporation for the purpose of funding the TAC Fund;

“insurer” means a licensed insurer or a suspended insurer;

“licence” means a licence under Division 1 of Part 8 of the Act;

“licensed insurer”:

(i) means a person who holds a licence which is in force and has not been suspended; and

(ii) for the period up to 1 July 1989 includes each of the Insurance Parties;

“Minister” means the Minister of the Crown for the time being administering the Act or the relevant part of the Act;

“sharing agreement” means the agreement to share the cost of claims set forth in clause 5 of this Deed;

“suspended insurer” means a licensed insurer whose licence has been suspended under section 106B of the Act.

## **1.2 Further Definitions**

In this Deed, unless the contrary intention appears, words defined in subsection 3 (1) of the Act which are not defined in subclause 1.1 shall have the same meaning in this Deed as they do in the Act.

## **1.3 Interpretation**

In this Deed:

- (a) words importing one gender shall include the other gender;
- (b) words importing the singular shall include the plural and vice versa;
- (c) a reference to a clause shall be a reference to all of its subclauses, and a reference to a subclause shall be a reference to all its sub-subclauses unless the contrary intention appears;
- (d) headings and underlinings are for reference only and have no effect on the construction, interpretation or meaning of the clauses;
- (e) the Schedules referred to in this Deed form part of and are subject to the terms of this Deed;

- (f) where the last day of any period prescribed or allowed by this Deed for the doing of anything falls on a day that is not a business day, the thing may be done on the first business day following that day;
- (g) all sums of money and all payments made under this Deed shall be in Australian dollars.

#### **1.4 Operative Date**

This Deed shall commence on the date it is executed by the Crown, the Authority and an Insurance Party.

#### **1.5 Ceasing to be a Party—Licence Applicants**

Any of the Insurance Parties or any person who executes an accession deed shall cease to be a party to this Deed if:

- (a) that person fails to apply for a licence within 3 months of becoming a party; or
- (b) that person is not granted a licence within 6 months of becoming a party.

#### **1.6 Ceasing to be a Party—Insurers**

An insurer shall cease to be a party to this Deed on the date the licence of that insurer is cancelled under the Act by the Authority.

### **2. ACCESSION**

#### **2.1 Execution of Deed of Accession**

A person who intends to become a licensed insurer may become a party to this Deed by executing an accession deed in the form of Schedule 2 or in such other form as the parties may approve.

#### **2.2 Date of Accession**

An accession deed shall operate from the date of its execution or such other date specified in the accession deed being a date approved by the parties and not later than the date on which the person executing the accession deed becomes a licensed insurer.

#### **2.3 No Other Consent Necessary**

The consent or agreement of any other party is not required for a person executing an accession deed to become a party to this Deed.

### **3. ACTING AS AGENT OF NOMINAL DEFENDANT**

#### **3.1 General Principle of Allocation**

Subject to subclauses 3.2 and 3.3, as the Nominal Defendant receives notice of claims against the Nominal Defendant, it shall randomly allocate those claims to licensed insurers in proportion to the market share of insurers for the accident year of the claim or if the market share for the accident year of the claim has not been determined then in accordance with the Nominal Defendant's estimate of market share of insurers in that accident year based on the last determination of market share by the Authority.

#### **3.2 Conflicts of Interest**

Subject to subclause 3.3, the Nominal Defendant shall not allocate a claim under subclause 3.1 involving an unidentified motor vehicle to a licensed insurer if the licensed insurer is or is likely to receive a claim relating to the same motor accident as the motor accident out of which the claim against the Nominal Defendant arises.

### **3.3 All Licensed Insurers have a Conflict**

If all licensed insurers receive or are likely to receive a claim relating to the same motor accident as a claim against the Nominal Defendant in respect of an unidentified motor vehicle then the Nominal Defendant shall allocate the claim involving the unidentified motor vehicle to which clause 3.2 applies to a licensed insurer who pursuant to the sharing agreement is not or is not likely to be an insurer handling claims arising from that motor accident.

### **3.4 Duty to Notify Nominal Defendant of Other Claims**

If an insurer is or has been allocated a claim by the Nominal Defendant involving an unidentified motor vehicle and that insurer has or is likely to receive a claim arising out of the same motor accident as the claim against the Nominal Defendant, then it shall promptly advise the Nominal Defendant of that fact.

### **3.5 Re-allocation of Nominal Defendant Claims**

The Nominal Defendant may re-allocate any claims previously allocated to an insurer:

- (a) whose licence is suspended, cancelled or assigned; or
- (b) where the claim relates to an unidentified motor vehicle, if the insurer handling the claim receives another claim in respect of the same motor accident.

### **3.6 No Refusal of Allocation**

A licensed insurer shall not refuse the allocation of a claim to it under this clause unless permitted or required to do so by subclause 3.2.

### **3.7 Insurers to Meet Nominal Defendant's Claims**

Each insurer shall meet and pay any claim against the Nominal Defendant allocated to it under this clause in accordance with the provisions of this clause and the provisions of the sharing agreement.

### **3.8 Claims Handling Cost**

Each insurer who handles a claim against the Nominal Defendant which has been allocated to it is not entitled to recover any amount incurred or paid by it in handling the claim other than the claim cost but the insurer may retain any legal or other costs recovered from the claimant in relation to the claim.

### **3.9 Claims Adjustment Between Insurers**

After the application of the sharing agreement, the insurers shall share the claim cost of all claims against the Nominal Defendant which arose in an accident year in proportion to the market share of the insurers in that accident year.

### **3.10 Settlement of Claims**

Insurers will notify the claim costs in relation to the Nominal Defendant claims and recoveries handled by them in the same manner as is provided in subclauses 5.15, 5.16 and 5.17 and shall provide such details and supporting information as is required by the clearing house established under those subclauses.

### **3.11 Recovery Actions**

An insurer who brings a recovery, action under section 31 of the Act shall do so at its own cost but, if it makes any recovery, seventy five per cent of the claim cost recovered shall be credited against the amount sought to be recovered by it under subclause 3.8 in respect of the relevant accident year in which the claim arose.

### **3.12 Termination of Liability to Meet Nominal Defendant Claims**

If all licensed insurers agree, they may give not less than 12 months' notice to the Authority that they

do not intend to meet and pay claims in accordance with subclause 3.7 and in relation to all motor accidents occurring after the expiry date of that notice the insurers shall cease to be bound by the provisions of subclauses 3.1, 3.8, 3.9 and 3.10 of this Deed.

#### **4. OBLIGATIONS OF AUTHORITY**

##### **4.1 Allocation of Policies**

At the request and cost of the insurers, the Authority shall, pursuant to the agreement under section 13 of the Act, arrange for the audit of the method of allocating policies and the Authority shall make such adjustments to the allocation of policies as may be recommended by the auditors and agreed by the insurers.

##### **4.2 Agreement with Roads and Traffic Authority**

The Authority shall not enter any agreement with the Roads and Traffic Authority under section 13 of the Act which provides that the aggregate commission received by the Roads and Traffic Authority shall be greater than 1.5 per cent of the insurance premiums collected by the Roads and Traffic Authority or that the frequency of payments to insurers shall be less than weekly.

#### **5. SHARING AGREEMENT**

##### **5.1 Interpretation**

In this clause, unless the contrary intention appears:

(a) "collision" means the physical contact of:

- (i) one motor vehicle with another or other motor vehicles;
- (ii) a person or thing in or on one motor vehicle with another motor vehicle or other motor vehicles;
- (iii) a person or thing in or on one motor vehicle with the passengers or goods in or on another motor vehicle or other motor vehicles;
- (iv) one motor vehicle and another motor vehicle or other motor vehicles and a pedestrian; or
- (v) a pedestrian with one motor vehicle or other motor vehicles notwithstanding that there has been no contact between the motor vehicles,

and includes consecutive contacts between the same where collisions, although not contemporaneous, are so closely related in time as to constitute one event or occurrence;

- (b) a reference to an insurer includes a reference to the Authority in its capacity as the Nominal Defendant or an insurer appointed as the agent of the Nominal Defendant in respect of any claim against the Nominal Defendant but does not include a reference to the Authority in that capacity or its agent in respect of a claim brought under section 28 of the Act in relation to an unidentified motor vehicle;
- (c) where one motor vehicle is being towed by another motor vehicle or is attached to another motor vehicle for towing, then if one of those motor vehicles is involved in a collision both motor vehicles shall be deemed to be involved in the collision.

##### **5.2 Sharing**

If in respect of a claim the owner or driver of more than one motor vehicle has caused or contributed

to the claim, then each insurer of any motor vehicle that has caused or contributed to the claim shall share the claim cost in accordance with this clause.

**5.3 Deemed Sharing if Motor Vehicle Involved in a Collision**

The owner or driver of a motor vehicle shall be deemed to have caused or contributed to a claim if that motor vehicle is involved in the collision out of which the claim arises.

**5.4 Deemed Sharing if so Determined by Referee**

If a motor vehicle is not involved in the collision out of which the claim arises, then the owner or driver of that motor vehicle shall be deemed to have caused or contributed to the claim if the insurer of that motor vehicle agrees or on application by any other insurer the referee determines that the owner or driver of that motor vehicle caused or contributed to the claim.

**5.5 Claim by Driver**

If the claim is made by the driver of a motor vehicle, the insurers sharing the claim cost under this clause shall not include the insurer of that motor vehicle or any motor vehicle towed by or attached to the motor vehicle driven by that person unless the owner of that motor vehicle or the motor vehicle towed by or attached to the motor vehicle driven by that person has caused or contributed to the claim of the driver and in relation to which the owner is indemnified by the insurer of that motor vehicle or the motor vehicle towed by or attached to the motor vehicle driven by that person.

**5.6 Method of Sharing**

An insurer who is liable to share the claim cost of a claim under this clause shall share that claim cost in the proportion that the number of motor vehicles insured by that insurer which are liable to share the claim cost bears to the total number of motor vehicles insured by all insurers who are liable to share the claim cost.

**5.7 Other Arrangements**

Subclause 5.6 is not to be read so as to prohibit the insurers sharing a particular claim from agreeing as between themselves to share that claim in a different proportion from that provided in subclause 5.6.

**5.8 Disputes**

If there is any dispute or difference as to any matter arising under this clause, that dispute or difference may be referred to the referee and after considering the dispute or difference the referee may give a direction to the parties to the dispute or difference and that direction shall be final and binding upon all parties to the dispute or difference.

**5.9 Referee**

The referee under this clause shall be a person or one of a panel of persons approved by the insurers for that purpose and in determining a dispute or difference under this clause the referee shall act as the referee sees fit with a view to expeditiously and with as little formality as possible resolving the dispute or difference.

**5.10 Costs of the Referee**

The costs of the referee shall be borne by the parties to the dispute in such proportion as the referee determines.

**5.11 Insurers to Co-operate**

Each of the insurers shall co-operate in the handling and settlement of all claims to which this clause applies and shall provide to any other insurer who is or is likely to share the claim cost information in respect of the claim or to the referee all information required by the referee in relation to a matter



referred to the referee.

**5.12 Conduct of Claim**

Unless otherwise agreed by the insurers sharing a claim, the insurer of the motor vehicle sharing the claim cost of a claim which principally caused or contributed to the claim or a series of claims shall handle that claim or those series of claims for and on behalf of each other insurer and the insurer handling the claim shall be authorised to settle and compromise that claim or series of claims and otherwise deal with the claims or series of claims as it sees fit.

**5.13 Determination of Principal Responsibility**

As between the insurers liable to share a claim under this clause, the determination of which insurer is principally responsible shall be made as early as possible by reference to the police reports relating to the event giving rise to the claim and statements of witnesses which may be available but if there is any dispute or difference, that dispute or difference shall be resolved by the referee pursuant to subclause 5.8.

**5.14 Notification to Other Insurers**

Where an insurer becomes aware that a claim may be subject to the sharing agreement it shall notify the other insurers who it believes are liable to share the claim cost as soon as it becomes aware of those facts and it shall provide to those insurers reasonable particulars of the claim.

**5.15 Insurers to Establish a Clearing House**

The insurers shall establish a claims settlement arrangement which shall operate as a clearing house and maintain records and accounts in relation to each insurer in relation to claims shared under this clause and under clauses 3 and 8 and after receiving the periodic reports of each insurer under subclause 5.16 the clearing house shall promptly notify each insurer of the net amounts owed to or payable by it and those insurers obliged to make payments shall immediately pay those amounts to the clearing house and the clearing house shall after receipt of those payments remit amounts owed to insurers.

**5.16 Claims to be Notified and Paid**

In relation to claims shared under this clause and clauses 3 and 8, insurers shall notify to the clearing house within 14 days at the end of each six month period ending in December and June or at such other times as the insurers may agree the amount of claim costs incurred by them in that period and the details and supporting information of the claims to which they relate in the form required by the clearing house.

**5.17 Special Claims**

Notwithstanding the provisions in subclauses 5.15 and 5.16:

- (a) if an insurer incurs or becomes liable to incur a claim cost in relation to any one claim of an amount greater than \$500,000, then it may immediately notify that to the clearing house and advise the proportion payable by other insurers and the clearing house will immediately advise each of the other insurers of the amount payable by them and those insurers shall immediately pay that amount to the insurer paying the claim cost; or
- (b) notwithstanding that a claim has not been settled or determined by a court, if an insurer has paid in respect of any one claim an amount greater than \$50,000 pursuant to section 45 of the Act, then the insurer may include that amount (being an amount greater than \$50,000) in its claim costs notified under subclause 5.16 in a particular period.

### **5.18 Variation**

If the licensed insurers agree, they may vary the terms of the sharing agreement with the approval of the Authority which approval shall not be unreasonably withheld.

## **6. BULK BILLING**

### **6.1 Insurers to be Party to any Bulk Billing Agreement**

If the licensed insurers agree to enter into a bulk billing agreement then unless that agreement has expired or has been terminated any person who is granted a licence and becomes a party to this Deed shall thereby be deemed to be a party to the bulk billing agreement on and from the date the licence is granted to that person and that person shall execute a counterpart of the bulk billing agreement or do such other act or thing that may be necessary or convenient to give effect to this clause.

### **6.2 Crown not to enter Separate Agreements with Insurers**

During any period in which an agreement under this clause operates the Crown shall ensure that the Minister for Health does not enter into any separate agreement with any insurer in relation to the matters the subject of that agreement.

## **7. OTHER OBLIGATIONS OF INSURERS**

### **7.1 Insurers to Enter into Facility Agreement**

If at the time at which a corporation becomes an insurer there is a facility agreement in force, the insurer shall enter into the facility agreement and perform the obligations of that agreement.

### **7.2 Exchange Information**

An insurer shall provide to any other insurer on request any information in respect of a claim in which the insurers have a mutual interest or where the claimants are in any way related to each other or other parties involved in the claims.

## **8. DEREGULATION**

### **8.1 Offer Renewals in Year Beginning 1 July 1991**

In the year commencing 1 July 1991 the insurer shall offer to renew a policy issued by it prior to that date and in force immediately prior to the renewal date at the premium applicable to the policyholder. The offer for renewal shall be made at least 28 days prior to the renewal date by sending the offer to the address of the insured last known to the insurer.

### **8.2 Assigned Risks Pool**

Prior to the deregulation date and at least once every 12 months thereafter, authorised representatives of insurers shall meet to agree on:

- (a) the detailed operation of the assigned risks pool which shall include motor vehicles which the insurers would not be ordinarily prepared to insure themselves;
- (b) the risks to be allocated to the assigned risks pool;
- (c) the premiums to be charged in relation to risks allocated to the assigned risks pool,

and after agreement is reached in accordance with clause 10 the insurers shall submit the premiums to the Authority in accordance with sections 15–15B of the Act.

### **8.3 Insurers to Insure Assigned Risks Pool**

A licensed insurer shall insure any motor vehicle which falls into the assigned risks pool at the

premium payable in respect of the vehicle unless the insurer is prepared to insure that motor vehicle at the insurer's own risk.

#### **8.4 Notification of Assigned Risks**

An insurer shall on the issue by it of a third party policy designate that policy in a manner specified by the insurers under subclause 8.2 as being an assigned risk or not and shall promptly notify the clearing house established under clause 5 of all policies issued by it in respect of the assigned risks pool.

#### **8.5 Insurers to Meet Assigned Risk Claims**

Each insurer shall meet and pay any claim in respect of a policy issued by it and designated as included in the assigned risks pool ("assigned risk policies") and after application of the sharing agreement the insurers shall share the claim cost of all claims in an accident year payable under assigned risk policies in proportion to the market share of insurers in that accident year.

#### **8.6 Premium Adjustment**

At the end of each accident year the insurers shall adjust premiums received by each of them in respect of assigned risk policies so that each insurer receives a proportion of the aggregate of such premiums equal to the market share of that insurer in the accident year.

#### **8.7 Settlement of Claims**

Insurers shall notify the claim costs in relation to claims under assigned risk policies handled by them in the same manner as provided in subclauses 5.15, 5.16 and 5.17 and shall provide such details and supporting information as is required by the clearing house established under those clauses.

### **9. ADVERSE ACTION BY THE CROWN OR THE AUTHORITY**

#### **9.1 Right to Immediately Surrender Licence 1 July 1989 to 1 July 1995**

The Crown agrees with the insurers that if during the period of 1 July 1989 to 1 July 1995 any of the following events should occur:

- (a) legislation is passed by the Parliament of the State of New South Wales which varies or replaces the *Motor Accidents Act 1988* and which materially adversely affects insurers or any one of them;
- (b) regulations are gazetted and not disallowed by the Parliament of the State of New South Wales under the *Motor Accidents Act 1988* or any Act replacing or amending that Act on or after 1 July 1989 which materially adversely affects insurers or any one of them;
- (c) legislation is passed by the Parliament of the State of New South Wales which increases or is likely to increase the claim cost of claims and which materially affects insurers or any one of them; or
- (d) there is a material adverse failure to observe or perform any provision of this Deed by the Crown or the Authority and if that failure is capable of remedy and is not remedied within 20 business days of a notice by any insurer to the Crown or Authority, as the case may be, specifying the failure and requiring it to be remedied,

then an insurer adversely affected by an event specified in this clause may by notice to the Authority given within 3 months of the event surrender its licence and the Authority shall immediately suspend that licence.

#### **9.2 Compensation**

If an event specified in subclause 9.1 occurs prior to 1 July 1995, then the Crown in addition to any amount that may be payable under subclause 9.6 shall, within 28 days after they have been assessed, pay to each insurer who has surrendered its licence under subclause 9.1 by way of liquidated

damages:

(a) if the event occurred prior to 1 July 1992, the sum calculated by the formula:

$$5\% \times P$$

(b) if the event occurred on or after 1 July 1992 but prior to 1 July 1994, the sum calculated by the formula:

$$3\% \times P$$

(c) if the event occurred on or after 1 July 1994 but prior to 1 July 1995, the sum calculated by the formula:

$$1\% \times P$$

where:

P is the aggregate premium income of the licensed insurer for the last 12 complete months immediately prior to the date the licensed insurer gives notice to the Authority surrendering its licence under subclause 9.1.

### **9.3 No Adverse Affect**

An insurer shall not be adversely affected by an event specified in subclause 9.1 if:

- (a) the event will or is reasonably likely to reduce the amount payable in respect of most claims;
- (b) the event is one specified in paragraph (a) or (b) of subclause 9.1 and it occurs after the deregulation date and it only operates in respect of motor accidents occurring 12 months after the date on which the variation is made;
- (c) there is a variation of the Act or the regulations to which the insurers agree; or
- (d) the event makes significant changes to reporting and procedural requirements prior to 1 July 1991 and the premium rates are increased to adequately compensate for the increased cost of those requirements in future years.

### **9.4 Deemed Adverse Affect**

Without limiting the generality of subclause 9.1, an event specified in paragraph (a) or (b) shall be deemed to materially adversely affect a licensed insurer if:

- (a) a reasonable insurer in the circumstances of the licensed insurer would not have applied for a licence if the event relied on under paragraph (a) or (b) of subclause 9.1 had occurred prior to the application for a licence by that licensed insurer;
- (b) the event occurs prior to the deregulation date and it increases or is likely to increase the amount payable in respect of claims;

- (c) the event occurs after the deregulation date that increases or is likely to increase the amount payable in respect of claims and it operates in respect of claims arising from motor accidents occurring less than 12 months after the date of the event; or
- (d) unless the insurers agree, a regulation reducing the discount rate specified in subsection 71 (1) (e) of the Act is prescribed.

### **9.5 Compensation to Suspended Insurers**

If the Act is varied to require or the Authority requires suspended insurers to incur additional costs by reason of changes in reporting, audit and related requirements, then the cost of those additional requirements shall be paid by the Crown.

### **9.6 Retrospective Changes to Amounts Payable Under Claims**

If at any time an event of a type specified in subclause 9.1 occurs whereby the amount payable in respect of a claim is increased in respect of claims arising from motor accidents occurring prior to a date 12 months after the date of the event, then the Crown, in addition to any damages payable under subclause 9.2, shall pay damages to each insurer of an amount sufficient to fully fund the increased liability of that insurer in respect of any additional amounts payable by that insurer by reason of that event in respect of those claims.

### **9.7 Dispute Resolution**

If there is any dispute or difference between the Crown and any insurer in respect of the amount payable under subclause 9.6 then that amount shall be determined by the arbitrator.

### **9.8 Extent of the Crown's Liability**

The liability of the Crown for damages for an event specified in subclause 9.1 shall be determined exclusively in accordance with this clause and that liability shall not exceed the liability so determined.

### **9.9 Clause does not Affect other Rights**

Subject to subclause 9.8, this clause is not to be construed so as to limit or restrict any other right or entitlement that an insurer may have if there is any breach of the Act or this Deed.

## **10. AGREEMENT BY INSURERS**

### **10.1 Approval Requirements**

In relation to any matter requiring the consent, agreement or approval of all licensed insurers or insurers under the Act or this Deed, then if 75% of those licensed insurers or insurers representing at least 65% of the market share of all licensed insurers so agree then all licensed insurers or insurers, as the case may be, shall be deemed to have given their consent, agreement or approval.

### **10.2 Method of Obtaining Approval**

A consent, agreement or approval under subclause 10.1 may be evidenced by a document or series of documents setting out the matter consented to, agreed or approved and executed by the required majority of licensed insurers or insurers.

### **10.3 Insurers May Appoint Agent**

For the purpose of entering into or negotiating any agreement supplementary to this Deed or relating to the third party business of insurers or for any other matter, the insurers may pursuant to this clause appoint a person or persons as the agent or representative of all the insurers for that purpose.

### **10.4 Other Agreements**

If the insurers or licensed insurers agree in writing on any matter relating to the operation of this Deed

or the Act in accordance with subclause 10.1, then all insurers or a licensed insurer as the case may be shall be deemed to have given their agreement to that matter.

**11. APPLICABLE LAW**

This Deed shall be governed by and construed in accordance with the law for the time being in force in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

**12. NOTICES**

**12.1**

Any notice, approval, request, consent or other communication given or made to a party under this Deed must be in writing and delivered in person or sent by post, telex or facsimile transmission to the party at the following address, telex number or facsimile number:

in the case of the Crown:

Address: The Attorney General of the State of New South Wales

Facsimile No:

Telex No:

in the case of the Authority:

Address:

Facsimile No:

Telex No:

in the case of the Insurance Parties:

at the address, facsimile or telex number set forth in Schedule 1 or in the accession deed executed by the particular Insurance Party;

or such other address, facsimile or telex number as a party from time to time may notify to the other parties for the purpose of this clause.

**12.2**

Any notice, approval, request, consent or other communication given or made pursuant to this clause shall be deemed to be duly given or made:

- (a) in the case of delivery in person when delivered to the recipient at such number or address; or
- (b) in the case of telex on receipt by the sending of the answerback code of the recipient at the end of the transmission,

but if such delivery or receipt is later than 5.00 p.m. (local time) on a business day it shall be deemed to have been duly given at the commencement of business on the next business day.

**13. WAIVER**

**13.1 Delay in Exercise of Rights**

No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default by any other party under this Deed shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed to be a waiver of any other breach or default.

**13.2 Waivers**

Any waiver agreement, consent or approval of any kind or character on the part of any party of any breach or default by any other party or any waiver on the part of any party of any provisional condition of the Deed must be in writing and shall be effective only to the extent specifically set forth in such writing.

**13.3 Remedies Cumulative**

All remedies available to the parties under this Deed shall be cumulative.

**14. ENTIRE AGREEMENT**

The terms and conditions of this Deed together with any written amendments which are confirmed by the parties as amendments to this Agreement shall constitute the complete deed between the parties and it is expressly agreed and declared that no further or other covenants or provisions in respect of this Deed or otherwise shall be deemed to be implied in this Agreement or to exist between the parties by way of collateral or other deed by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Deed and the existence of any such implicational collateral or other agreement is hereby negated.

**15. AMENDMENTS OR VARIATION**

No amendment or variation of this Deed by any other party shall be of any force or effect unless the amendment or variation is conferred in writing and signed by all parties.

**16. ASSIGNMENT**

The deed may not be assigned in whole or in part by any party without the prior written consent of all other parties.

**17. COSTS**

The parties shall each bear their own legal and other costs incidental to the preparation execution and implementation of this Deed.

**18. ARBITRATION**

If any dispute or difference is referred to the arbitrator under this Deed then unless otherwise agreed by the parties to the referral the arbitrator shall determine the dispute or difference in accordance with and subject to the Institute of Arbitrators Australia Rules for the conduct of Commercial Arbitrations.

**SCHEDULE 1**

<b><u>Name of Insurer</u></b>	<b><u>Address</u></b>	<b><u>Facsimile No.</u></b>	<b><u>Telex No.</u></b>
1.			
2.			
3.			
4.			

**SCHEDULE 2**

**Accession Deed**

THIS DEED POLL is made the            day of            19

BY: [            ] of [            ] (the "Acceding Party")

**RECITALS**

