

Motor Accidents Compensation Amendment Act 2006 No 17

[2006-17]



New South Wales

Status Information

Currency of version

Historical version for 4 July 2007 to 5 January 2012 (accessed 5 May 2024 at 21:41)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)
- **Proposed repeal**
The Act is to be repealed by sec 5 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 16 November 2011

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New South Wales

Contents

Long title 3

1 Name of Act 3

2 Commencement 3

3 Amendment of Motor Accidents Compensation Act 1999 No 41 3

4 (Repealed) 3

5 Repeal of Act 3

Schedule 1 Amendment of Motor Accidents Compensation Act 1999 3

Schedule 2 (Repealed) 9

Motor Accidents Compensation Amendment Act 2006 No 17



New South Wales

An Act to amend the *Motor Accidents Compensation Act 1999* to make further provision with respect to the motor accidents to which the Act applies, no-fault recovery by children, blameless motor accidents, insurance premiums, claims against the Nominal Defendant and caps on insurer liability; and for other purposes.

1 Name of Act

This Act is the *Motor Accidents Compensation Amendment Act 2006*.

2 Commencement

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

3 Amendment of *Motor Accidents Compensation Act 1999* No 41

The *Motor Accidents Compensation Act 1999* is amended as set out in Schedule 1.

4 (Repealed)

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of *Motor Accidents Compensation Act 1999*

(Section 3)

[1]-[6] (Repealed)

[7] Chapter 1, Part 1.2

Insert after section 7:

Part 1.2 No-fault claims—children and blameless accidents

Division 1 Recovery for blameless accidents

7A Definition of “blameless motor accident”

In this Division:

blameless motor accident means a motor accident not caused by the fault of the owner or driver of any motor vehicle involved in the accident in the use or operation of the vehicle and not caused by the fault of any other person.

7B Liability for damages in case of blameless motor accident

- (1) The death of or injury to a person that results from a blameless motor accident involving a motor vehicle that has motor accident insurance cover for the accident is, for the purposes of and in connection with any claim for damages in respect of the death or injury, deemed to have been caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.

Note—

Section 3B defines what is meant by a motor vehicle having motor accident insurance cover for a motor accident.

- (2) If the blameless motor accident involved more than one motor vehicle that has motor accident insurance cover for the accident, the death or injury is deemed to have been caused by the fault of the owner or driver of each of those motor vehicles in the use or operation of the vehicle.

7C Presumption that motor accident is blameless

In proceedings on a claim for damages in respect of the death of or injury to a person resulting from a motor accident, an averment by the plaintiff that the motor accident was a blameless motor accident is evidence of that fact in the absence of evidence to the contrary.

7D Accident must occur in New South Wales after commencement

This Division applies only in respect of motor accidents that occur in the State after the commencement of this Division.

7E No coverage for driver who caused accident

- (1) There is no entitlement to recover damages under this Division in respect of the death of or injury to the driver of a motor vehicle if the motor accident concerned was caused by an act or omission of that driver.
- (2) The death of or injury to the driver is taken to have been caused by an act or

omission of the driver for the purposes of subsection (1) even if:

- (a) the act or omission does not constitute fault by the driver in the use or operation of the vehicle, or
- (b) the act or omission was involuntary, or
- (c) the act or omission was not the sole or primary cause of the death or injury, or
- (d) the act or omission would have caused the death or injury but for the occurrence of a supervening act or omission of another person or some other supervening event.

7F Contributory negligence

This Division does not prevent the reduction of damages by reason of the contributory negligence of the deceased or injured person.

Note—

The contributory negligence of a deceased or injured child does not reduce damages of the kind to which the special entitlement to damages conferred by Division 2 applies. See section 7P.

7G Recovery of contribution from person actually at fault

A person whose liability for damages in respect of the death of or injury to a person results from the person being deemed under this Division to be a person whose fault caused the death or injury is entitled to recover contribution in respect of that liability from a person (whether or not the driver of a motor vehicle) whose fault actually caused the death or injury.

7H No recovery by Nominal Defendant unless owner or driver actually at fault

The Nominal Defendant is not entitled to recover any amount under section 39 from the owner or driver of a motor vehicle in respect of amounts properly paid by the Nominal Defendant in connection with the operation of this Division unless the motor accident concerned was actually caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.

7I Other entitlements not affected

This Division does not affect any entitlement to damages apart from this Division.

Division 2 No-fault recovery by children

7J Damages for children where driver not at fault

- (1) If the death of or injury to a child results from a motor accident not caused by

the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle, the death or injury is, for the purposes of the special entitlement to recover damages conferred by this Division, deemed to have been caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if the motor vehicle was involved in the accident and has motor accident insurance cover for the accident.

Note—

Section 3B defines what is meant by a motor vehicle having motor accident insurance cover for a motor accident.

- (2) If more than one motor vehicle involved in the motor accident has motor accident insurance cover for the accident, the death or injury is (for the purposes of that special entitlement) deemed to have been caused by the fault of the owner or driver of each such motor vehicle in the use or operation of the vehicle.
- (3) The **special entitlement** to recover damages conferred by this Division is an entitlement to recover damages for the following in respect of the death of or injury to the child:
 - (a) hospital, medical and pharmaceutical expenses,
 - (b) rehabilitation expenses,
 - (c) respite care expenses,
 - (d) attendant care services expenses,
 - (e) funeral or cremation expenses.
- (4) The special entitlement to recover damages for funeral or cremation expenses is an entitlement to recover those damages under the [Compensation to Relatives Act 1897](#), but this Division confers no other entitlement to recover damages under that Act.
- (5) The motor accident must occur in the State after the commencement of this Division and the child must be a resident of the State at the time of the motor accident.
- (6) In this Division:

child means a person who is under 16 years of age at the time of the motor accident.

7K Claims where child at fault

- (1) This Division applies even if the death of or injury to the child was caused by the fault of the child, except as provided by this section.

- (2) A court is not to award damages pursuant to this Division in respect of the death of or injury to a child if the court is satisfied that:
 - (a) the death of or injury to the child occurred at the time of, or following, conduct of the child that, on the balance of probabilities, constitutes a serious offence, and
 - (b) that conduct contributed materially to the death or injury or to the risk of death or injury.
- (3) A **serious offence** is an offence punishable by imprisonment for 6 months or more.
- (4) This section operates whether or not the child whose conduct is alleged to constitute an offence has been, will be or is capable of being proceeded against or convicted of any offence concerned.
- (5) There is to be no reduction of the damages provided for by this Division by reason of the contributory negligence of the deceased or injured person, except as provided by this section.

7L Special provision where child and driver at fault

In a case in which this Division would confer a special entitlement to recover damages in respect of the death of or injury to a child but for the fact that the motor accident was caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle, a liability for damages of the kind to which that special entitlement relates (including any such liability of an insurer under section 83 or 84) is not to be reduced on account of the contributory negligence of the child (even though this Division does not confer that special entitlement in the case).

Note—

The special entitlement to damages conferred by this Division is only applicable where the owner/driver is not at fault. Where the owner/driver is at fault, this section prevents a reduction in special entitlement type damages that would otherwise result from the contributory negligence of the child.

7M Recovery of contribution from person actually at fault

A person whose liability for damages in respect of the death of or injury to a person results from the person being deemed under this Division to be a person whose fault caused the death or injury is entitled to recover contribution in respect of that liability from a person (whether or not the driver of a motor vehicle) whose fault actually caused the death or injury.

7N No recovery by Nominal Defendant unless owner or driver actually at fault

The Nominal Defendant is not entitled to recover any amount under section 39 from

the owner or driver of a motor vehicle in respect of amounts properly paid by the Nominal Defendant in connection with the operation of this Division unless the motor accident concerned was actually caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.

70 Other entitlements not affected

This Division does not affect any entitlement to damages apart from this Division.

7P Relationship with Division 1

- (1) This Division does not apply in a case to which Division 1 (Recovery for blameless accidents) applies, subject to subsection (2).
- (2) In a case in which this Division would confer a special entitlement to recover damages in respect of the death of or injury to a child but for the fact that the case is one to which Division 1 applies, a liability for damages arising under that Division of the kind to which that special entitlement relates (including any such liability of an insurer under section 83 or 84) is not to be reduced on account of the contributory negligence of the child (despite section 7F).

[8]-[11] (Repealed)

[12] Section 23A

Insert after section 23:

23A Limit on insurer liability for single incident

- (1) If the liability of a licensed insurer under a third-party policy in respect of all claims arising from a single incident exceeds the prescribed maximum amount, the insurer is entitled to be indemnified by the Nominal Defendant for the amount by which the insurer's liability exceeds that prescribed maximum amount.
- (2) The ***prescribed maximum amount*** is:
 - (a) \$200 million, or
 - (b) such other amount as may be prescribed by the regulations as the prescribed maximum amount for the purposes of this section.
- (3) A change to the prescribed maximum amount does not apply in respect of a liability arising in connection with a motor accident that occurs before the change takes effect.
- (4) The Nominal Defendant is not personally liable to pay any amount payable in satisfaction of the liability of the Nominal Defendant to indemnify an insurer

under this section, but every such amount is to be paid by the Nominal Defendant out of the Nominal Defendant's Fund established under Part 2.4.

[13]-[33] (Repealed)

Schedule 2 (Repealed)