

# Motor Accidents Compensation Act 1999 No 41

[1999-41]



New South Wales

## Status Information

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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**
  - [Motor Accidents Compensation Amendment Act 2006 No 17](#), Sch 1 [12] (not commenced)
  - [Private Health Facilities Act 2007 No 9](#) (not commenced)
  - [Motor Accidents Compensation Amendment Act 2009 No 26](#), Sch 1 [1] and [3]-[7] (not commenced — to commence on 1.4.2010)

### Authorisation

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# Motor Accidents Compensation Act 1999 No 41



New South Wales

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# Motor Accidents Compensation Act 1999 No 41



New South Wales

An Act to establish a new scheme of compulsory third-party insurance and payment of compensation relating to the death of or injury to persons as a consequence of motor accidents; to amend the *Motor Accidents Act 1988* and other Acts; and for other purposes.

## Chapter 1 Preliminary

### Part 1.1 Interpretation and application

#### 1 Name of Act

This Act is the *Motor Accidents Compensation Act 1999*.

#### 2 Commencement

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

#### 3 Definitions (cf ss 3, 3B, 3C, 68 MAA)

In this Act:

**attendant care services** means services that aim to provide assistance to people with everyday tasks, and includes (for example) personal assistance, nursing, home maintenance and domestic services.

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

**Chief Executive Officer** of the Authority means the person exercising functions under the *Public Sector Employment and Management Act 2002* as the Division Head of the relevant Government Service Division.

**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.

**claims assessor**—see Part 4.4.

**credit card** includes a debit card.

**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.

**exercise** a function includes perform a duty.

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

**function** includes a power, authority or duty.

**hospital** means a public hospital (within the meaning of the [Health Services Act 1997](#)), or a private hospital licensed under the [Private Hospitals and Day Procedure Centres Act 1988](#).

**injury** means personal or bodily injury and includes:

- (a) pre-natal injury, and
- (b) psychological or psychiatric injury, and
- (c) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.

**Insurance Industry Deed** means an agreement, as in force for the time being, between the Minister on behalf of the State, the Authority, licensed insurers and other persons (if any) with respect to the third-party insurance scheme and the Nominal Defendant scheme under this Act that is designated by the agreement as the Insurance Industry Deed for the purposes of this Act.

**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 that is the holder of a licence granted under Part 7.1 and in force.

**MAA Claims Assessment Guidelines** means guidelines issued by the Authority under Part 4.1 and in force.

**MAA Medical Guidelines** means guidelines issued by the Authority under Part 3.1 and in force.

**market share**, in relation to an insurer, means, at any particular time, the proportion determined under section 172 by the Authority in relation to the insurer and applicable at

that time.

**medical assessor**—see Part 3.4.

**member of staff** means any person who is employed in the relevant Government Service Division.

**motor accident** means an incident or accident involving the use or operation of a motor vehicle that causes the death of or injury to a person where the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) 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.

**Motor Accidents Authority Fund** means the fund by that name established under Part 8.4.

**Motor Accidents Council** means the Motor Accidents Council of New South Wales constituted under Part 8.2.

**motor vehicle** means a motor vehicle or trailer within the meaning of the [Road Transport \(General\) Act 2005](#).

**Note—**

The [Road Transport \(General\) Act 2005](#) defines a motor vehicle to mean a vehicle (within the meaning of that Act) that is built to be propelled by a motor that forms part of the vehicle. That Act 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.

**Nominal Defendant** means the Nominal Defendant referred to in section 32.

**Note—**

Section 32 appoints the Authority as the Nominal Defendant for the purposes of this Act.

**Nominal Defendant's Fund** means the fund by that name established under Part 2.4.

**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.

**owner** of a motor vehicle—see section 4.



**Parliamentary Committee** means the committee of the Legislative Council referred to in Part 8.3.

**Principal Claims Assessor** means the person holding office as Principal Claims Assessor under section 99A.

**registration** means:

- (a) registration of a motor vehicle under the *Road Transport (Vehicle Registration) Act 1997* 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.

**rehabilitation** of 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.

**relevant Government Service Division** means the Division of the Government Service comprising the group of staff who are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* to enable the Authority to exercise its functions.

**road** means a road, or road related area, within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, but does not include an area to which the whole of that Act does not apply because of an instrument under the *Road Transport (General) Act 2005*.

**RTA** means the Roads and Traffic Authority.

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

**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 2005*.

**Note—**

The *Road Transport (General) Act 2005* 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.

**use or operation** of a motor vehicle includes:

- (a) the maintenance or parking of the vehicle, or
- (b) in the case of a motor vehicle that is not a trailer—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, or
- (c) in the case of a motor vehicle that is a tow truck—the use or operation of an uninsured motor vehicle that is being towed or carried by the tow truck.

**Note—**

As a result of the above definition, a third-party policy for a motor vehicle extends to cover the matters mentioned in the definition.

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

### 3A General restrictions on application of Act

- (1) This Act (including any third-party policy under this Act) applies only in respect of the death of or injury to a person that is caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle and only if the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) 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.

**Note—**

Part 1.2 (No-fault claims—children and blameless accidents) extends the operation of this Act for certain limited purposes to motor accidents that have not in fact been caused by the fault of the owner or driver of the motor vehicle.

Part 1.2 achieves this result by deeming such accidents to have been caused by the fault of the owner or driver of the motor vehicle in the use or the operation of the vehicle provided that:

- (a) the vehicle was involved in the accident and had motor accident insurance cover for the accident, and
- (b) the accident was not caused by the fault of any other person or the accident resulted in the death of or

injury to a child.

The bulk billing arrangements provided for under section 54 extend to any person injured in a motor accident (even if the motor accident was caused, partly or wholly, by the fault of that person).

- (2) This Act (including any third-party policy under this Act) does not apply in respect of an injury that arises gradually from a series of incidents.

**3B Restrictions on application of claims provisions—accident must be insured or work accident**

- (1) The application of Chapters 3–6 in respect of death or injury that results from the use or operation of a motor vehicle is limited to death or injury that:
- (a) is caused by a motor accident for which the vehicle has motor accident insurance cover, or
  - (b) gives rise to a work injury claim, other than a work injury claim in respect of the death of or injury to a coal miner (as defined in clause 3 of Part 18 of Schedule 6 to the *Workers Compensation Act 1987*).

**Note—**

Part 1.2 (No-fault claims—children and blameless accidents) extends the operation of this Act for certain limited purposes to motor accidents that have not in fact been caused by the fault of the owner or driver of the motor vehicle.

Part 1.2 achieves this result by deeming such accidents to have been caused by the fault of the owner or driver of the motor vehicle in the use or the operation of the vehicle provided that:

- (a) the vehicle was involved in the accident and had motor accident insurance cover for the accident, and
  - (b) the accident was not caused by the fault of any other person or the accident resulted in the death of or injury to a child.
- (2) For the purposes of this Act, a motor vehicle has motor accident insurance cover for a motor accident if and only if:
- (a) at the time of the motor accident the motor vehicle was subject to coverage under a third-party policy or was 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, or
  - (b) at the time of the motor accident, the motor vehicle was owned by the Commonwealth or by any person or body of persons representing the Commonwealth, or
  - (c) there is a right of action against the Nominal Defendant in respect of the motor accident or there would be a right of action against the Nominal Defendant in respect of the motor accident if the motor accident had been caused by the fault

of the owner or driver of the motor vehicle in the use or operation of the vehicle.

- (3) For the purposes of this Act, death or injury gives rise to a work injury claim if it is:
- (a) the 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,

with expressions used in this subsection having the same meanings as they have in Part 5 of the *Workers Compensation Act 1987*.

#### 4 Meaning of "owner" of motor vehicle (cf s 3 (3)–(5) MAA)

- (1) 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 that 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.
- (2) For the purposes of this section, a person is 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 or operation of the motor vehicle for the benefit of the bailee.

- (3) 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 is to be read as a reference to the trader, and a reference to the third-party policy in relation to that motor vehicle is to 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).

**5 Objects of Act** (cf s 2A MAA; Sch 1 [1] of Act No 132 of 1998)

- (1) The objects of this Act are as follows:

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

- (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, and

(d) that insurers, as receivers of public money that is compulsorily levied, should account for their profit margins, and their records should be available to the Authority to ensure that accountability.

#### **5A (Repealed)**

#### **6 Interpretation and application of Act by reference to objects** (cf s 2B MAA)

- (1) In the interpretation of a provision of this Act or the regulations, a construction that would promote the objects of this Act or the provision is to be preferred to a construction that would not promote those objects.
- (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 objects of this Act or of the provision concerned.

#### **7 Notes** (cf s 3 (7) MAA)

Notes in the text of this Act do not form part of this Act.

### **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.

**7O 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).

## **Chapter 2 Third-party insurance**

### **Part 2.1 Compulsory insurance**

**8 Offence of using uninsured motor vehicle on road** (cf s 8 (1) and (2) MAA)

- (1) A person who:

- (a) uses a motor vehicle that is not an insured motor vehicle on a road, or
  - (b) causes or permits another person to use such a motor vehicle on a road,
- is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to proceedings for an offence against this section if the defendant establishes that at the time the motor vehicle was used on the road the defendant had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

### **9 Exception from compulsory insurance** (cf s 8 (3) MAA)

This Part does not apply to a motor vehicle that is used on a road if:

- (a) the motor vehicle may lawfully be used on the road although not registered, or
- (b) the motor vehicle is a trailer, or
- (c) the motor vehicle is a vehicle of a kind, and is used in the circumstances (if any), prescribed by the regulations.

## **Part 2.2 Insurance policies**

### **10 Third-party policies** (cf s 9 and Sch 1 MAA)

A third-party policy under this Act is a policy that is in the following terms:

#### **Third-party Policy**

The insurer insures the owner of the motor vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle:

- (a) if the motor vehicle is not one to which paragraph (b) applies—in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a road), or
- (b) if the motor vehicle is subject to an unregistered vehicle permit under the [Road Transport \(Vehicle Registration\) Act 1997](#)—in the use or operation of the vehicle on any road in any part of the Commonwealth.

In this policy, words and expressions have the same meanings as in the [Motor Accidents Compensation Act 1999](#).

### **10A Treatment of certain vehicles for purposes of third-party policy**

- (1) A motor vehicle that is:

- (a) subject to a conditional registration under the *Road Transport (Vehicle Registration) Act 1997*, and
- (b) designed principally for use otherwise than on a road, and
- (c) a motor vehicle, or a motor vehicle of a class, prescribed by the regulations for the purposes of this section,

is taken, for the purposes of a third-party policy under this Act, to be subject to an unregistered vehicle permit and not to a conditional registration.

- (2) However, a regulation made for the purposes of this section does not affect a third-party policy of insurance under this Act that is in force in respect of any particular vehicle at the time that the regulation is made. This subsection is subject to subsection (3).
- (3) The first regulation made for the purposes of this section may provide that subsection (1) applies, from the commencement of the regulation, to a vehicle referred to in subsection (1) (a)–(c) that became subject to a conditional registration on or after 20 May 2002 and before the commencement of the regulation.

**11 Issue of certificate of insurance** (cf s 10 MAA)

- (1) If a licensed insurer accepts a premium for the insurance under a third-party policy of a motor vehicle, the licensed insurer must immediately issue a certificate of insurance to the owner of the vehicle.
- (2) If a licensed insurer accepts a premium for the insurance under a third-party policy of motor vehicles to which a trader's plate is or is to be fixed, the licensed insurer must immediately issue a certificate of insurance to the trader.
- (3) A licensed insurer who issues such a certificate is taken to have issued a third-party policy for the motor vehicle or motor vehicles to which the certificate relates.
- (4) If 2 or more licensed insurers issue certificates of insurance which (but for this subsection) would be capable of having effect at the same time in respect of the same motor vehicle, a third-party policy is taken to have been issued only by the licensed insurer recorded by the RTA in connection with the registration or renewal of registration of the motor vehicle or issue of a trader's plate as being the insurer.

**12 Evidence of insurance in respect of motor vehicle** (cf s 11 MAA)

- (1) The RTA must not register or renew the registration of a motor vehicle or issue a trader's plate unless:
  - (a) the applicant produces a certificate of insurance issued by a licensed insurer in relation to the motor vehicle or trader's plate, or

(b) the RTA is satisfied that there is evidence, of a type approved by the Motor Accidents Authority, of the existence of a third-party policy in relation to the motor vehicle or trader's plate.

(2) This section does not apply to a trailer.

**13 Commencement and duration of third-party policy** (cf s 12 MAA)

(1) A third-party policy taken to have been issued for a motor vehicle has effect for the period for which the licensed insurer who is taken to have issued the policy is on risk in accordance with this section.

(2) In this section:

**new insurer** means the licensed insurer whose insurance is later in time.

**old insurer** means the licensed insurer whose insurance is earlier in time.

**period of grace** means the period of 14 days after the registration, or renewal of registration, of a motor vehicle expires.

**period of registration** means the period, not exceeding one year, for which the registration or renewal of registration of a motor vehicle is effected, but if, within that period, the registration or renewal of registration is cancelled or surrendered, it means the period for which the registration or renewal of registration is actually in force.

(3) The old insurer and the new insurer may be the same licensed insurer or different licensed insurers.

(4) In the case of the registration (but not the renewal of registration) of a motor vehicle, the licensed insurer is on risk for the period of registration of the motor vehicle.

(5) If registration is renewed before the previous period of registration expires, the old insurer is on risk until the previous period of registration expires and the new insurer comes on risk immediately after the previous period of registration expires.

(6) If registration is renewed during the period of grace, the old insurer is on risk until 12 midnight on the day registration is renewed and the new insurer comes on risk immediately after 12 midnight and is on risk for the balance of the period of registration of the motor vehicle effected by the renewal of registration.

(7) If registration is renewed after the period of grace expires, the new insurer comes on risk at the time the renewal of registration is effected. The motor vehicle is not an insured motor vehicle from the expiry of the previous period of registration until the time the renewal of registration is effected.

(8) There is no period of grace following the cancellation or surrender of the registration (whether registration or a renewal of registration) of a motor vehicle.

- (9) A licensed insurer ceases to be on risk on the cancellation of a third-party policy under section 14, subject to section 14 (7).
- (10) A licensed insurer is on risk in respect of a motor vehicle under a third-party policy relating to a motor vehicle to which a trader's plate is fixed:
  - (a) only during the period for which the policy is issued, and
  - (b) only during the period for which the trader's plate is issued, and
  - (c) only while a trader's plate is fixed to the vehicle.
- (11) A licensed insurer is on risk in respect of a light rail vehicle under a third-party policy relating to the vehicle only during the period for which the policy is issued.

**14 Cancellation of third-party policies** (cf s 13 MAA)

- (1) A licensed insurer has no power to cancel a third-party policy.
- (2) A third-party policy may only be cancelled in accordance with this section.
- (3) A third-party policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except where the registration is cancelled under Division 3 of Part 4 of the *Fines Act 1996*.
- (4) If the whole or any part of the premium payable in respect of a third-party policy is paid by cheque or credit card, and the cheque is not met on due presentation or the credit card transaction is not duly honoured or is fraudulent, the licensed insurer may request the RTA to suspend the registration of the motor vehicle to which the policy relates for a period of 14 days.
- (4A) If the insured person under a third-party policy deliberately avoided paying the correct premium for the third-party policy by making a statement in connection with the issue of the policy that the insured person knew was false, the licensed insurer may request the RTA to suspend the registration of the motor vehicle to which the policy relates for a period of 14 days.
- (4B) A licensed insurer is not to request the RTA to suspend the registration of a motor vehicle except with the prior approval in writing of the Authority and is not to make such a request unless the amount outstanding remains unpaid.
- (5) Before requesting the RTA to suspend the registration of a motor vehicle, the licensed insurer must notify the owner of the motor vehicle that the insurer intends to request the RTA to suspend the registration and that the registration and third-party policy may be cancelled at the expiration of the suspension period if the amount outstanding has not been paid before the expiration of the period.
- (6) The RTA must comply with a request by a licensed insurer under this section to

suspend the registration of a motor vehicle.

- (6A) If the amount outstanding remains unpaid, the licensed insurer may request the RTA before the end of the suspension period to cancel the registration of the motor vehicle at the expiration of the suspension period. A licensed insurer is not to request the RTA to cancel the registration of a motor vehicle except with the prior approval in writing of the Authority.
- (6B) The RTA must comply with a request by a licensed insurer under this section to cancel the registration of a motor vehicle.
- (6C) The Authority may establish guidelines that provide for the circumstances in which the Authority will or will not give its approval to the making of a request for the suspension or cancellation of the registration of a motor vehicle.
- (7) If the registration of a motor vehicle is cancelled, otherwise than under Division 3 of Part 4 of the *Fines Act 1996* or subsection (6), but restored before the date for renewal of the registration, the third-party policy cancelled is taken to have remained in force during the period of cancellation.
- (8) Despite anything in the *Fines Act 1996*, the regulations may make provision for or with respect to:
- (a) the cancellation of a third-party policy in respect of a motor vehicle whose registration is cancelled under Division 3 of Part 4 of that Act, where:
    - (i) the whole or any part of the premium payable in respect of the third-party policy is paid by cheque or credit card, and
    - (ii) the cheque is not met on due presentation or the credit card transaction is not duly honoured or is fraudulent, and
  - (b) the restoration (whether prospectively or during any past period of cancellation) of any third-party policy so cancelled.

**15 Risks not insured under third-party policies** (cf s 16 MAA)

A third-party policy does not extend to insure the owner or driver of a motor vehicle against:

- (a) a liability to pay compensation under the Workers Compensation Acts (or any corresponding law of another State or a Territory of the Commonwealth) to a worker employed by the owner or driver, or
- (b) a liability which may be incurred by the owner or driver under an agreement unless the liability is one which would have arisen in the absence of the agreement.

### **15A Exclusion of acts of terrorism from insurance coverage**

- (1) A third-party policy does not extend to insure the owner or driver of a motor vehicle against a liability that is attributable to an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (2) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this section. An act can only be so characterised if it:
  - (a) causes or threatens to cause death, personal injury or damage to property, and
  - (b) is designed to influence a government or to intimidate the public or a section of the public, and
  - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.
- (3) This section applies to an act of terrorism that occurs on or after 1 January 2002 and before such date as may be appointed by proclamation for the purposes of this section.
- (4) This section does not affect any claim that is paid in full before the date of assent to the *Motor Accidents Compensation Amendment (Terrorism) Act 2002*.

### **16 Indemnification of insured persons** (cf s 17 MAA)

A licensed insurer is, despite any other law, liable to indemnify the insured persons under a third-party policy of the insurer in respect of any liability which the policy purports to cover.

### **17 Liability of licensed insurers and insured persons where correct insurance premiums not paid** (cf s 18 MAA)

- (1) The fact that the correct insurance premium has not been paid in respect of a third-party policy does not affect the validity or operation of the policy.
- (2) A licensed insurer to whom an incorrect insurance premium has been paid may recover any balance outstanding of the premium from the person liable to pay it as a debt in a court of competent jurisdiction.
- (3) If:
  - (a) an insured person under a third-party policy incurs a liability against which he or she is insured under the policy, and
  - (b) the insured person deliberately avoided paying the correct premium for the third-party policy by making a statement in connection with the issue of the policy that the insured person knew was false,



the licensed insurer may recover from the insured person as a debt in a court of competent jurisdiction:

(c) where the money paid and the costs incurred by the licensed insurer in respect of the liability do not exceed \$2000—the amount of the money paid and costs incurred, and

(d) where the money paid and costs incurred by the licensed insurer exceed \$2000—\$2000.

(4) The licensed insurer is not entitled to recover an amount under subsection (3) if the licensed insurer has recovered that amount in the exercise of any other right of recovery under this Part.

**18 Effect of change of ownership of motor vehicle or trader's business** (cf s 19 MAA)

(1) While a third-party policy is in force in relation to a motor vehicle, the third-party policy enures in favour of the owner for the time being of the vehicle (and any driver of the vehicle) despite any change in the ownership of the vehicle.

(2) While a third-party policy is in force in relation to a motor vehicle to which a trader's plate issued in respect of any business is fixed, the third-party policy enures in favour of the person who for the time being is carrying on the business (and any driver of any such vehicle) despite any change in the ownership of the business.

**19 Notice of change of registered particulars and other information relating to motor vehicles** (cf s 19A MAA)

(1) The RTA is required to notify the licensed insurer under a third-party policy in force in relation to a motor vehicle and, if requested to do so by the Authority, the Authority, of any change in any registered particulars relating to the motor vehicle which is notified to the RTA.

(2) If, as a consequence of the change in ownership of a motor vehicle, a change in the place at which the motor vehicle is usually garaged or any other change, a higher premium would be payable in relation to the vehicle than the premium paid or payable under the third-party policy in force in relation to the vehicle before the change occurred, the licensed insurer may recover the appropriate difference from the owner as a debt in a court of competent jurisdiction.

**20 Right of insurer against unauthorised driver of motor vehicle** (cf s 22 MAA)

If:

(a) a person uses or operates a motor vehicle without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner, and

- (b) a licensed insurer pays any money or incurs any costs (under a third-party policy) in respect of a motor accident arising from that use or operation,

the insurer may recover the money so paid and the costs so incurred from the person as a debt in a court of competent jurisdiction.

**21 Recovery of an excess in certain cases** (cf s 23 MAA)

- (1) If an insured person incurs a liability against which he or she is insured under a third-party policy and the liability arises out of a motor accident which was to the extent of more than 25% the fault of the insured person, the licensed insurer may recover from the insured person as a debt in a court of competent jurisdiction:
- (a) where the money paid and costs incurred by the licensed insurer in respect of the liability do not exceed \$500—the amount of the money paid and costs incurred, or
- (b) where the money paid and costs incurred by the licensed insurer exceed \$500—\$500.
- (2) The licensed insurer is not entitled to recover an amount under this section if the licensed insurer exercises any other right of recovery against the insured person under section 20.

**22 Extension of indemnity to insured person's estate** (cf s 24 MAA)

- (1) A third-party policy, to the extent of the insurance effected by that policy:
- (a) extends, if the insured person is dead, to indemnify the insured person's estate against:
- (i) liability arising under any cause of action which, by virtue of section 2 of the [Law Reform \(Miscellaneous Provisions\) Act 1944](#), survives against the insured person's estate, and
- (ii) liability arising by operation of section 2 (4) of that Act, and
- (b) extends to indemnify the insured person or, if the insured person is dead, to indemnify the insured person's estate against:
- (i) liability arising where the insured person or, as the case may be, the insured person's estate has in any proceedings been joined as an alternative defendant, and
- (ii) liability arising where the insured person or, as the case may be, the insured person's estate has served or has been served with a notice in writing under section 3 (1) of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#), and
- (iii) liability arising where the insured person or, as the case may be, the insured person's estate claims contribution from some other person as a joint

tortfeasor or has a claim made against the insured person or the insured person's estate, as the case may be, as a joint tortfeasor.

- (2) In subsection (1), **insured person** means a person who is insured or indemnified against liability 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 under:
- (a) a third-party policy, or
  - (b) a policy of insurance complying with the provisions of any law in force in any part of the Commonwealth (other than this State) which requires the owner or driver of a motor vehicle to be insured against any such liability, or
  - (c) the provisions of any other law in force in any part of the Commonwealth (other than this State) which indemnify the owner or driver of a motor vehicle against any such liability.

### **23 Entry of judgment against licensed insurer** (cf s 25 MAA)

- (1) If a judgment obtained in any court relating to liability in respect of the death of or injury to a person caused by the fault of the owner or driver of an insured motor vehicle in the use or operation of the vehicle is not satisfied in full within 30 days after the judgment is entered, the court must, on the application of the judgment creditor, direct that the judgment be entered against the licensed insurer of the vehicle.
- (2) If execution on the judgment is stayed pending appeal, the time during which execution is stayed is to be excluded in calculating the 30-day period.
- (3) Notice of intention to make the application is to be served on the licensed insurer at least 7 days before the hearing of the application.
- (4) If the court directs that the judgment be entered against the licensed insurer, the judgment may be enforced as a judgment against the licensed insurer to the extent to which it was not satisfied at the time it was so entered.

## **Part 2.3 Insurance premiums**

### **24 Authority guidelines for the determination of premiums** (cf s 14A MAA)

- (1) The Authority may issue to licensed insurers guidelines for the determination of insurance premiums for third-party policies (**MAA Premiums Determination Guidelines**).
- (2) MAA Premiums Determination Guidelines may (without limiting the generality of subsection (1)):
  - (a) specify the manner in which premiums are to be determined and the factors to be taken into account in determining premiums, and

- (b) require licensed insurers to specify how they have determined premiums, and
  - (c) specify the nature of the additional information and reports that the Authority may require licensed insurers to furnish with the premiums they file or to justify premiums they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to third-party insurance business and other relevant matters).
- (3) The Authority may amend, revoke or replace MAA Premiums Determination Guidelines.
  - (4) MAA Premiums Determination Guidelines may only be issued, amended, revoked or replaced with the approval of the Board of Directors of the Authority.
  - (5) MAA Premiums Determination Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
  - (6) It is a condition of a licence granted under Part 7.1 that the licensed insurer must comply with MAA Premiums Determination Guidelines.

**25 Third-party premiums** (cf s 15 MAA)

- (1) A licensed insurer must not charge an insurance premium for a third-party policy, except in accordance with this Part.
- (2) The licensed insurer must file with the Authority a premium or set of premiums it proposes to charge.
- (3) The licensed insurer may charge a premium which has not, within 6 weeks after it is filed, been rejected by the Authority and, except as provided by section 27, must not charge any other premium.

**26 Filing of full sets of premiums** (cf s 15A MAA)

- (1) A licensed insurer must, at least once each year or such longer period as the Authority may allow, file with the Authority a full set of the insurance premiums it proposes to charge for third-party policies which are taken to have been issued by it together with such additional information, including actuarial reports, as the Authority may reasonably require.
- (2) The Authority may, by notice in writing, require a licensed insurer to file a full set of premiums with it on or before such date as is specified in the notice, being a date which is not earlier than 4 weeks after the date of the notice together with such additional information, including actuarial reports, as the Authority may reasonably require.
- (3) It is a condition of a licence granted under Part 7.1 that the licensed insurer must

comply with this section and any notice given to it under this section.

**27 Rejection of premiums by Authority** (cf s 15B MAA)

- (1) The Authority may only reject an insurance premium filed with it under this Part if it is of the opinion that:
  - (a) the premium will not fully fund the present and likely future liability under this Act of the licensed insurer concerned, or
  - (b) the premium is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive, or
  - (c) the premium does not conform to MAA Premiums Determination Guidelines in force under this Part, or
  - (d) the premium has been determined in a manner that contravenes section 30 (Maximum commission payable to insurers' agents).
- (2) Written notice of the Authority's rejection of a premium, and the reasons for the rejection, must be given to the licensed insurer.
- (3) If the Authority rejects a premium of a licensed insurer, the licensed insurer may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional premium.
- (5) A provisional premium so determined has effect, pending the Authority's reconsideration, as if it were an insurance premium which may lawfully be charged by the licensed insurer concerned.
- (6) If the Authority has not withdrawn its rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this section. The following provisions have effect:
  - (a) The *Commercial Arbitration Act 1984* applies to an arbitration under this section, subject to this Act and the regulations. The Authority and the licensed insurer concerned may by agreement appoint a person to act as arbitrator in connection with the matter. Failing agreement within 7 days, paragraphs (b) and (c) apply.
  - (b) The Independent Pricing and Regulatory Tribunal (established by the *Independent Pricing and Regulatory Tribunal Act 1992*) may act as arbitrator to hear and determine such a matter.
  - (c) Alternatively, that Tribunal may appoint a person to act as arbitrator in connection with the matter. The person is to be appointed from a panel constituted by the Minister and consisting of persons who have appropriate knowledge and

understanding of economics, general insurance and the interests of consumers.

- (d) The regulations may make provision for or with respect to the arbitration of matters under this section.
- (7) The arbitrator may determine the premium that may be charged by the licensed insurer, being a premium that in the arbitrator's opinion is sufficient to fully fund the present and likely future liability of the licensed insurer under this Act.
- (8) For the purposes of this section, a premium will fully fund a liability referred to in this section if the premium is sufficient:
- (a) to pay all acquisition and policy administration expenses of the licensed insurer concerned, and
  - (b) to provide a sum of money that together with anticipated investment income is equal to the best estimate of the cost of claims plus claim settlement expenses (in inflated dollars) at the assumed date of settlement, and
  - (c) to provide a profit margin in excess of all claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken, and
  - (d) to provide for such other matters as a prudent insurer should, in all the circumstances, make provision for.

### **27A Effect of Lifetime Care and Support Scheme payments**

A determination of the cost of claims and settlement expenses for the purposes of this Part must take account of the effect on the cost of claims of section 130A (No damages for expenses covered by Lifetime Care and Support Scheme).

### **28 Insurers to disclose profit margins**

- (1) A licensed insurer is required to disclose to the Authority the profit margin on which a premium is based and the actuarial basis for calculating that profit margin.
- (2) The Authority is to assess that profit margin, and the actuarial basis for its calculation, and to present a report on that assessment annually to the Parliamentary Committee.

### **29 Premium risk adjustment**

- (1) The Authority may enter into any one or more of the following arrangements with licensed insurers (whether by means of the Insurance Industry Deed or otherwise):
  - (a) an arrangement for allocating high risk third-party policies among insurers,
  - (b) an arrangement for the pooling of premiums collected from the issue of third-party policies and for the allocation of the premiums among insurers,

(c) an arrangement for the pooling of the costs of claims for motor accidents covered by high risk third-party policies and for the allocation of those costs among insurers.

Any such allocation may be made among insurers generally in accordance with the market share of each insurer or in any other appropriate manner.

- (2) The regulations may make provision for giving effect to any such arrangement.
- (3) High risk third-party policies are policies of a kind that the Authority determines incur a disproportionate share of liability for the total cost of claims for motor accidents.
- (4) The Authority may, with the approval of the Minister, make such an arrangement a condition of the licence of each insurer if the Minister is satisfied that licensed insurers, or any of them, have refused to enter into the arrangement with the Authority and the arrangement is appropriate having regard to the objects of this Act.

### **30 Maximum commission payable to insurers' agents**

- (1) For the purposes of calculating the amount of insurance premiums under this Part, the acquisition and policy administration expenses of a licensed insurer may not include, as the amount of commission or other remuneration payable to the insurer's agent or agents for the issue of third-party policies by the insurer, an amount that exceeds 5% (or such other percentage as may be prescribed by the regulations) of the premium payable for policies.
- (2) If more than one insurer's agent acts in respect of a third-party policy, the maximum amount of commission or other remuneration under this section is the total amount payable to all those agents.
- (3) In this section:

**commission or other remuneration** does not include payment for business expenses incurred by an insurer's agent.

**insurer's agent** means any insurance broker or commission agent acting for or on behalf of a licensed insurer in connection with the issue of third-party policies by the insurer.

## **Part 2.4 Uninsured or unidentified motor vehicles**

### **31 Application of Part**

This Part applies to and in respect of a motor accident occurring before or after the commencement of this Act.

**32 Nominal Defendant** (cf s 26 MAA)

- (1) The Authority is, for the purposes of this Act, the Nominal Defendant.
- (2) Any action or proceeding by or against the Nominal Defendant is to be taken in the name of the "Nominal Defendant".

**33 Claim against Nominal Defendant where vehicle not insured** (cf s 27 MAA)

- (1) An action for the recovery of 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 that is not an insured motor vehicle in the use or operation of the vehicle on a road in New South Wales may be brought against the Nominal Defendant.
- (2) Any such action may be brought despite the fact that the owner or driver of the motor vehicle is dead or cannot be found or is the spouse of the person whose death or to whom injury has been caused.
- (3) In respect of any such action, the Nominal Defendant is liable as if it were the owner or driver of the motor vehicle.
- (3A) If the motor accident resulting in the death of or injury to a person occurred on land that is a road related area under the [Road Transport \(Vehicle Registration\) Act 1997](#) because it is an area that is open to or used by the public for driving, riding or parking vehicles, there is no right of action against the Nominal Defendant under this section if at the time of the motor accident the person was a trespasser on the land.
- (4) There is no right of action against the Nominal Defendant under this section:
  - (a) if the motor vehicle is owned by the Commonwealth or by any person or body of persons representing the Commonwealth, or
  - (b) if there is a right of action under section 35 in respect of the death or injury, or
  - (c) if, at the time the motor accident resulting in the death or injury occurred, the motor vehicle was registered under the law of a place other than New South Wales or under a law of the Commonwealth and the motor vehicle was covered under a policy of compulsory third-party personal injury insurance or was subject to coverage under a compulsory motor vehicle accident compensation scheme of that place or of the Commonwealth, or
  - (d) if the regulations provide that in the circumstances specified in the regulations there is no right of action against the Nominal Defendant.
- (5) For the purposes of this section, and any regulations made for the purposes of this section:

**motor vehicle** means a motor vehicle:



- (a) that is exempt from registration, or
- (b) that is not exempt from registration, is required to be registered to enable its lawful use or operation on a road in New South Wales and:
  - (i) was at the time of manufacture capable of registration, or
  - (ii) was at the time of manufacture, with minor adjustments, capable of registration, or
  - (iii) was previously capable of registration but is no longer capable of registration because it has fallen into disrepair.

**34 Claim against Nominal Defendant where vehicle not identified** (cf s 28 MAA)

- (1) An action for the recovery of 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 on a road in New South Wales may, if the identity of the vehicle cannot be established, be brought against the Nominal Defendant.
- (1AA) A claim cannot be made against the Nominal Defendant under this section unless due inquiry and search has been made to establish the identity of the motor vehicle concerned.
- (1A) If the motor accident resulting in the death of or injury to a person occurred on land that is a road related area under the [Road Transport \(Vehicle Registration\) Act 1997](#) because it is an area that is open to or used by the public for driving, riding or parking vehicles, there is no right of action against the Nominal Defendant under this section if at the time of the motor accident the person was a trespasser on the land.
- (2) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.
- (3) In respect of any such action, the Nominal Defendant is liable as if it were the owner or driver of the motor vehicle.

**34A Rejection of claim for failure to make due inquiry and search to establish identity of vehicle**

- (1) If due inquiry and search has not been made to establish the identity of the motor vehicle concerned, a claim against the Nominal Defendant under section 34 cannot be referred for assessment under Part 4.4 unless:
  - (a) the Nominal Defendant has lost the right to reject the claim for failure to make that due inquiry and search, or
  - (b) a claims assessor has, on the assessment of a dispute as to whether the claim may be rejected for failure to make that due inquiry and search, assessed that due

inquiry and search has been made, or

(c) the claim is referred only for a certificate of exemption from assessment under Part 4.4.

(2) The Nominal Defendant loses the right to reject a claim for failure to make due inquiry and search to establish the identity of a vehicle if the Nominal Defendant:

(a) does not, within 2 months after the claim is made, reject the claim for failure to make that due inquiry and search or ask the claimant to make that due inquiry and search, or

(b) does not, within 2 months after being notified of efforts to establish the identity of the vehicle, refuse to accept that there has been due inquiry and search to establish the identity of the vehicle.

(3) If court proceedings are commenced on a claim against the Nominal Defendant under section 34, the Nominal Defendant may apply to the court to have the proceedings dismissed on the ground that due inquiry and search to establish the identity of the vehicle has not been made.

(4) An application to have proceedings dismissed on that ground cannot be made more than 2 months after the statement of claim is served on the Nominal Defendant and also cannot be made if the Nominal Defendant has lost the right to reject the claim on that ground.

(5) On an application to have proceedings dismissed on that ground, the court must dismiss the proceedings unless satisfied that due inquiry and search to establish the identity of the vehicle has been made.

**35 Claim against Nominal Defendant where a NSW registered trailer is attached to a motor vehicle not registered in NSW** (cf s 28A MAA)

(1) The Nominal Defendant is taken to have issued a policy of insurance under this Act which insures:

(a) the owner of a registered trailer:

(i) which is attached to a motor vehicle which is not registered, or

(ii) which runs out of control having become detached from the towing motor vehicle which is not registered, and

(b) the owner of a motor vehicle which is not registered:

(i) to which a registered trailer is attached, or

(ii) from which a registered trailer becomes detached and runs out of control, and

(c) any other person who at any time drives such a vehicle (whether or not with the consent of the owner),

against liability in respect of the death of or injury to a person caused by the fault of the owner of the trailer or the owner or driver of the vehicle in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a road).

- (2) An action for the recovery of damages in respect of the death of or injury to a person as referred to in subsection (1) may be brought against the Nominal Defendant.
- (3) Any such action may be brought despite the fact that the owner of the trailer or the owner or driver of the towing vehicle is dead or cannot be found or is the spouse of the person whose death or to whom injury has been caused.
- (4) In respect of any such action, the Nominal Defendant is liable as if it were the owner of the trailer or the owner or driver of the towing vehicle.
- (5) There is no right of action against the Nominal Defendant under this section:
  - (a) if the trailer or the towing vehicle is owned by the Commonwealth or by any person or body of persons representing the Commonwealth, or
  - (b) if, at the time the motor accident resulting in the death or injury occurred, the motor vehicle was registered under the law of a place other than New South Wales or under a law of the Commonwealth and the motor vehicle was covered under a policy of compulsory third party personal injury insurance or was subject to coverage under a compulsory motor vehicle accident compensation scheme of that place or of the Commonwealth, or
  - (c) if the regulations provide that in the circumstances specified in the regulations there is no right of action against the Nominal Defendant.

### **35A Exclusion of acts of terrorism from claims against Nominal Defendant**

- (1) There is no right of action against the Nominal Defendant under section 33, 34 or 35 for damages that are attributable to an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (2) An act cannot be characterised as an act of terrorism for the purposes of this section unless it can be so characterised under section 15A (2).
- (3) This section applies to an act of terrorism that occurs on or after 1 January 2002 and before such date as may be appointed by proclamation for the purposes of this section.
- (4) This section does not affect any claim that is paid in full before the date of assent to the *Motor Accidents Compensation Amendment (Terrorism) Act 2002*.

**36 Nominal Defendant as tortfeasor** (cf s 28B MAA)

- (1) The Nominal Defendant may join another person, or may be joined, for contribution or indemnity in respect of a claim or proceedings under this Act as if the Nominal Defendant were a tortfeasor.
- (2) Joinder of the Nominal Defendant is required to be effected in accordance with this section.
- (3) A person seeking to join the Nominal Defendant in respect of a claim or proceedings must give the Nominal Defendant notice of the person's intention to do so. The notice must include a copy of the notice of claim under section 72 given to the person.
- (4) The notice must be given within 3 months after the claim is made against the person under section 72, or within 3 months after the person becomes a party to proceedings in respect of the claim, whichever occurs first.
- (5) The court may extend the period for giving notice to the Nominal Defendant if the person seeking to join the Nominal Defendant gives a full and satisfactory explanation for not having given notice within the 3-month period.
- (6) Within 2 months after notice is given, the person giving notice must provide the Nominal Defendant with full details of the allegations made against the Nominal Defendant (or against the person to whom the Nominal Defendant is taken to have issued a third-party policy).
- (7) An application may not be made to join the Nominal Defendant as a party to proceedings before the court after 3 years from the date on which the claim under section 72 in respect of which contribution or indemnity is sought must be made, except with the leave of the court.
- (8) If the Nominal Defendant is sought to be joined because the identity of another motor vehicle is not known, joinder may not be effected unless due inquiry or search to identify the vehicle has been made. The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.
- (9) Except as provided by this section, nothing in this section affects any rules of court relating to the joinder of parties.

**37 Payment of claims against Nominal Defendant** (cf s 29 MAA)

The Nominal Defendant is not personally liable to pay any amount payable in satisfaction of any claim made or judgment obtained under section 33, 34 or 35 or the amount of any costs or expenses incurred by it in relation to any such claim or judgment, but every such amount is to be paid by the Nominal Defendant out of the Nominal Defendant's Fund established under this Part.

**38 Licensed insurers to act for Nominal Defendant** (cf s 30 MAA)

- (1) The Nominal Defendant is to allocate claims made against it to licensed insurers in accordance with the arrangements contained in the Insurance Industry Deed or as determined by the Authority.
- (2) The Nominal Defendant is not required to allocate claims that are unlikely to involve a liability of the Nominal Defendant.
- (3) A licensed insurer to whom a claim is allocated is authorised, on behalf of and in the name of the Nominal Defendant, to deal with the claim (and any proceedings relating to the claim) in such manner as it thinks fit.
- (4) A licensed insurer may settle or compromise any such claim.
- (5) A licensed insurer is authorised, on behalf of and in the name of the Nominal Defendant, to bring and prosecute proceedings under section 39 relating to any such claim and to settle or compromise those proceedings as it thinks fit.
- (6) A licensed insurer is required to provide to the Authority such reports as the Authority may reasonably require in relation to any thing done by the licensed insurer under the authority of this section.

**39 Recovery from owner or driver** (cf s 31 MAA)

- (1) Any amount properly paid by the Nominal Defendant in satisfaction of a claim made or judgment obtained under section 33, 34 or 35 and the amount of any costs and expenses properly incurred by it in relation to any such claim or judgment may be recovered by the Nominal Defendant as a debt:
  - (a) from the person who, at the time of the occurrence out of which the claim arose or in respect of which the judgment was obtained, was the owner of the motor vehicle, or
  - (b) where at the time of such occurrence some other person was driving the motor vehicle, from the owner and the driver jointly or from either of them severally.
- (2) However:
  - (a) it is a sufficient defence in any proceedings under this section against the owner (whether severally or jointly with the driver) if the owner establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without the owner's authority, and
  - (b) it is a sufficient defence in any proceedings under this section against the driver of an uninsured motor vehicle (whether severally or jointly with the owner) if the driver establishes to the satisfaction of the court that, at the time of the occurrence, the driver was driving the motor vehicle with the authority of the

owner or had reasonable grounds for believing and did in fact believe that the driver had such authority, and that the driver had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

- (3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of a motor vehicle which, at the relevant time, was not required to be registered or was exempt from registration or, if required to be registered, was not required to be insured under this Act.

**40 Establishment of Nominal Defendant's Fund** (cf s 32 MAA)

- (1) There is established a fund, to be known as the Nominal Defendant's Fund, belonging to and vested in the Authority.
- (2) The following is to be paid into the Fund:
- (a) money collected under section 41,
  - (b) the interest from time to time accruing from the investment of the Fund,
  - (c) money recovered by the Nominal Defendant under this Part,
  - (c1) money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16E of the *Insurance Protection Tax Act 2001*,
  - (d) money required to be paid into the Fund by or under this or any other Act.
- (3) The following is to be paid from the Fund:
- (a) money required to be paid from the Fund under section 23A or 37,
  - (a1) money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16G of the *Insurance Protection Tax Act 2001*,
  - (b) all other money required to be paid from the Fund by or under this or any other Act.
- (4) The Authority may invest money in the Fund which is not immediately required for the purposes of the Fund:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the Authority to invest money in the Fund—in any other manner approved by the Minister with the concurrence of the Treasurer.

**41 Collections for Nominal Defendant's Fund** (cf s 33 MAA)

- (1) In this section:

**financial year** means a year commencing on 1 July.

- (2) The Authority may determine the amount to be collected for the purposes of the Nominal Defendant's Fund in respect of each financial year.
- (3) An amount to be collected for the purposes of the Nominal Defendant's Fund is to be collected from such persons or fund, and in accordance with such arrangements, as may be prescribed by the regulations.
- (4) The Authority is not to determine an amount under subsection (2) in respect of a financial year if it is of the opinion that satisfactory arrangements have been made in respect of that year (pursuant to the Insurance Industry Deed or otherwise) by licensed insurers to meet claims made against the Nominal Defendant.

## **Chapter 3 Motor accident injuries**

### **Part 3.1 Preliminary**

#### **42 Definitions**

In this Chapter:

**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:

- (a) the Nominal Defendant, and
- (b) where a claim is handled on behalf of an insurer by another insurer, the other insurer.

**treatment** means:

- (a) medical treatment, or
- (b) dental treatment, or
- (c) the provision of rehabilitation services, or
- (d) the provision of attendant care services, or
- (e) the provision, replacement or repair of artificial members, eyes or teeth, crutches or other aids or spectacle glasses,

whether or not at a hospital.

#### **43 Application of Chapter**

- (1) This Chapter applies to and in respect of an injury caused by a motor accident occurring after the commencement of this Act.

- (2) This Chapter applies to and in respect of an injury whether or not there is a third-party policy in respect of liability for the injury.

**Note—**

This Chapter applies only if the injury was caused by a motor accident for which the vehicle has motor accident insurance cover or that gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.

**43A Application of Chapter to treatment covered by Lifetime Care and Support Scheme**

This Chapter does not apply in respect of treatment of an injured person while the person is a participant in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* if expenses incurred in connection with that treatment are required to be paid under Part 2 of that Act.

**44 Medical Guidelines of Authority**

- (1) The Authority may issue guidelines (**MAA Medical Guidelines**) with respect to the following:
- (a) the appropriate treatment of injured persons,
  - (b) the appropriate procedures with respect to the provision of rehabilitation services or attendant care services for injured persons (including the circumstances in which rehabilitation services or attendant care services are required to be provided),
  - (c) the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident,
  - (d) the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment and review of assessments, under Part 3.4.
- (2) The Authority may amend, revoke or replace MAA Medical Guidelines.
- (3) MAA Medical Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) MAA Medical Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (5) MAA Medical Guidelines:
- (a) are not to be construed as requiring medical treatment to be carried out in accordance with MAA Medical Guidelines, and



(b) are to be consistent with a high standard of medical care, dental care, rehabilitation, aftercare and continuing care as exists in the community at that time.

(6) MAA Medical Guidelines must be developed in consultation with relevant medical colleges, including the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Royal Australian College of General Practitioners, the Australian Orthopaedic Association, the para-medical professional associations and other relevant colleges and associations.

(7) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a guideline under this section in the same way as those sections apply to a statutory rule.

**Editorial note—**

For Guidelines issued pursuant to this section see Gazettes No 87 of 21.5.2004, p 3122; No 92 of 22.7.2005, p 3857; No 30 of 3.3.2006, p 1090; No 49 of 7.4.2006, p 2059; No 118 of 22.9.2006, p 8116; No 90 of 13.7.2007, p 4581 and No 87 of 11.7.2008, p 7059.

**45 Special requirements relating to MAA Medical Guidelines relating to impairment**

- (1) This section applies to MAA Medical Guidelines that relate to the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident.
- (2) Any such MAA Medical Guidelines are to be issued within 3 months after the commencement of this Act.
- (3) Any such MAA Medical Guidelines may adopt the provisions of another publication only as in force at a time before the issue of the guidelines.
- (4) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to any such MAA Medical Guidelines.

**Part 3.2 Early payment for treatment and lost earnings of injured persons**

**46 Definitions**

In this Part:

**accident notification form** means a form referred to in section 49.

**injured person** includes a person in respect of whom an accident notification form is duly completed.

**lost earnings** means past loss of earnings resulting from injuries to an injured person.

**treatment expenses** means expenses incurred in connection with the treatment of an injured person, including hospital, medical, pharmaceutical and rehabilitation expenses, but not including attendant care expenses.

#### **47 Payment for treatment and lost earnings of injured persons**

- (1) Insurers are required to pay the treatment expenses and lost earnings of injured persons in the circumstances and to the extent provided by this Part.
- (2) Payment for treatment expenses and lost earnings is not required under this Part to the extent that:
  - (a) they are paid for by the insurer under a claim made in respect of the matter, or
  - (b) (in the case of treatment expenses) they are paid or recovered under Part 3.3 (Payments to hospitals, doctors and others).
- (3) Payment is not required under this Part for treatment expenses or lost earnings incurred after a claim is made in respect of the matter.
- (4) An insurer is not required to pay for lost earnings under this Part if the insurer is reasonably of the opinion that the claimant is likely to make a claim in respect of the matter because the claimant is entitled to recover damages in excess of the amount that would otherwise be payable under this Part or is entitled to recover under other heads of damage.

#### **48 Notification of motor accident to police and submission of accident notification form to insurer**

An injured person is not entitled to payment for treatment expenses or lost earnings under this Part unless:

- (a) a police officer attended the motor accident in which the injured person was injured or the motor accident has been officially reported to a police officer by or on behalf of the injured person, and
- (b) an accident notification form has been completed by or on behalf of the injured person and submitted to the insurer, and
- (c) the accident notification form is submitted to the insurer within 28 days after the motor accident (or within such other period as the form requires), and
- (d) the accident notification form contains a declaration by or on behalf of the injured person that the motor accident was not caused wholly or mainly by the fault of the injured person.

#### **49 Accident notification forms**

- (1) An accident notification form is to be in the form approved by the Authority. The Motor

Accidents Council is to advise the Authority on an appropriate accident notification form.

- (2) The approved form may include provision for:
  - (a) information about the injury and treatment provided to be completed by the person providing the treatment, and
  - (b) information about the motor accident and the injured person to be completed by or on behalf of the injured person, and
  - (b1) information about any loss of earnings suffered by the injured person to be completed by or on behalf of the injured person, and
  - (c) authorisation of the insurer to obtain information and documents relevant to any such matter from specified persons.
- (3) The Authority is to make arrangements for the supply of copies of the approved form for use by injured persons and for an information service to assist injured persons to complete and submit accident notification forms. Those arrangements may require action by insurers and may be made a condition of the licence of an insurer under Part 7.1.
- (4) The approved form is to include a component entitled “Information for Injured Persons” that explains in simple language the workings of the scheme under this Act and the rights of the injured person. That component of the form must be capable of being detached and retained by the injured person.
- (5) A copy of the “Information for Injured Persons” is to be posted on the Internet site maintained by the Authority.

#### **50 Acceptance of provisional liability by insurer**

- (1) It is the duty of the insurer to give written notice to an injured person who has duly submitted a completed accident notification form to the insurer stating whether or not the insurer accepts provisional liability in respect of the treatment expenses and lost earnings concerned.
- (2) The notice is required to be given within 10 days after the insurer receives the accident notification form. The regulations may abridge or extend that period.
- (3) If the injured person was injured in the motor accident as a passenger of a motor vehicle or as a pedestrian, the insurer is taken to have accepted provisional liability in respect of the treatment expenses and lost earnings concerned and is to notify the injured person accordingly.
- (4) If the insurer fails to notify the injured person in accordance with this section, the insurer is taken to have accepted provisional liability.

- (5) Despite anything to the contrary in this section, an insurer who is, or is acting for, the Nominal Defendant under section 34 (Claims against Nominal Defendant where vehicle not identified) is not taken to have accepted provisional liability unless the insurer has given written notice accepting provisional liability.
- (6) Nothing in this section prevents the insurer from accepting provisional liability after having denied that liability.
- (7) An insurer is required to pay for the treatment expenses and lost earnings of an injured person in accordance with this Part only if the insurer has accepted or is taken to have accepted provisional liability in respect of them.
- (8) Payments under this Part are payments as compensation for the treatment expenses or lost earnings concerned, but neither those payments nor the acceptance of provisional liability under this Part by an insurer constitutes an admission of liability by the insurer in connection with a claim in respect of the motor accident.
- (9) A payment made under this Part before the injured person obtains judgment for damages against the defendant is, to the extent of its amount, a defence to proceedings by the injured person against the defendant for damages.
- (10) It is a condition of an insurer's licence that the insurer must comply with this section.

#### **51 Limit on preliminary payments**

- (1) The maximum amount that an insurer is required to pay under this Part as the total amount of treatment expenses and lost earnings of an injured person is \$5,000 or such other amount as may be determined by the Authority under subsection (2).
- (2) The Authority:
  - (a) is to review the amount referred to in subsection (1) annually, and
  - (b) may, by order published in the Gazette, vary that amount to take account of inflation or other matters.
- (3) If 2 or more injured persons were injured in the same motor accident, the maximum total amount of treatment expenses and lost earnings under this section applies to each such person and is not reduced by the payment of the treatment expenses or lost earnings of any other such injured person.
- (4) Treatment expenses and lost earnings of an injured person are only required to be paid under this Part for treatment provided or loss of earnings suffered within 6 months after the motor accident concerned (even if the total amount payable is less than the maximum total amount fixed by this section).
- (5) Treatment expenses are to be paid in priority to lost earnings and for that purpose payment for lost earnings is not to be made until the end of the 6 months after the

motor accident concerned and is to be made only to the extent that payment for treatment expenses for treatment provided in that 6 months will not exceed the maximum total amount fixed by this section.

## **52 Treatment expenses where treatment contrary to guidelines or exceeds limit**

- (1) If the MAA Medical Guidelines approve particular treatment as appropriate treatment in respect of any matter and the treatment provided to an injured person in respect of the matter does not accord with that approved treatment, the insurer is not required to pay treatment expenses under this Part in respect of the treatment.
- (2) Nothing in this Part prevents an insurer from:
  - (a) paying treatment expenses for treatment that did not accord with relevant treatment approved by MAA Medical Guidelines, or
  - (b) paying an amount of treatment expenses that exceeds the maximum amount payable by the insurer under this Part, or
  - (c) approving further treatment for the purposes of any claim.
- (3) If the insurer makes a payment of treatment expenses under this Part but the injured person has incurred or is likely to incur additional treatment expenses, the insurer is required to inform the injured person of the right to make a claim in respect of those additional expenses. The insurer is required to do so in writing at the time or as soon as possible after making that payment.

## **53 Treatment expenses not payable**

Treatment expenses are not required to be paid under this Part to the extent that the treatment concerned was not reasonable and necessary in the circumstances to reach a standard of good medical care existing at the time or did not relate to the injury caused by the motor accident concerned.

## **Part 3.3 Payments to hospitals, doctors and others**

### **54 Bulk billing arrangements for hospital, ambulance and other expenses** (cf s 39B (4) MAA)

- (1) Bulk billing arrangements may be entered into by the Authority with respect to:
  - (a) the payment of expenses incurred in connection with the treatment of injured persons at hospitals, or
  - (b) the payment of expenses incurred in conveying injured persons by ambulance, or
  - (c) the payment of other treatment expenses incurred by injured persons.
- (2) A bulk billing arrangement is an arrangement made with the Minister for Health, service providers or others acting on their behalf for the payment by the Authority of

any such expenses of injured persons at the rate provided by the arrangement.

- (2A) A bulk billing arrangement may provide for the payments due by the Authority under the arrangement to be paid by means of lump sum payments to cover the payments due in respect of expenses incurred during a specified period.
- (3) For the purposes of this section, the treatment or conveyance of injured persons includes the treatment or conveyance of persons classified as injured persons in accordance with a bulk billing arrangement.
- (4) Despite section 3A (1), a bulk billing arrangement may extend to expenses of an injured person even if the motor accident concerned was caused wholly or partly by the fault of the injured person.

**55 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement** (cf s 39B MAA)

(1) This section applies to:

- (a) payment for the treatment of injured persons at hospitals, and
- (b) payment for conveying injured persons by ambulance, and
- (c) payment for any medical or dental treatment of, or rehabilitation services provided to, injured persons,

in any case where payment for the expenses concerned has not been made, and is not required to be made in accordance with a bulk billing arrangement under section 54.

- (2) If an insurer is required to make that payment in accordance with the duty imposed on the insurer under section 83, the rate at which the payment is to be made is as follows:
  - (a) in the case of treatment at public hospitals—at the rate determined by the Minister for Health by order published in the Gazette,
  - (b) in any case in which a maximum rate is fixed under section 56—at the maximum rate so fixed,
  - (c) in a case to which a rate referred to in paragraph (a) or (b) does not apply—at the rate reasonably appropriate to the treatment or service having regard to the customary charge made in the community for the treatment or service.
- (3) If the insurer does not make that payment, the body or person who provided the treatment or service to which the payment relates may recover the payment from the insurer as a debt in a court of competent jurisdiction.

**56 Maximum fees payable by insurers for medical treatment and other treatment or**

**services not provided at hospitals or for treatment at private hospitals** (cf s 39B MAA)

(1) This section applies to:

- (a) the fee payable for any medical treatment of an injured person, and
- (b) the fee payable for any dental treatment of an injured person, and
- (c) the fee payable for any rehabilitation service provided to an injured person, and
- (d) the fees payable for any attendant care services provided to an injured person,

but does not apply to any such treatment or service that is provided at a hospital (whether to an in-patient or out-patient) and for which any payment is required to be made to the hospital and not to the treatment or service provider.

(2) This section also applies to the fee payable to a private hospital for any treatment at the hospital.

(3) The regulations may make provision for or with respect to fixing the maximum amount for which an insurer is liable in respect of any claim for fees to which this section applies.

(4) Any such fees may (but need not) be fixed by reference to fees recommended by the Australian Medical Association or other professional association or by reference to any schedule of fees.

(5) Each of the following is to be made consistently with any regulations under this section:

- (a) a payment of treatment expenses by an insurer under Part 3.2,
- (b) a payment by an insurer in accordance with the duty imposed under section 83,
- (c) an assessment of a claim by a claims assessor under Part 4.4,
- (d) an award of damages to which Chapter 5 applies.

(6) This section does not prevent the inclusion in MAA Claims Assessment Guidelines of provision as to the appropriate allowance for fees to which this section applies and which are not fixed by regulations under this section.

## **Part 3.4 Medical assessment**

### **57 Definitions**

In this Part:

***medical assessment matters*** means any of the matters referred to in section 58.

**medical assessor** means a person appointed under this Part to make an assessment under this Part.

**medical assessors review panel** means a panel of medical assessors convened under this Part to review an assessment under this Part.

**medical dispute** means a disagreement or issue to which this Part applies.

#### **57A Motor Accidents Medical Assessment Service**

- (1) The Authority is to establish in association with its operations a unit, to be known as the Motor Accidents Medical Assessment Service.
- (2) The Service is to consist of medical assessors and such officers of the Authority as the Authority determines.

#### **58 Application**

- (1) This Part applies to a disagreement between a claimant and an insurer about any of the following matters (referred to in this Part as **medical assessment matters**):
  - (a) whether the treatment provided or to be provided to the injured person was or is reasonable and necessary in the circumstances,
  - (b) whether any such treatment relates to the injury caused by the motor accident,
  - (c) (Repealed)
  - (d) whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.
  - (e) (Repealed)
- (2) This Part also applies to any issue arising about such a matter in proceedings before a court or in connection with the assessment of a claim by a claims assessor.

#### **59 Appointment of medical assessors**

- (1) The Authority is required to appoint medical practitioners and other suitably qualified persons to be medical assessors for the purposes of this Part.
- (2) The terms of any such appointment may restrict a medical assessor to disputes of a specified kind.
- (3) The Authority is to ensure that, as far as reasonably practicable, there are medical assessors appointed in the regional areas of the State.

#### **59A Protection of medical assessors**

- (1) A matter or thing done or omitted to be done by a medical assessor under this Part in



the exercise of the assessor's functions does not, if the matter or thing was done or omitted in good faith, subject the assessor personally to any action, liability, claim or demand.

- (2) A medical assessor is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a medical assessor.
- (3) Any liability that would attach to a person were it not for the operation of subsection (1) attaches instead to the Crown.

#### **60 Medical assessment procedures**

- (1) A medical dispute may be referred to the Authority for assessment under this Part by either party to the dispute or by a court or claims assessor.
- (2) The Authority is to arrange for the dispute to be referred to one or more medical assessors.
- (3), (4) (Repealed)

#### **61 Status of medical assessments**

- (1) The medical assessor or assessors to whom a medical dispute is referred is or are to give a certificate as to the matters referred for assessment.
- (2) Any such certificate as to a medical assessment matter is conclusive evidence as to the matters certified in any court proceedings or in any assessment by a claims assessor in respect of the claim concerned.
- (3) (Repealed)
- (4) In any court proceedings, the court may (despite anything to the contrary in this section) reject a certificate as to all or any of the matters certified in it, on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that admission of the certificate as to the matter or matters concerned would cause substantial injustice to that party.
- (5) If a certificate as to any matter is rejected under subsection (4), the court is to refer that matter again for assessment under this Part and adjourn the proceedings until a further certificate is given and admitted in evidence in the proceedings.
- (6) However, if a certificate as to whether or not the degree of permanent impairment of the injured person is greater than 10% is rejected under subsection (4), the court may, if it considers it appropriate, substitute a determination of the court as to the degree of permanent impairment of the injured person (assessed by the court in accordance with section 133) instead of referring that matter again for assessment under this

Part.

- (7) Except as provided by subsection (6), a court may not substitute its own determination as to any medical assessment matter.
- (8) This section:
  - (a) does not prevent a court from referring a matter again for assessment under this Part (as provided for by section 62), and
  - (b) does not require a court to refer a matter again for assessment under this Part if the matter is not a medical assessment matter.
- (9) A certificate is to set out the reasons for any finding by the medical assessor or assessors as to any matter certified in the certificate in respect of which the certificate is conclusive evidence.
- (10) The following procedure is to apply if the assessment of more than one medical assessor is required to assess whether the degree of permanent impairment of the injured person is greater than 10% (not being an assessment of the degree of permanent impairment resulting from psychiatric or psychological injury):
  - (a) each medical assessor is to give a certificate as to the degree of permanent impairment of the injured person resulting from the particular injury or injuries with which the medical assessor's assessment is concerned,
  - (b) based on the matters certified in each such certificate a medical assessor nominated by the Authority for the purpose is to make an assessment of the total degree of permanent impairment resulting from all the injuries with which those certificates are concerned and is to give a certificate (a **combined certificate**) as to that total degree of permanent impairment,
  - (c) the combined certificate is conclusive evidence as to whether the degree of permanent impairment of the injured person is greater than 10% and this section applies to the combined certificate accordingly.
- (11) If a medical assessor is satisfied that a certificate under this section contains an obvious error, the medical assessor may issue a replacement certificate to correct the error.

## **62 Referral of matter for further medical assessment**

- (1) A matter referred for assessment under this Part may be referred again on one or more further occasions in accordance with this Part:
  - (a) by any party to the medical dispute, but only on the grounds of the deterioration of the injury or additional relevant information about the injury, or

(b) by a court or claims assessor.

(1A) A matter may not be referred again for assessment by a party to the medical dispute on the grounds of deterioration of the injury or additional relevant information about the injury unless the deterioration or additional information is such as to be capable of having a material effect on the outcome of the previous assessment.

(1B) Referral of a matter under this section is to be by referral to the member of staff designated by the Authority for the purpose (in this Part referred to as the **proper officer of the Authority**).

(2) A certificate as to a matter referred again for assessment prevails over any previous certificate as to the matter to the extent of any inconsistency.

### **63 Review of medical assessment by review panel**

(1) A party to a medical dispute may apply to the proper officer of the Authority to refer a medical assessment under this Part by a single medical assessor to a review panel of medical assessors for review.

(2) An application for the referral of a medical assessment to a review panel may only be made on the grounds that the assessment was incorrect in a material respect.

(2A) If a medical assessment under this Part (a **combined certificate assessment**) is based on the assessments of 2 or more single medical assessors (resulting in a combined certificate as to the total degree of permanent impairment), the combined certificate assessment cannot be the subject of review under this section except by way of the review of any of the assessments of the single medical assessors on which the combined certificate assessment is based.

(3) The proper officer of the Authority is to arrange for any such application to be referred to a panel of at least 3 medical assessors, but only if the proper officer is satisfied that there is reasonable cause to suspect that the medical assessment was incorrect in a material respect having regard to the particulars set out in the application.

(3A) The review of a medical assessment is not limited to a review only of that aspect of the assessment that is alleged to be incorrect and is to be by way of a new assessment of all the matters with which the medical assessment is concerned.

(4) The review panel may confirm the certificate of assessment of the single medical assessor, or revoke that certificate and issue a new certificate as to the matters concerned.

(5) If on the review of a medical assessment of a single medical assessor on which a combined certificate assessment is based a new certificate is issued by the review panel, the review panel is also to issue a new combined certificate to take account of the results of the review.

- (6) Section 61 applies to any new certificate or new combined certificate issued under this section.
- (7) The MAA Medical Guidelines may limit the time within which an application under this section may be made.

#### **64 Costs of medical assessment**

- (1) The costs of medical assessments under this Part are payable by the insurer, except as otherwise provided by the regulations.
- (2) The Authority may, for the purposes of meeting those costs, impose fees for the carrying out of medical assessments or make other arrangements for meeting those costs.
- (3) The costs of medical assessments under this Part include the following:
  - (a) the remuneration of medical assessors,
  - (b) the reasonable and necessary costs and expenses incurred by the injured person, and by a parent or other carer of the injured person in order to accompany the injured person, in attending the medical assessor or assessors for the purposes of the assessment,
  - (c) any costs incurred by the Authority in connection with medical assessments under this Part,
  - (d) such other costs in connection with medical assessments under this Part as may be prescribed by the regulations.
- (4) A reference in this section to medical assessment includes a reference to the review of medical assessments.
- (5) The regulations may prescribe a rate at which the cost of travel by any specified mode of transport is to be calculated for the purposes of the payment of travel costs under this section.

#### **65 MAA monitoring and oversight**

- (1) Medical assessments under this Part are subject to relevant provisions of MAA Medical Guidelines relating to the procedures for the referral of disputes for assessment or review of assessments and the procedure for assessment.
- (2) The Authority may arrange for the provision of training and information to medical assessors to promote accurate and consistent medical assessments under this Part.
- (3) A medical assessor is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the assessor that affect the interests of the parties to a medical assessment, and the Authority or any public

servant may not overrule or interfere with any such decision of a medical assessor in respect of any such assessment.

## Chapter 4 Motor accident claims

### Part 4.1 Preliminary

#### 66 Definitions (cf s 40 MAA)

(1) In this Chapter:

**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:

(a) the Nominal Defendant, and

(b) where a claim is handled on behalf of an insurer by another insurer, the other insurer.

(2) In this Chapter, 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.

#### 67 Application of Chapter (cf s 41 MAA)

(1) This Chapter applies to and in respect of a claim relating to a motor accident occurring after the commencement of this Act.

(2) This Chapter applies to and in respect of such a claim whether or not there is a third-party policy in respect of the claim.

#### **Note—**

This Chapter applies only if the vehicle has motor accident insurance cover for the claim. See section 3B.

#### 68 Claims Handling Guidelines of Authority (cf s 40B MAA)

(1) The Authority may issue to licensed insurers guidelines with respect to the manner in which insurers and those acting on their behalf are to deal with claims (**MAA Claims Handling Guidelines**).

(2) The Authority may amend, revoke or replace MAA Claims Handling Guidelines.

(3) The Authority is to consult the following about any proposed MAA Claims Handling

Guidelines:

- (a) Insurance Council of Australia Limited,
  - (b) Council of the Bar Association,
  - (c) Council of the Law Society.
- (4) MAA Claims Handling Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) It is a condition of an insurer's licence under Part 7.1 that the insurer comply with MAA Claims Handling Guidelines.

**69 Claims Assessment Guidelines of Authority**

- (1) The Authority may issue guidelines for or with respect to procedures for the assessment of claims under Part 4.4 and associated matters (***MAA Claims Assessment Guidelines***).
- (2) The Authority may amend, revoke or replace MAA Claims Assessment Guidelines.
- (3) The Authority is to consult the following about any proposed MAA Claims Assessment Guidelines:
- (a) Insurance Council of Australia Limited,
  - (b) Council of the Bar Association,
  - (c) Council of the Law Society.
- (4) MAA Claims Assessment Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) MAA Claims Assessment Guidelines are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (6) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to MAA Claims Assessment Guidelines in the same way as those sections apply to statutory rules.

**Editorial note—**

For Guidelines issued pursuant to this section see Gazettes No 30 of 3.3.2006, p 1100; No 87 of 11.7.2008, p 7016 and No 122 of 4.9.2009, p 4969.

## Part 4.2 Claims and other preliminary matters

### 70 Reporting of motor accident to police

- (1) Unless a police officer attended the motor accident, a motor accident that gives rise to a claim must be reported to a police officer by or on behalf of the claimant within 28 days after the motor accident. This requirement is referred to in this section as the ***police accident report requirement***.
- (2) A person who makes a claim must provide to the insurer a full and satisfactory explanation for any non-compliance with the police accident report requirement.
- (3) If the police accident report requirement for a claim is not complied with, the claim cannot be referred for assessment under Part 4.4 unless:
  - (a) the insurer has lost the right to reject the claim on the ground of that non-compliance, or
  - (b) a claims assessor has, on the assessment of a dispute as to whether the claimant has a full and satisfactory explanation for the non-compliance, assessed that sufficient cause existed to justify the delay in reporting the motor accident to a police officer and that a report of the motor accident to a police officer was made within a reasonable period in the circumstances, or
  - (c) the claim is referred only for a certificate of exemption from assessment under Part 4.4.
- (4) The insurer loses the right to reject a claim on the ground of non-compliance with the police accident report requirement if the insurer:
  - (a) does not, within 2 months after receiving the claim, reject the claim on the ground of that non-compliance or ask the claimant to provide a full and satisfactory explanation for the non-compliance, or
  - (b) does not, within 2 months after receiving an explanation for the non-compliance, reject the explanation.
- (5) If court proceedings are commenced on a claim in respect of which the police accident report requirement has not been complied with, the insurer may apply to the court to have the proceedings dismissed on that ground.
- (6) An application to have proceedings dismissed on the ground of non-compliance with the police accident report requirement cannot be made more than 2 months after the statement of claim is served on the defendant and received by the insurer and also cannot be made if the insurer has lost the right to reject the claim on the ground of that non-compliance.
- (7) On an application to have proceedings dismissed on the ground of non-compliance

with the police accident report requirement, the court must dismiss the proceedings unless satisfied that sufficient cause existed to justify the delay in reporting the motor accident to a police officer and that a report of the motor accident to a police officer was made within a reasonable period in the circumstances.

- (8) In this section, a reference to an insurer includes a reference to the person against whom the claim is made.

**71 Authority's access to police information** (cf s 42A MAA)

- (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 motor 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 to 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.

**72 Time for and notice of making of claims** (cf s 43 MAA)

- (1) 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.
- (2) A claim is made by giving notice of the claim as follows:
- (a) in the case of a claim against a person whose insurer is a third-party insurer, to the person's insurer,
  - (b) in any other case, to the person against whom the claim is made.
- (3) The requirement under subsection (2) (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.

**73 Late making of claims** (cf s 43A MAA)

- (1) A claim may be made more than 6 months after the relevant date for the claim under section 72 (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 insurer.
- (2) 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.
- (3) If a late claim is made, the claim cannot be referred for assessment under Part 4.4 unless:
  - (a) the insurer has lost the right to reject the claim on the ground of delay, or
  - (b) a claims assessor has, on the assessment of a dispute as to whether a late claim may be made in accordance with this section, assessed that the claimant has a full and satisfactory explanation for the delay in making the claim, or
  - (c) the claim is referred only for a certificate of exemption from assessment under Part 4.4.
- (4) The insurer loses the right to reject a late claim on the ground of delay if the insurer:
  - (a) does not, within 2 months after receiving the claim, reject the claim on the ground of delay or ask the claimant to provide a full and satisfactory explanation for the delay, or
  - (b) does not, within 2 months after receiving an explanation for the delay, reject the explanation.
- (5) If court proceedings are commenced on a late claim, the insurer may apply to the court to have the proceedings dismissed on the ground of delay.
- (6) An application to have proceedings dismissed on the ground of delay cannot be made more than 2 months after the statement of claim is served on the defendant and received by the insurer and also cannot be made if the insurer has lost the right to reject the claim on the ground of delay.
- (7) On an application to have proceedings on a late claim dismissed on the ground of delay, the court must dismiss the proceedings unless satisfied that the claimant has a full and satisfactory explanation for the delay in making the claim.
- (8) In this section, a reference to an insurer includes a reference to the person against whom the claim is made.

**Note—**

The combined effect of sections 72 and 73 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 more than 6 months after the date of the accident or death, a full and satisfactory explanation for the delay in making the claim must be provided.

Section 96 provides that a dispute about whether a late claim can be made may be referred to a claims assessor.

**74 Form of notice of claim** (cf s 44 MAA)

- (1) A notice of a claim under this Part 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.
- (2) A notice of claim given to an insurer may, if approved by the Authority, require the claimant to do any one or more 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,
  - (c) authorise the insurer to provide information and documents so obtained by the insurer to persons specified in the authorisation.
- (2A) A copy of an authorisation for the obtaining of information and documents from a person is sufficient authorisation for that purpose and may be relied on as if it were the original authorisation.
- (3) The Authority may approve different forms according to the persons to whom the notice is to be given.
- (4) A notice of a claim given to an insurer must be verified by statutory declaration.

**75 Other approved forms** (cf s 44A MAA)

- (1) The Authority may approve forms (other than the form for a notice of claim) for use by insurers for the purposes of this Chapter.
- (2) Approved forms may include, but are not limited to, a certificate of earnings and a rehabilitation plan.

**76 Rejecting claims for failure to comply with section 74**

- (1) If section 74 has not been complied with, a claim cannot be referred for assessment

under Part 4.4 unless:

- (a) the insurer has lost the right to reject the claim for non-compliance with section 74, or
  - (b) a claims assessor has, on the assessment of a dispute as to whether the claim may be rejected for non-compliance with section 74, assessed that the non-compliance is technical and of no significance, or
  - (c) the claim is referred only for a certificate of exemption from assessment under Part 4.4.
- (2) The insurer loses the right to reject a claim for non-compliance with section 74 if within 2 months after receiving the claim the insurer does not reject the claim for non-compliance with that section.
  - (3) If court proceedings are commenced on a claim in respect of which section 74 has not been complied with, the insurer may apply to the court to have the proceedings dismissed on the ground of non-compliance with section 74.
  - (4) An application to have proceedings dismissed on the ground of non-compliance with section 74 cannot be made more than 2 months after the statement of claim is served on the defendant and received by the insurer and also cannot be made if the insurer has lost the right to reject the claim on the ground of that non-compliance.
  - (5) On an application to have proceedings dismissed on the ground of non-compliance with section 74, the court must dismiss the proceedings on that ground unless satisfied that the non-compliance is technical and of no significance.
  - (6) In this section, a reference to an insurer includes a reference to the person against whom the claim is made.

**77 Insured not to admit liability or act in respect of claim** (cf s 46 MAA)

- (1) A person may 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. However, this section does not prevent any person from truthfully answering any question reasonably asked of the person by a police officer.
- (2) An offer, promise or admission made in contravention of this section is of no effect.

**78 Power of insurer to act for insured** (cf s 47 MAA)

- (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 Act on the person in respect of the claim.
- (2) The person against whom the claim is made is required to 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 is to 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.

**79 Power of insurer to intervene in legal proceedings** (cf s 47A MAA)

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.

**Part 4.3 Duties with respect to claims**

**80 General duty of insurer to try to resolve claim expeditiously** (cf s 45 (1) MAA)

- (1) It is the duty of an insurer to endeavour to resolve a claim, by settlement or otherwise, as justly and expeditiously as possible.
- (2) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.

**81 Duty of insurer with respect to admission or denial of liability**

- (1) It is the duty of an insurer to give written notice to the claimant as expeditiously as possible whether the insurer admits or denies liability for the claim, but in any event within 3 months after the claimant gave notice of the claim under section 72.
- (2) If the insurer admits liability for only part of the claim, the notice is to include details

sufficient to ascertain the extent to which liability is admitted.

- (3) If the insurer fails to comply with this section, the insurer is taken to have given notice to the claimant wholly denying liability for the claim.
- (4) Nothing in this section prevents an insurer from admitting liability after having given notice denying liability or after having failed to comply with this section.
- (5) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.

## **82 Duty of insurer to make offer of settlement**

- (1) It is the duty of an insurer to make a reasonable offer of settlement to the claimant (unless the insurer wholly denies liability for the claim):
  - (a) within 1 month after the injury is sufficiently recovered to enable the claim to be quantified, or
  - (b) within 2 months after the claimant has provided to the insurer all relevant particulars about the claim as required by section 85A,whichever is the later.
- (2) An offer of settlement is to specify an amount of damages or a manner of determining an amount of damages.
- (3) If an offer of settlement is made on the basis that the insurer admits only part of the liability for the claim, the offer is to include details sufficient to ascertain the extent to which liability is admitted.
- (4) This section does not apply to:
  - (a) a claim made in respect of the death of a person, or
  - (b) a claim in respect of an injury that is not sufficiently recovered within 3 years after the motor accident to enable the claim to be quantified, or
  - (c) a claim in respect of which a medical assessor has declined to make an assessment under Part 3.4 of the degree of permanent impairment of the injured person because the impairment caused by the injury has not become permanent.
- (5) (Repealed)
- (6) The insurer is not entitled to delay the making of an offer of settlement under this section on the ground that any particulars about the claim are insufficient unless the insurer requested further relevant particulars within 2 weeks after the claimant provided particulars.

### **Note—**

Section 96 provides that a dispute about whether particulars about a claim are sufficient may be referred to a claims assessor.

- (7) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.

**Note—**

Section 91 provides that 2 months after the insurer makes an offer of settlement the claim, if not resolved, may be referred for assessment. If an offer is not duly made, the claim may be referred for assessment as soon as the time for making the offer has expired.

**83 Duty of insurer to make hospital, medical and other payments** (cf s 45 (2)–(4) MAA)

- (1) 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, and
  - (c) respite care expenses in respect of a claimant who is seriously injured and in need of constant care over a long term, and
  - (d) attendant care services expenses in respect of a claimant who is seriously injured and in need of constant care over a long term (being services provided by a person with appropriate training to provide those services, but not including services provided by a person who is related to the claimant or any services for which the claimant has not paid and is not liable to pay),
- as incurred.
- (2) The duty of an insurer under this section to make payments applies only to the extent to which those payments:
- (a) are reasonable and necessary in the circumstances, 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.

**Note—**

Medical disputes about payments under this section may be referred by the insurer or claimant to a medical assessor for assessment under Part 3.4. Other disputes may be referred to a claims assessor under section 96 for assessment.

- (2A) If the MAA Medical Guidelines approve particular treatment as appropriate treatment, or particular procedures as appropriate procedures with respect to the

provision of rehabilitation services or attendant care services, in respect of any matter, any treatment, rehabilitation services or attendant care services provided to the injured person that accords with the approved treatment or procedures is taken to be reasonable in the circumstances for the purposes of subsection (2) (a).

**Note—**

Subsection (2) (a) also requires that treatment and services be necessary in the circumstances.

- (3) An insurer may agree to make payments to or on behalf of the claimant in respect of attendant care services provided by a person who is related to the claimant or by a person other than a person with appropriate training to provide those services.
- (4) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.
- (5) 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.
- (6) The amount of a payment made under this section to or on behalf of a claimant is to be included in the damages recoverable by the claimant for the purposes of any reduction of those damages by reason of the contributory negligence of the deceased or injured person.

**Note—**

If damages are to be reduced by reason of contributory negligence, subsection (6) ensures that the reduction extends to amounts paid by an insurer under this section.

**84 Duty of insurer with respect to rehabilitation of injured person** (cf ss 37 (2) and (5), 38 MAA)

- (1) An insurer (to the extent of the insurer's liability under a third-party policy or this Act) must do all such things as may, in accordance with MAA Medical Guidelines, be reasonable and necessary for the rehabilitation of an injured person, including:
  - (a) meeting the reasonable and necessary costs and expenses of travel and accommodation incurred by the person in order to obtain rehabilitation services, and
  - (b) if the injured person is under the age of 18 years, meeting the reasonable and necessary costs and expenses of travel and accommodation incurred by a parent or other carer of the injured person in order to accompany the injured person while he or she is obtaining rehabilitation services.
- (2) In the provision of rehabilitation services, an insurer must, 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 insurer.

- (3) If rehabilitation services are provided to an injured person before an admission of liability is made by the insurer, the provision of those services is not to be taken to be an admission of liability.
- (4) An 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 143.
- (5) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.
- (6) The regulations may prescribe a rate at which the cost of travel by any specified mode of transport is to be calculated for the purposes of the payment of travel costs under this section.

#### **84A Duty of insurer to make interim payments in case of financial hardship**

- (1) 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 economic loss but only to the extent that such a payment is necessary to avoid the claimant suffering financial hardship.

**Note—**

A dispute about payments under this section may be referred to a claims assessor under section 96 for assessment.

- (2) It is a condition of an insurer's licence under Part 7.1 that the insurer must comply with this section.
- (3) 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.
- (4) The amount of a payment made under this section to or on behalf of a claimant is to be included in the damages recoverable by the claimant for the purposes of any reduction of those damages by reason of the contributory negligence of the deceased or injured person.

**Note—**

If damages are to be reduced by reason of contributory negligence, subsection (4) ensures that the reduction extends to amounts paid by an insurer under this section.

#### **85 Duty of claimant to co-operate with other party** (cf s 48 MAA)

- (1) 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.
- (3) 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.
- (4) 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.

#### **85A Duty of claimant to provide relevant particulars of claim**

- (1) A claimant must provide the insurer of the person against whom the claim is made with all relevant particulars about the claim as expeditiously as possible after the claim is made.
- (2) The Authority may approve a form to be completed by claimants in connection with the provision of particulars in compliance with this section.

- (3) For the purposes of this section, **relevant particulars** about a claim are 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) 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.

**85B Consequences of failure to provide relevant particulars of claim**

- (1) If after a period of 2 years and 6 months since the motor accident concerned a claimant has failed without reasonable excuse to provide the insurer with all relevant particulars about the claim (as required by section 85A), the insurer may by a written direction given to the claimant within 2 months after the end of that period require the claimant to provide those particulars.
- (2) The insurer's direction must be given in the form approved by the Authority.
- (3) If the claimant does not comply with the direction within 3 months after it is given, the claimant is taken to have withdrawn the claim.
- (4) The claimant may make an application for reinstatement of the claim:
  - (a) to the Authority for a claim that is not exempt from assessment under Part 4.4, or
  - (b) to a court of competent jurisdiction for a claim that is exempt from assessment under Part 4.4.
- (5) An application for reinstatement made to the Authority is to be referred for assessment as a dispute under section 96:
  - (a) by a claims assessor if made less than 3 years after the date of the motor accident, or
  - (b) by the Principal Claims Assessor if made 3 years or more after the date of the motor accident.
- (6) If the application for reinstatement is made less than 3 years after the date of the motor accident, the claim is to be reinstated if the court or claims assessor is satisfied that the claimant has a full and satisfactory explanation for the failure to provide the required particulars.
- (7) If the application for reinstatement is made 3 years or more after the date of the motor accident, the claim is to be reinstated if the court or the Principal Claims Assessor is satisfied that:

- (a) the claimant has a full and satisfactory explanation for the failure to provide the required particulars, and
  - (b) the total damages of all kinds likely to be awarded to the claimant if the claim succeeds are not less than 25% of the maximum amount that may be awarded for non-economic loss under section 134 as at the date of the motor accident.
- (8) This section does not apply to a claim that, as at 2 years and 6 months since the motor accident concerned, is the subject of a determination by a medical assessor declining to make an assessment under Part 3.4 of the degree of permanent impairment of the injured person because the impairment caused by the injury has not become permanent.

**86 Medical and other examination of claimant** (cf s 49 MAA)

- (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, or
  - (b) to undergo a rehabilitation assessment, an assessment to determine functional and vocational capacity or an assessment to determine attendant care needs, by an assessor nominated by that person or insurer, or
  - (c) to undergo an assessment in accordance with MAA Medical Guidelines, not being, in any such case, an examination or assessment that is unreasonable, unnecessarily repetitious or dangerous.
- (2) Any such examination or assessment is at the cost of the person who requests it. The claimant may decline to undergo the examination or assessment unless that person pays the claimant a reasonable sum to meet the reasonable and necessary costs and expenses incurred by the claimant in connection with the examination or assessment.
- (3) A claimant must comply with any request by a medical assessor or the Authority to undergo a medical examination or an assessment by the medical assessor for the purposes of a medical assessment under Part 3.4.
- (4) If the claimant fails without reasonable excuse to comply with such a request:
  - (a) the claim cannot be referred to the Authority for assessment under Part 4.4 and any such assessment cannot be continued while the failure continues, and
  - (b) court proceedings cannot be commenced or continued in respect of the claim while the failure continues.
- (5) The regulations may prescribe a rate at which the cost of travel by any specified

mode of transport is to be calculated for the purposes of the payment of travel costs under this section.

**87 Duty of owner and driver to co-operate with insurer** (cf s 50 MAA)

- (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 must co-operate fully with the vehicle owner's insurer in respect of the claim.
- (2) In particular, the owner or driver of any motor vehicle involved in a motor accident must:
  - (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 motor vehicle at the time of the motor accident to which a claim relates must furnish to the insurer such information as the insurer may reasonably request in connection with the claim.

Maximum penalty (subsection (3)): 20 penalty units.

## **Part 4.4 Claims assessment and resolution**

### **Division 1 Preliminary**

**88 Definitions**

- (1) In this Part:

**claims assessor** means a member of staff in the Motor Accidents Claims Assessment and Resolution Service who is designated as a claims assessor pursuant to section 99.

**party** to an assessment under this Part means the claimant or the insurer in respect of the claim referred for assessment.

**specify** an amount of damages includes specify a manner of determining the amount of damages.

- (2) A reference in this Part to referring a claim for assessment under this Part includes a

reference to referring a claim for a certificate of exemption from assessment under this Part.

- (3) A reference in this Part to an assessment of a claim includes a reference to the result of the assessment.

## **89 Application**

- (1) This Part applies to any claim, whether or not the insurer admits or denies liability.
- (2) Nothing in this Part prevents a claim from being settled at any time.

### **Note—**

Section 108 provides that a person cannot commence court proceedings in respect of a claim unless it has been referred for assessment under this Part and a certificate as to the exclusion of the claim from assessment or as to the results of assessment has been issued.

## **Division 1A Document exchange and settlement conference before claims assessment**

### **89A Parties required to participate in settlement conference**

- (1) The parties to a claim must participate in a settlement conference as soon as practicable after the insurer makes an offer of settlement to the claimant under section 82.
- (2) A claim cannot be referred to the Authority for assessment under this Part until the parties have participated in a settlement conference.
- (3) A party can however refer a claim for assessment if a claims assessor is satisfied that the party is ready and willing to participate in a settlement conference but the other party has refused or failed to participate despite having had a reasonable opportunity to do so.
- (4) A **settlement conference** is a conference, the purpose of which is to settle the claim, in which the following persons participate:
  - (a) the claimant, the claimant's guardian or some other person authorised by the claimant to settle the claim on the claimant's behalf,
  - (b) a person authorised by the insurer to settle the claim on the insurer's behalf.

### **89B Parties to exchange documents before settlement conference**

- (1) Before the parties' settlement conference, each party to the claim must provide the other party or parties to the claim with a copy of all the documents on which the party proposes to rely for the purposes of the assessment of the claim under this Part.
- (2) If a party does not provide a copy of a document before the parties' settlement

conference, the document (and any information contained in the document) is not to be considered or otherwise taken into account by a claims assessor for the purposes of the assessment of the claim under this Part unless the claims assessor admits the document to assessment on being satisfied that the probative value of the document substantially outweighs any prejudicial effect it may have on another party.

- (3) An insurer is not required to provide a copy of documents under this section if the insurer suspects on reasonable grounds that the claim is fraudulent or otherwise not made in good faith.

### **89C Settlement offers to be made if claim not settled**

- (1) If the parties participate in a settlement conference but the claim is not settled, each party must make an offer of settlement within 14 days after the settlement conference concludes.
- (2) A claim cannot be referred to the Authority for assessment under this Part until each party has made the required offer of settlement.
- (3) An offer of settlement must include a schedule of damages sufficient to explain the manner of calculation of the damages to which the offer relates.
- (4) A party who has made the required offer of settlement can refer the claim for assessment if more than 14 days have elapsed since the settlement conference concluded and a claims assessor is satisfied that the other party has refused or failed to make the required offer of settlement.

### **89D Compliance with Division**

- (1) A claims assessor may, in assessing costs on a claim that is the subject of assessment under this Part, impose a costs penalty on a party to the claim if the claims assessor is satisfied that:
  - (a) the party has failed without reasonable excuse to participate in a settlement conference or to make an offer of settlement as required by this Division, or
  - (b) the party has failed without reasonable excuse to provide a copy of a document to other parties before the parties' settlement conference and the document was subsequently admitted to assessment under this Part despite that failure.
- (2) The costs penalty that may be imposed on a party is a penalty of up to 25% (imposed by increasing the costs to be awarded against the party, or decreasing the costs to be awarded in favour of the party, by up to 25%). In this section, **costs** means costs for the provision of legal services (including disbursements).
- (3) It is a condition of a licence granted under Part 7.1 that the licensed insurer must comply with the requirements of this Division.

### **89E Certain claims excluded from Division**

This Division does not apply to a claim if:

- (a) the claim is exempt from assessment under this Part pursuant to section 92 (1) (a), or
- (b) the period within which the insurer was required to make an offer of settlement to the claimant under section 82 has expired and the insurer has failed to make the offer, or
- (c) the insurer wholly denies liability in respect of the claim, or
- (d) the claim is in respect of the death of a person, or
- (e) the claim is in respect of an injury that is not sufficiently recovered within 3 years after the motor accident to enable the claim to be quantified.

## **Division 2 Assessment of claims**

### **90 Reference of claim**

A claim may be referred to the Authority by the claimant or the insurer, or both, for assessment under this Part.

### **91 Time limits for referring claims**

- (1) A claim may not be referred for assessment under this Part unless a period of 28 days has elapsed after each party to the claim has made an offer of settlement as required by section 89C.
- (2) However a claim may be referred for assessment under this Part at any time if:
  - (a) Division 1A (Document exchange and settlement conference before claims assessment) does not apply to the claim (as provided by section 89E), or
  - (b) a provision of Division 1A allows the claim to be referred for assessment under this Part without the parties having participated in a settlement conference or without each party having made the offer of settlement required by section 89C, or
  - (c) the claim is referred for assessment by way of referring the claim for a certificate of exemption from assessment under this Part, or
  - (d) a medical assessor has (under section 133) declined to make an assessment of the degree of permanent impairment of the injured person.

### **92 Claims exempt from assessment**

- (1) A claim is exempt from assessment under this Part if:
  - (a) the claim is of a kind that is exempt under MAA Claims Assessment Guidelines or

the regulations, or

(b) a claims assessor has made a preliminary assessment of the claim and has determined (with the approval of the Principal Claims Assessor) that it is not suitable for assessment under this Part.

(2) If a claim is exempt from assessment under this Part, the Principal Claims Assessor must, as soon as practicable, issue the insurer and claimant with a certificate to that effect (enabling court proceedings to be commenced in respect of the claim concerned).

### **93 Arrangements for assessment**

The Principal Claims Assessor is responsible for making arrangements as to the claims assessor who is to assess any particular claim or class of claims that are not exempt from assessment.

### **94 Assessment of claims**

- (1) The claims assessor is, in respect of a claim referred to the assessor for assessment, to make an assessment of:
  - (a) the issue of liability for the claim (unless the insurer has accepted liability), and
  - (b) the amount of damages for that liability (being the amount of damages that a court would be likely to award).
- (2) Such an assessment is to be made having regard to such information as is conveniently available to the claims assessor, even if one or more of the parties to the assessment does not co-operate or ceases to co-operate.
- (3) The assessment is to specify an amount of damages.
- (4) The claims assessor must, as soon as practicable, after an assessment issue the insurer and claimant with a certificate as to the assessment.
- (5) The claims assessor is to attach a brief statement to the certificate, setting out the assessor's reasons for the assessment.
- (6) If the Principal Claims Assessor is satisfied that a certificate as to an assessment or a statement attached to the certificate contains an obvious error, the Principal Claims Assessor may issue, or approve of the claims assessor issuing, a replacement certificate or statement to correct the error.

#### **94A Claims assessor may assess costs**

- (1) In making an assessment and specifying damages under section 94 in respect of a claim, a claims assessor may include in the assessment an assessment of the claimant's costs (including costs for legal services and fees for medico-legal services)



in the matter.

- (2) An assessment of those costs may also be made (whether or not an assessment has been made under subsection (1)) if a court does not determine a matter after the issue of a certificate under section 94 but remits the matter for further assessment under this Part.
- (3) In making an assessment under this section, a claims assessor:
  - (a) may have regard to the amount of any written offer of settlement made by either party to the matter, and
  - (b) must give effect to any requirement of a court under section 151 (3), and
  - (c) must give effect to any requirement of the regulations under Chapter 6 as to costs that may be included in an assessment or award of damages or fixing maximum fees and costs,
  - (d) must have regard to the matters set out in section 363 of the *Legal Profession Act 2004*.
- (4) A claimant or an insurer (or an Australian legal practitioner acting for a claimant or an insurer in respect of the relevant claim) has the same right of appeal against an assessment made under this section as the claimant, insurer or legal practitioner would have under section 384 or 385 of the *Legal Profession Act 2004* if the assessment were a determination made by a costs assessor under Part 3.2 of that Act in respect of a bill of costs.

## **95 Status of assessments**

- (1) An assessment under this Part of the issue of liability for a claim is not binding on any party to the assessment.
- (2) An assessment under this Part of the amount of damages for liability under a claim is binding on the insurer, and the insurer must pay to the claimant the amount of damages specified in the certificate as to the assessment if:
  - (a) the insurer accepts that liability under the claim, and
  - (b) the claimant accepts that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued.

### **Note—**

If the amount of damages is not accepted by the claimant within that period, section 151 makes provision with respect to liability for legal costs incurred after the certificate of assessment was issued.

- (2A) The amount of damages payable by an insurer (including any costs assessed as payable by the insurer) must be paid within such period as may be prescribed by the

regulations and the regulations may require the payment of interest on so much of the amount payable as is from time to time unpaid after the end of that period. The rate of interest may be set by reference to the rate of interest prescribed for the purposes of section 101 of the *Civil Procedure Act 2005* but may not exceed that rate.

- (3) It is a condition of an insurer's licence under Part 7.1 that the insurer complies with this section.

## **96 Special assessments of certain disputes in connection with claims**

- (1) This section applies to a dispute between a claimant and an insurer as to:
- (a1) whether for the purposes of section 34 (Claim against Nominal Defendant where vehicle not identified) there has been due inquiry and search to establish the identity of a motor vehicle, or
  - (a) whether a late claim may be made in accordance with section 73, or
  - (b) whether the claimant has a full and satisfactory explanation for non-compliance with the police accident report requirement under section 70, or
  - (c) whether a claim may be rejected for non-compliance with section 74, or
  - (d) whether the insurer is entitled to delay the making of an offer of settlement under section 82, or
  - (e) whether a payment is required to be made under section 83 (not being a medical dispute that may be referred to a medical assessor under Part 3.4), or
  - (f) whether a payment is required to be made under section 84A (Duty of insurer to make interim payments in case of financial hardship), or
  - (g) whether a request made of a claimant under section 85 (Duty of claimant to co-operate with other party) is reasonable or whether a claimant has a reasonable excuse for failing to comply with that section, or
  - (h) whether the insurer is entitled to give a direction to the claimant under section 85B (Consequences of failure to provide relevant particulars of claim), or
  - (i) whether a claim that is taken to have been withdrawn under section 85B should be reinstated.
- (2) Any such dispute may be referred at any time to the Authority by the claimant or the insurer, or both, for assessment under this Part.
- (3) Any such dispute is to be referred to a claims assessor, the dispute is to be assessed and a certificate is to be issued by the claims assessor in accordance with the relevant provisions of this Division relating to the assessment of claims. Division 3 applies to

the assessment of the dispute in the same way as it applies to the assessment of a claim.

- (4) An assessment of a dispute under this section is binding on the parties to the dispute to the extent that it relates to the duties of the parties with respect to the claim under Part 4.3.
- (5) An assessment of a dispute under this section may include an assessment of the claimant's costs (including costs for legal services and fees for medico-legal services) in the assessment. Section 94A extends to an assessment of those costs.
- (6) An assessment of the claimant's costs on a dispute is binding on the insurer and the insurer must pay to the claimant the amount of the assessed costs.

## **97 Regulations**

- (1) The regulations may make provision for or with respect to any aspect of procedures to be followed under this Part, including provision for or with respect to:
  - (a) the manner of referring claims or disputes for assessment, and
  - (b) the documentation that is to accompany such a reference of a claim or dispute for assessment, and
  - (c) the manner of presenting documents and information to a claims assessor by the parties, including time limits for the presentation of the documents and information, and
  - (d) the making of assessments, and
  - (e) the manner of specifying an amount of damages, and
  - (f) the extension or abridgment of any period referred to in this Part.
- (2) The Motor Accidents Council may refer to the Parliamentary Committee any inconsistency between the regulations and the MAA Claims Assessment Guidelines and the Parliamentary Committee may review and make recommendations about the resolution of any such inconsistency.

## **Division 3 Provisions relating to claims assessors**

### **98 Motor Accidents Claims Assessment and Resolution Service**

- (1) The Authority is to establish in association with its operations a unit, to be known as the Motor Accidents Claims Assessment and Resolution Service.
- (2) The Service is to consist of claims assessors and such other officers of the Authority as the Authority determines.

## **99 Claims assessors**

- (1) For the purposes of this Part, a claims assessor is a member of staff for the time being designated by the Authority as a claims assessor.
- (2) The members of staff so designated are to be persons who are, in the opinion of the Authority, suitably qualified to be claims assessors under this Part.
- (3) (Repealed)

## **99A Principal Claims Assessor**

- (1) The Minister is to appoint a person who is an Australian lawyer as Principal Claims Assessor.
- (2) The Principal Claims Assessor has and may exercise all the functions of a claims assessor under this Act.
- (3) The Principal Claims Assessor can delegate to any member of staff any of the Principal Claims Assessor's functions under this Act, except this power of delegation.
- (4) Schedule 3 has effect.

## **100 Power of claims assessor to require information**

- (1) A claims assessor may give a direction in writing to a party to an assessment under this Part requiring the party:
  - (a) to produce to the assessor, at a time and place specified in the direction, specified documents in the possession of the party, being documents that the assessor considers relevant to the assessment of the claim concerned, or
  - (b) to furnish specified information to the assessor within a time specified in the direction, being information that the assessor considers relevant to the assessment of the claim concerned, or
  - (c) to give within a time specified in the direction any specified consent, authority or direction that the assessor considers necessary or desirable for the purpose of facilitating the provision by another person of documents or information pursuant to a direction under subsection (1A).
- (1A) A claims assessor may give a direction in writing to a person who is not a party to an assessment under this Part requiring the person:
  - (a) to produce to the assessor, at a time and place specified in the direction, specified documents in the possession of the person, being documents that the assessor considers relevant to the assessment of the claim concerned, or
  - (b) to furnish specified information to the assessor within a time specified in the

direction, being information that the assessor considers relevant to the assessment of the claim concerned.

(1B) The Authority must pay the reasonable costs incurred by a person in complying with a direction under subsection (1A).

(2) A person who fails without reasonable excuse to comply with a direction given to the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) If a party to an assessment fails without reasonable excuse to produce a document or furnish information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before a court have the document or information admitted in the proceedings unless the court otherwise orders in the special circumstances of the case.

(4) The regulations may make provision for or with respect to any of the following matters:

(a) exempting specified kinds of documents or information from the operation of this section,

(b) specifying cases and circumstances in which a claims assessor is required to exercise the assessor's powers under this section.

#### **101 Power of claims assessor to provide documents and information to a party**

(1) When documents or information are produced or furnished to a claims assessor by a party to an assessment (whether or not pursuant to a requirement under this Act), the assessor may produce or furnish the documents or information to any other party to the assessment.

(1A) When documents or information are produced or furnished to a claims assessor by a person who is not a party to an assessment (pursuant to a direction under section 100 (1A)), the assessor may produce or furnish the documents or information to any party to the assessment.

(2) The regulations may make provision for or with respect to any of the following matters:

(a) exempting specified kinds of documents or information from the operation of this section,

(b) specifying cases and circumstances in which a claims assessor is required to exercise the assessor's powers under subsection (1),

(c) specifying circumstances in which documents or information produced or

furnished to a claims assessor may not be produced or furnished by the assessor to a party to the assessment.

### **102 Summons to appear at assessment conference**

- (1) The Principal Claims Assessor may issue a summons requiring the attendance of a party to an assessment at an assessment conference (as referred to in section 104) on the assessment of a claim if the Principal Claims Assessor is satisfied that the party has failed without reasonable excuse to comply with a request by a claims assessor to attend an assessment conference on the assessment.
- (2) A person must not fail without reasonable excuse to comply with a summons served on the person under this section.

Maximum penalty: 50 penalty units.

### **103 Protection of claims assessors**

- (1) A matter or thing done or omitted to be done by a claims assessor in the exercise of the assessor's functions does not, if the matter or thing was done or omitted in good faith, subject the assessor personally to any action, liability, claim or demand.
- (2) A claims assessor is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a claims assessor.

### **104 Proceedings before claims assessors**

- (1) In this section:

**assessment conference** means any conference or other proceeding held with or before a claims assessor in connection with an assessment of a claim, and includes any such proceedings at which the parties (or some of them) participate by telephone, closed-circuit television or other means.

- (2) A person who is a party to an assessment under this Part is entitled to be represented by an Australian legal practitioner or by an agent. The claims assessor may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (3) A party to an assessment at an assessment conference is entitled to such representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at the assessment conference.
- (4) A claims assessor must take into account any written submission prepared by an Australian legal practitioner acting for a party to the assessment and submitted by or on behalf of the party (whether or not the party is represented by an Australian legal

practitioner at an assessment conference on the assessment of the claim).

- (5) A claims assessor may, subject to any general directions of the Principal Claims Assessor, hold an assessment conference with all relevant parties in attendance and with relevant experts in attendance, or a separate assessment conference in private with any of them.
- (6) If the claims assessor is satisfied that sufficient information has been supplied to him or her in connection with an assessment, the assessor may exercise functions under this Act without holding any assessment conference or other formal hearing.
- (7) In proceedings before a court with respect to a claim (other than proceedings under Part 4.6), evidence of a statement made during an assessment conference is not admissible unless the person who made the statement agrees to the evidence being admitted.

**Note—**

See also section 115 with respect to disclosure of result of assessment.

**105 Control and direction of claims assessors**

- (1) This section applies to officers of the Authority in their capacity as claims assessors.
- (2) A claims assessor is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the assessor that affect the interests of the parties to an assessment, and the Authority or any public servant may not overrule or interfere with any such decision of the claims assessor in respect of any such assessment.
- (3) Subject to subsection (2), claims assessors are, in the exercise of their functions, subject to the general control and direction of the Principal Claims Assessor. The Principal Claims Assessor is, in the exercise of his or her functions, subject to the general direction and control of the Chief Executive Officer.
- (4) Subsection (2) does not prevent the making of arrangements for the training of claims assessors, and does not prevent claims assessors from obtaining advice, to ensure consistently correct application of the provisions of this Act and the regulations and of other relevant matters.
- (5) This section does not affect the exercise of the functions of the Chief Executive Officer under the *Public Sector Employment and Management Act 2002* with respect to claims assessors.

**106 MAA monitoring and oversight**

- (1) Claims assessments under this Part are subject to relevant provisions of MAA Claims Assessment Guidelines relating to those assessments.

- (2) The Authority may make arrangements for the provision of training and information to claims assessors to promote accurate and consistent claim assessments under this Part.

## **Part 4.5 Court proceedings on claims**

### **107 Forum for court proceedings** (cf s 51 MAA)

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

### **108 Claims assessment or exemption pre-condition for commencement of court proceedings**

- (1) A claimant is not entitled to commence court proceedings against another person in respect of a claim unless:
  - (a) the Principal Claims Assessor has issued a certificate in respect of the claim under section 92 (Claims exempt from assessment), or
  - (b) a claims assessor has issued a certificate in respect of the claim under section 94 (Assessment of claims).
- (2) The provisions of this section are in addition to those of section 109. Accordingly, both sections are capable of applying to a claim.

### **109 Time limitations on commencement of court proceedings** (cf s 52 MAA)

- (1) 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.
- (2) Time does not run for the purposes of this section from the time that a claim has been referred to the Authority for assessment and until 2 months after a certificate as to the assessment or exemption from assessment is issued.
- (3) 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% of the maximum amount that may be awarded for non-economic loss under section 134 as at the date of the relevant motor accident.



- (4) Subsection (3) (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.

**110 Insurer may require claimant to commence court proceedings** (cf s 52B)

- (1) The insurer of a person against whom a claim is made may give the claimant notice requiring the claimant to commence court proceedings in respect of the claim if:
  - (a) the claimant has been entitled to commence the proceedings for a period of at least 6 months, and
  - (b) at least 18 months have elapsed since the date of the motor accident to which the claim relates.
- (2) The claimant must comply with the notice within 3 months after its receipt.
- (3) If the claimant does not comply with the notice as required by this section, the claimant is taken to have withdrawn the claim.
- (4) A claimant whose claim is taken to have been withdrawn by the operation of this section may apply to a court of competent jurisdiction for reinstatement of the claim.
- (5) The court may reinstate the claim if the court is satisfied that the claimant has a full and satisfactory explanation for the failure to comply with the notice.

**111 Matter to be remitted for further claims assessment where significant new evidence produced in court proceedings**

- (1) This section applies to court proceedings in respect of a claim for which a claims assessor has issued a certificate under section 94.
- (2) If significant evidence is adduced in the court proceedings that was not made available to the claims assessor, the court is required to adjourn the proceedings until:
  - (a) the party who has adduced the evidence has referred the matter for further assessment under Part 4.4, and
  - (b) a claims assessor has issued a further certificate under section 94 in respect of the claim.
- (3) For the purposes of this section, significant evidence is evidence that the court considers may have materially affected the assessment made by the claims assessor if it had been made available to the claims assessor when the initial claims assessment was made (whether or not it was available at that time).

**Note—**

See section 151 for cost penalty where the new evidence was available at the time of the original claims assessment.

**112 Presumption of agency** (cf s 53 MAA)

- (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) is 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 is to 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 113 or the Nominal Defendant, and
    - (ii) proceedings in which the owner or driver, the owner's 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 tortfeasor pursuant to Part 3 of that Act.

**113 Proceedings against insurer if insured dead or unable to be served** (cf s 54 MAA)

- (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 judgment against the insured person.
- (2) The fact that a person cannot be served with process is not to be regarded as having been proved unless it is established that all reasonable inquiries have been made in an effort to effect service.

**114 Proof of inability to serve process and give notice** (cf s 55 MAA)

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.

**115 Disclosure of offers or assessment by claims assessor** (cf s 56 MAA)

- (1) This section applies to:
- (a) the amount of an offer of settlement under section 82 in connection with a claim, or
  - (b) the amount of an assessment of damages by a claims assessor under Part 4.4.
- (2) Except as prescribed by the regulations, any such amount is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings, and is not to be disclosed to or taken into account by the court, before the court's determination of the amount of damages in the proceedings.

## **Part 4.6 Miscellaneous provisions**

**116 Licensed insurers to deter fraudulent claims** (cf s 64A MAA)

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

**117 False claims** (cf s 65 MAA)

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

- (a) in an accident notification form under Part 3.2, or
- (b) in a notice of a claim given to a person or an insurer under Part 4.2, or
- (c) in the course of the assessment of a claim under Part 4.4, or
- (d) 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.

**118 Remedy available where claim fraudulent** (cf s 66 MAA)

- (1) This section applies to a claimant or insurer if it is established that, for the purpose of obtaining a financial benefit, the claimant or insurer 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 claim.
- (3) If this section applies to an insurer, the claimant is entitled to recover from the insurer as a debt the amount of the financial benefit so obtained by the insurer and any costs incurred by the claimant in connection with the claim.

**119 Joinder of insurer where false claim alleged** (cf s 66A MAA)

- (1) If:
  - (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 motor 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 anything to the contrary in section 38 of the *Evidence Act 1995*.
- (7) Subsections (3)–(6) apply to 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.

**120 Claims register** (cf s 67 MAA)

- (1) Within such period after receiving notice of a claim as the Authority may reasonably require, an insurer must forward to the Authority such details of the claim as the Authority requires.
- (2) An insurer must provide such additional details to the Authority for inclusion in the register under this section as the Authority may reasonably require from time to time.
- (3) The Authority and the WorkCover Authority are authorised to exchange information concerning claims under this Act and claims under the Workers Compensation Acts.
- (3A) The Authority and the Lifetime Care and Support Authority are authorised to exchange information concerning claims under this Act, payments made to or on behalf of participants in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* and the treatment and care needs of those participants.
- (4) The NSW Self Insurance Corporation constituted under the *NSW Self Insurance Corporation Act 2004* is authorised to provide to the Authority any information concerning claims under the *Motor Vehicles (Third Party Insurance) Act 1942* and the *Transport Accidents Compensation Act 1987*.
- (5) The Authority is to maintain a claims register comprising:
  - (a) details of claims notified by insurers under this Act, and
  - (b) details of claims made on the Nominal Defendant, and

- (c) details of claims under the Workers Compensation Acts, the *Motor Vehicles (Third Party Insurance) Act 1942* or the *Transport Accidents Compensation Act 1987* of which the Authority is informed under this Act, and
  - (d) such additional details as the Authority considers appropriate for inclusion in the register, and
  - (e) details of which the Authority is informed under this Act of payments made to or on behalf of participants in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* and of the treatment and care needs of those participants.
- (6) The claims register is to be open to inspection only by licensed insurers and such other persons or bodies as may be approved by the Authority.
- (7) Licensed insurers are authorised to exchange information concerning claims notified by them under this Act.
- (8) In this section:

**claim** includes an accident notification form under Part 3.2.

**this Act** includes the *Motor Accidents Act 1988*.

## **121 Regulation of advertising and other marketing of services**

- (1) The regulations may make provision for or with respect to regulating (including prohibiting) conduct by any person (including advertising) that relates to:
- (a) the marketing of services to be provided by an Australian legal practitioner or an agent in connection with claims under this Act, or
  - (b) the use of the expression “green slip” in connection with any commercial services (whether in connection with claims under this Act or the issue of third-party policies under this Act), other than services provided by or on behalf of the Authority or licensed insurers.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the *Legal Profession Act 2004*.
- (3) Any such regulation may impose a penalty not exceeding 200 penalty units for any contravention of the regulation.
- (4) Nothing in this section prevents advertising by a bona fide consumer or community advocacy or advice body.

## Chapter 5 Award of damages

### Part 5.1 Application

#### 122 Damages in respect of motor accidents (cf s 69 (1) MAA)

- (1) This Chapter 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 Chapter does not apply to or in respect of a motor accident occurring before the commencement of this Act.
- (3) This Chapter applies to and in respect of the assessment of damages by a claims assessor under Part 4.4 in the same way as it applies to and in respect of an award of damages by a court.

**Note—**

See *Motor Accidents Act 1988* for motor accidents occurring before the commencement of this Act.

See section 121 of the *Transport Administration Act 1988* for the application of this Chapter to railway, ferry and other public transport accidents.

This Chapter applies only if the death or injury was caused by a motor accident for which the vehicle has motor accident insurance cover or that gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.

#### 123 General regulation of court awards (cf s 70 MAA)

- (1) A court cannot award damages to a person in respect of a motor accident contrary to this Chapter.
- (2) To remove doubt it is declared that if the substantive law of New South Wales is to govern a claim for damages in respect of a motor accident, the provisions of this Chapter are part of that substantive law and are to be applied accordingly by the court that determines the claim (including a court of another jurisdiction).
- (3) If a court (including a court of another jurisdiction) awards damages to a person in respect of a motor accident contrary to this Chapter, the person against whom the award is made:
  - (a) is not required to pay those damages to the extent that the award is contrary to this Chapter, and
  - (b) is, to the extent that the person has paid as damages an amount in excess of the amount awarded in conformity with this Chapter, entitled to recover the excess as a debt from the person to whom the payment is made.

## **Part 5.2 Damages for economic loss**

### **124 (Repealed)**

### **125 Damages for past or future economic loss—maximum for loss of earnings etc** (cf s 151 WCA)

- (1) This section applies to an award of damages:
  - (a) for past or future economic loss due to loss of earnings or the deprivation or impairment of earning capacity, or
  - (b) for the loss of expectation of financial support.
- (2) In the case of any such award, the court is to disregard the amount (if any) by which the injured or deceased person's net weekly earnings would (but for the injury or death) have exceeded \$2,500.

**Note—**

See section 146 for indexation of that amount.

### **126 Future economic loss—claimant's prospects and adjustments** (cf s 70A MAA)

- (1) A court cannot make an award of damages for future economic loss unless the claimant first satisfies the court that the assumptions about future earning capacity or other events on which the award is to be based accord with the claimant's most likely future circumstances but for the injury.
- (2) When a court determines the amount of any such award of damages it is required to adjust the amount of damages for future economic loss that would have been sustained on those assumptions by reference to the percentage possibility that the events concerned might have occurred but for the injury.
- (3) If the court makes an award for future economic loss, it is required to state the assumptions on which the award was based and the relevant percentage by which damages were adjusted.

### **127 Damages for future economic loss—discount rate** (cf s 71 MAA)

- (1) Where an award of damages is to include compensation, assessed as a lump sum, in respect of damages for future economic loss which is referable to:
  - (a) deprivation or impairment of earning capacity, or
  - (b) loss of expectation of financial support, or
  - (c) the value of future services of a domestic nature or services relating to nursing and attendance, or



(d) a liability to incur expenditure in the future,

the present value of the future economic loss is to be qualified by adopting the prescribed discount rate.

(2) The **prescribed discount rate** is:

(a) a discount rate of the percentage prescribed by the regulations, or

(b) if no percentage is so prescribed—a discount rate of 5%.

(3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

**128 Damages for economic loss—maximum amount for provision of certain attendant care services** (cf s 72 MAA)

(1) Compensation, included in an award of damages, for the value of attendant care services:

(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 would have been provided to the person even if the person had not been injured by the motor accident.

(3) Further, no compensation is to be awarded unless the services are provided (or to be provided):

(a) for at least 6 hours per week, and

(b) for a period of at least 6 consecutive months.

(4) 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.
- (5) 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 (4) (a) or (b), as the case requires.
- (6) 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 (4) or (5), as the case requires.
- (7) Except as provided by this section, nothing in this section affects any other law relating to the value of attendant care services.

**129 Respite care** (cf s 72A MAA)

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

**130 Damages for economic loss—reduction because of other amounts paid or payable** (cf s 78 MAA)

A court must reduce the amount of economic loss of an injured person or deceased person as a consequence of a motor accident by:

- (a) the amount of any entitlement to or payment of compensation for expenses under the *Victims Compensation Act 1996* for the injury suffered in the accident, and
- (b) 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 payments made under Part 3.2 or Part 4.3), and
- (c) any other amount of a kind prescribed by the regulations for the purposes of this section.

**130A No damages for expenses covered by Lifetime Care and Support Scheme**

No damages may be awarded to a person who is a participant in the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* for economic loss in respect of the treatment and care needs (within the meaning of that Act) of the participant that relate to

the motor accident injury in respect of which the person is a participant in that Scheme and that are provided for or are to be provided for while the person is a participant in that Scheme.

## **Part 5.3 Damages for non-economic loss**

### **131 Impairment thresholds for award of damages for non-economic loss**

No damages may be awarded for non-economic loss unless the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.

### **132 Assessment of impairment required before award of damages for non-economic loss if dispute over impairment threshold**

- (1) If there is a dispute about whether the degree of permanent impairment of an injured person is sufficient for an award of damages for non-economic loss, the court may not award any such damages unless the degree of permanent impairment has been assessed by a medical assessor under Part 3.4 (Medical assessment).

**Note—**

The assessment of the medical assessor under Part 3.4 is conclusive in proceedings before the court—see section 61.

- (2) The court may, at any stage in proceedings for an award of damages for non-economic loss, refer the matter for assessment of the degree of permanent impairment under Part 3.4.
- (3) A medical assessor may decline to make an assessment under Part 3.4 of the degree of permanent impairment of an injured person until the assessor is satisfied that the impairment caused by the injury has become permanent. Court proceedings with respect to any such matter may be adjourned until the assessment is made.
- (4) Nothing in this section prevents:
  - (a) the degree of impairment being re-assessed under Part 3.4, or
  - (b) a claim from being settled at any time.

### **133 Method of assessing degree of impairment**

- (1) The assessment of the degree of permanent impairment of an injured person as a result of the injury caused by a motor accident is to be expressed as a percentage in accordance with this Part.
- (2) The assessment of the degree of permanent impairment is to be made in accordance with:
  - (a) MAA Medical Guidelines issued for that purpose, or

(b) if there are no such guidelines in force—the American Medical Association’s Guides to the Evaluation of Permanent Impairment, Fourth Edition.

- (3) In assessing the degree of permanent impairment under subsection (2) (b), regard must not be had to any psychiatric or psychological injury, impairment or symptoms, unless the assessment of the degree of permanent impairment is made solely with respect to the result of a psychiatric or psychological injury.

**Note—**

See Part 3.1 for MAA Medical Guidelines.

**134 Maximum of amount of damages for non-economic loss**

- (1) The maximum amount that a court may award for non-economic loss is \$284,000.
- (2) If that amount is adjusted by the operation of section 146 (Indexation of amounts relating to award of damages), the applicable maximum amount is the amount as at the date the award is made.

**135 Publication of information to assist determination of non-economic loss** (cf s 80A MAA)

- (1) The Authority may publish information, or promote the publication of information, to assist courts to determine the appropriate level of damages for non-economic loss as a result of motor accidents.
- (2) A court may have regard to any such information, but is not bound to act on it.

**Part 5.4 Other matters**

**136 Mitigation of damages** (cf ss 37 (4), 39 MAA)

- (1) An injured person is under a duty to mitigate his or her damages.
- (2) Accordingly, in assessing damages in respect of a claim, the court is to give consideration to the steps taken by the injured person to mitigate those damages and to the reasonable steps that could have been or could be taken by the injured person to mitigate those damages.
- (3) Those steps include the following:
- (a) undergoing medical treatment,
  - (b) undertaking rehabilitation (including the formulation and undertaking of an appropriate rehabilitation program),
  - (c) pursuing alternative employment opportunities,
  - (d) giving the earliest practicable notice of the claim in order to enable the assessment and implementation of the above matters.

- (4) In proceedings before the court, the onus of proving that an injured person has not mitigated his or her damages as required by this section lies with the person who makes that allegation.
- (5) In proceedings before the court, 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.
- (6) If any dispute arises over an alleged failure by the injured person to mitigate his or her damages, the court is to give consideration to and take into account any evidence that an insurer failed to assist in mitigating damages.

**137 Payment of interest** (cf s 73 MAA)

- (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) **Attendant care services** No interest is payable on damages comprising compensation under section 128. A court cannot order the payment of interest on such damages.
- (3) **Non-economic loss** No interest is payable on damages awarded for non-economic loss. 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 83, or
    - (iv) if 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 101 of the *Civil Procedure Act 2005* 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.

### **138 Contributory negligence—generally** (cf s 74 MAA)

(1) The common law and enacted law as to contributory negligence apply to an award of damages in respect of a motor accident, except as provided by this section.

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

(a) where the injured person or deceased person has been convicted of an alcohol or other drug-related offence in relation to the motor accident, unless the plaintiff satisfies the court that the alcohol or other drug 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,

unless, in the circumstances of the case, the injured person or deceased person could not reasonably be expected to have declined to become a passenger in or

on the motor vehicle,

- (c) where the injured person (not being a minor) or the deceased person was, at the time of the motor accident, not wearing a seat belt when required by law to do so,
  - (d) where the injured person or the deceased person was, at the time of the motor accident, not wearing a protective helmet when required by law to do so.
- (3) The damages recoverable in respect of the motor accident are to 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) For the purposes of this Act, a deceased person is 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.
- (6) This section does not exclude any other ground on which a finding of contributory negligence may be made.
- (7) For the purposes of this section, an **alcohol or other drug-related offence** is:
- (a) an offence of driving a motor vehicle with a particular concentration of alcohol or other drug in the person's breath or blood, or
  - (b) an offence of driving a motor vehicle under the influence of alcohol or other drug, or
  - (c) an offence of causing death or injury while driving a motor vehicle under the influence of alcohol or other drug, or
  - (d) an offence, in connection with the driving of a motor vehicle, of:
    - (i) 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
    - (ii) wilfully altering the concentration of alcohol or other drug in the person's breath or blood, or
    - (iii) preventing a sample of the person's blood from being taken for analysis.

**139 (Repealed)**

**140 Defence of voluntary assumption of risk** (cf s 76 MAA)

- (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 is to 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:
  - (a) an organised motor sports event, or
  - (b) an activity that is an offence under section 40 of the *Road Transport (Safety and Traffic Management) Act 1999*.

#### **141 Standard of care not affected by knowledge of driver's skill and experience**

- (1) For the purposes of proceedings for damages payable in relation to a motor accident, the standard of care required of the driver of a motor vehicle who owes another person a duty of care is not diminished or otherwise affected by any actual or imputed knowledge of the other person as to the skill or experience of the driver as the driver of a motor vehicle.
- (2) This section does not affect any determination of whether a person who has suffered harm has been contributorily negligent in failing to take precautions against risk of harm, or any determination as to voluntary assumption of risk by such a person.

#### **142 Damages for the loss of services**

- (1) No damages for the loss of the services of a person are to be awarded in respect of a motor accident.
- (2) Subsection (1) does not apply to the award of damages in an action brought under the *Compensation to Relatives Act 1897*.
- (3) The provisions of section 128 (3)-(7) apply to an award of damages brought under that Act with respect to the loss of the services of the deceased person in so far as the award relates to attendant care services.



### **143 Court may make consent order for structured settlement**

- (1) This section applies where the parties to a claim agree to settle the claim by making a structured settlement and apply to a court for an order approving of or in the terms of the structured settlement.
- (2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.
- (3) A **structured settlement** is an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

### **144 Exemplary or punitive damages** (cf s 81A MAA)

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

### **145 Court to apportion damages** (cf s 82 MAA)

- (1) If 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 must, as part of the judgment, declare what portion of the sum awarded by the judgment is in respect of the death or injury.
- (2) In any such case, the court is to apportion any costs awarded.

### **146 Indexation of amounts relating to award of damages** (cf s 80 MAA)

- (1) The Minister is, on or before 1 October 2000 and on or before 1 October in each succeeding year, to declare, by order published on the NSW legislation website, the amounts which are to apply, as from the date specified in the order, for the purposes of sections 125 and 134.

#### **Editorial note—**

See orders published in Gazettes No 127 of 29.9.2000, p 10839; No 135 of 7.9.2001, p 7574; No 154 of 27.9.2002, p 8395; No 154 of 26.9.2003, p 9624; No 149 of 24.9.2004, p 7665; No 120 of 30.9.2005, p 7911; No 120 of 29.9.2006, p 8495; No 127 of 21.9.2007, p 7224 and No 123 of 26.9.2008, p 9568. See now the [Motor Accidents Compensation \(Determination of Loss\) Order 2009](#).

- (2) The amounts declared are to be each of the amounts applicable under section 125 or 134 (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 applies to the exclusion of the corresponding amount under section 125 or 134.

- (4) If the Australian Statistician fails or ceases to estimate the amounts referred to in subsection (2), the amounts declared are to be the amounts determined in accordance with the regulations.
- (5) In adjusting an amount to be declared for the purpose of section 125, the amount determined in accordance with subsection (2) is to be rounded to the nearest \$1 (with the amount of 50 cents being rounded up).
- (6) In adjusting an amount to be declared for the purpose of section 134, 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).

## Chapter 6 Costs

### 147 Definitions

- (1) In this Chapter:

***court*** includes a court arbitrator or arbitrators.

***insurer*** has the same meaning as in Chapter 4.

***medical report*** includes any medical certificate or opinion.

- (2) Expressions used in this Chapter have the same meaning as in Part 3.2 (Costs disclosure and assessment) of the [Legal Profession Act 2004](#), except as provided by this Chapter.

#### Note—

Under the [Legal Profession Act 2004](#), **legal costs** include Australian legal practitioners' fees as well as other items that may be charged by Australian legal practitioners (such as expenses and disbursements) but do not include interest.

### 148 Application of Chapter

- (1) This Chapter applies to and in respect of costs in connection with a motor accident occurring after the commencement of this Act.
- (2) This Chapter applies to and in respect of costs payable on a party and party basis, on a solicitor and client basis or on any other basis, unless this Chapter otherwise provides.

#### Note—

This Chapter applies only if the vehicle has motor accident insurance cover for the motor accident or the motor accident gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.

### 149 Regulations fixing maximum costs recoverable by Australian legal practitioners (cf s

113 *Workplace Injury Management and Workers Compensation Act 1998*)

- (1) The regulations may make provision for or with respect to the following:
  - (a) fixing maximum costs for legal services provided to a claimant or to an insurer in any motor accidents matter,
  - (b) fixing maximum costs for matters that are not legal services but are related to proceedings in any motor accidents matter (for example, expenses for investigations, for witnesses or for medical reports).
- (2) An Australian legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.
- (3) This section does not entitle an Australian legal practitioner to recover costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.
- (4) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 2004* (in particular section 329 of that Act) and the regulations under that Act. An assessment under Division 11 of Part 3.2 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
- (5) The Minister is to consult the Councils of the Bar Association and the Law Society about any proposed regulation under this section. The validity of a regulation is not affected by a contravention of this subsection.

**150 Maximum fees recoverable by medical practitioners for medico-legal services** (cf s 114 *Workplace Injury Management and Workers Compensation Act 1998*)

- (1) The regulations may make provision for or with respect to fixing maximum fees for the provision by medical practitioners of the following services:
  - (a) provision of any medical report for use in court proceedings in connection with a claim, or for use in connection with the assessment of a claim by a claims assessor, or for use in connection with a medical assessment by a medical assessor,
  - (b) appearance as a witness in court proceedings or before a claims assessor in connection with a claim.
- (2) A medical practitioner is not entitled to be paid or recover any fee for providing a service that exceeds any maximum fee fixed under this section for the provision of the service.
- (3) In determining any matter to be prescribed under this section, the Minister is to

consult with the Australian Medical Association and other appropriate bodies.

**151 Costs where claims assessment made** (cf 82D MAA)

- (1) This section applies if an assessment is made under Part 4.4 of the amount of damages for liability under a claim.
- (2) If the claimant does not accept that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued, then the following provisions have effect with respect to liability for costs incurred after the certificate of assessment was issued:
  - (a) the insurer is liable to pay the costs if:
    - (i) the amount of court awarded damages in respect of the claim exceeds the amount of damages specified in the certificate of assessment by at least \$2,000 or 20% (whichever is the greater), or
    - (ii) the amount of court awarded damages in respect of the claim exceeds the amount of damages specified in the certificate of assessment by at least \$200,000,
  - (b) the claimant is liable to pay the costs if the amount of court awarded damages in respect of the claim does not exceed the amount of damages specified in the certificate of assessment, but the maximum amount that a claimant is liable to pay for the insurer's costs is \$25,000 (or such other amount as is determined by the Authority by order published in the Gazette),
  - (c) except as provided by paragraph (a) or (b), the insurer and claimant are liable to pay their own costs.
- (3) This subsection applies if court proceedings are adjourned under section 111 (2) for further claims assessment because a party to the proceedings has adduced significant evidence in the proceedings that was available to the party at the time of the original claims assessment but was not made available to the claims assessor. In any such case, the court is to take the failure of the party to make that evidence available to the claims assessor into account and may require the party to pay a greater share of the costs incurred after the initial certificate of assessment was issued and until a further certificate of assessment is issued in connection with the claim.
- (4) The regulations may make provision for or with respect to the manner in which amounts referred to in this section are to be adjusted (to take account of inflation and other matters) for the purposes of enabling the comparisons provided for in this section to be made.
- (5) In this section:

**costs** means costs payable on a party and party basis in relation to a claim, including

court fees prescribed under section 154.

**court awarded damages** means all damages of any kind awarded by a court in respect of a claim (without the addition of interest) after taking into account any deduction or reduction in accordance with Chapter 5.

**152 Costs where court proceedings and no claims assessment** (cf s 82F MAA)

- (1) This section applies where a claim is determined by court proceedings (including court arbitration) and an assessment has not been made under Part 4.4 of the amount of damages for liability under the claim.
- (2) The rules of court concerning offers of compromise apply to any such offer in those proceedings.
- (3) The costs payable on a party and party basis are, subject to the rules of court, to follow the event, and are to include the court fees prescribed under section 154.

**153 Other matters relating to costs**

- (1) Any order of a court as to costs is to be made consistently with the relevant provisions of or made under this Act. However, the court may make an order that departs from those provisions in an exceptional case and for the avoidance of substantial injustice.
- (2) Subject to the regulations and rules of court where relevant, if costs are awarded to a claimant by reference to the amount recovered by the claimant, that amount is to be taken to be the amount recovered as qualified, or after making any deduction or reduction, in accordance with or by reference to Chapter 5.
- (3) Regulations under this Chapter may fix maximum costs and fees by reference to costs and fees fixed by regulations under the [Legal Profession Act 2004](#).
- (4) The regulations may make provision for or with respect to the assessment or taxation of costs and any associated matters, and may do so by reference to the provisions of any Act.

**154 Court fees**

- (1) In this section:

**court fees** means court fees payable in respect of a claim determined by a court which was not the subject of an assessment of the amount of damages under Part 4.4.

- (2) The regulations may make provision for or with respect to court fees payable under this Chapter.
- (3) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.

- (4) Court fees are payable into the Consolidated Fund.

### **155 Claims assessment fees**

- (1) In this section:

**claims assessment fees** means fees payable in connection with an assessment of a claim under Part 4.4.

- (2) The regulations may make provision for or with respect to claims assessment fees payable under this Chapter.
- (3) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.
- (4) Claims assessment fees are payable into the Motor Accidents Authority Fund.

### **156 Exclusion of matters from this Chapter**

The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Chapter.

## **Chapter 7 Insurers**

### **Part 7.1 Licensing of insurers**

#### **157 Offence—unlicensed insurers** (cf s 100 MAA)

- (1) A person must not issue or purport to issue a certificate of insurance under section 11 unless the person is a licensed insurer.

Maximum penalty: 100 penalty units.

- (2) If a person contravenes this section, or any condition to which a licence under this Part is subject, the certificate remains a valid certificate of insurance and the contravention does not annul or affect the third-party policy that is taken by this Act to have been issued on the issue of the certificate.

#### **158 Applications for licences** (cf s 101 MAA)

- (1) An application for a licence under this Part may be made to the Authority by any corporation authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.
- (2) A corporation is not competent to make an application unless it is a party to the Insurance Industry Deed.
- (3) An application is to be in such form and accompanied by such documents:

- (a) as may be prescribed by the regulations, and
  - (b) subject to any such regulations, as may be determined by the Authority.
- (4) Without affecting the generality of subsection (3), an applicant for a licence may be required to furnish the following particulars and documents:
- (a) particulars of the shareholders, directors and other managers of the applicant,
  - (b) previous returns and accounts under the *Corporations Law*, the *Corporations Act 2001* of the Commonwealth and the *Insurance Act 1973* of the Commonwealth,
  - (c) particulars of re-insurance arrangements to which the applicant is a party,
  - (d) a draft business plan under section 173.
- (5) A person who, in or in connection with an application for a licence, makes a statement knowing that it is false or misleading in a material particular is guilty of an offence.
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**159 Determination of application for licence** (cf s 102 MAA)

- (1) The Authority is to consider each application for a licence under this Part and may:
- (a) grant a licence to the applicant, or
  - (b) refuse the application.
- (2) The Authority may, in determining an application for a licence, take into consideration:
- (a) the suitability of the applicant, and
  - (b) the paid-up share capital and reserves of the applicant, and
  - (c) the constitution of the applicant (if any), and
  - (d) the re-insurance arrangements of the applicant, and
  - (e) the efficiency of the motor accidents scheme under this Act generally, and
  - (f) such other matters as the Authority thinks fit.
- (3) Despite subsection (1), the Authority must refuse an application for a licence from a corporation that does not comply with such requirements as are prescribed by the regulations for the purposes of this section.
- (4) A licence must not be granted under this Part unless the applicant has paid (or has made arrangements acceptable to the Authority for the payment of) the fee determined by the Authority, with the approval of the Minister, for the grant of the

licence.

- (5) When the Authority proposes to grant a licence to a corporation, it must give 14 days' notice of the proposal to all licensed insurers specifying the name of the corporation.

**160 Duration of licences** (cf s 104 MAA)

A licence granted under this Part continues in force until it is cancelled under this Part.

**161 Conditions of licences** (cf s 105 MAA)

- (1) A licence granted under this Part is subject to:
- (a) such conditions as may be prescribed by this Act or the regulations, and
  - (b) such conditions (not inconsistent with this Act or the regulations) as may be imposed by the Authority:
    - (i) on the granting of the licence, or
    - (ii) at any time during the currency of the licence.
- (2) The Authority may, by notice served on a licensed insurer, impose conditions (or further conditions) to which the licence is to be subject or revoke or vary any condition imposed on the licence by the Authority.
- (3) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.
- (4) A licensed insurer who contravenes, whether by act or omission, any condition to which the licence is subject is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) An insurer (not being a licensed insurer) who contravenes, whether by act or omission, any obligation imposed by this Act on the insurer in connection with a motor accident, being an obligation that is declared by this Act to be a condition of a licence under this Part, is guilty of an offence.

Maximum penalty: 100 penalty units.

- (6) A licensed insurer cannot be convicted of an offence under subsection (4) and required to pay civil penalty under section 166 in respect of the same act or omission.

**162 Matters that may be regulated by conditions of licences** (cf ss 105 (5) and 106 MAA)

- (1) Without limiting the generality of section 161, the conditions to which a licence under this Part may be subject include conditions:
- (a) for the purpose of ensuring compliance with the obligations of the licensed



insurer, or

- (b) for the purpose of ensuring that insurance premiums for third-party policies are available to meet claims, or
- (c) for the purpose of requiring the licensed insurer to achieve early resolution of compensation claims, and early payment under Part 3.2, at particular levels, or
- (d) for the purpose of the efficiency of the motor accidents scheme under this Act generally, or
- (e) relating to the provision of information concerning claims and profits.

- (2) A licensed insurer does not contravene a condition of a kind referred to in subsection (1) (c) if the insurer establishes that the insurer furnished a report to the Authority within a reasonable period and that the report sets out reasonable grounds for justifying the contravention.

**163 Matters not subject to conditions of licences** (cf s 105 (1A) and (5) MAA)

- (1) A condition of a licence under this Part must not be prescribed by the regulations or imposed, revoked or varied by the Authority if this would give or be likely to give a competitive advantage to the licensed insurer over other licensed insurers.
- (2) A condition of a licence under this Part that requires or has the effect of requiring a licensed insurer to obtain a share of the insurance market specified in or determined in accordance with the terms of the condition is of no effect.
- (3) This section extends, in the case of a licence in force on the commencement of this Act, to conditions imposed or otherwise applicable before that commencement.
- (4) This section has effect despite anything to the contrary in sections 161 and 162.

**164 Assignment of licences** (cf s 106A MAA)

- (1) A licensed insurer may, with the approval of the Authority, assign its licence to another licensed insurer or to a corporation to whom the Authority proposes to grant a licence.
- (2) The Authority must not approve the assignment of a licence unless the Authority is satisfied that the proposed assignee is able to meet the past, present and future liabilities of the assignor:
  - (a) under any third-party policy in respect of which the assignor is the insurer, and
  - (b) to the Motor Accidents Authority Fund, and
  - (c) to any other licensed insurer.

**165 Suspension of licences** (cf s 106B MAA)

- (1) The Authority may, by notice served on a licensed insurer, suspend the insurer's licence and the insurer is thereby prohibited from issuing any third-party policies after such date as is specified in the notice for the purpose.
- (2) A licensed insurer who contravenes, whether by act or omission, the terms of any such notice is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) A suspension may be effected only if:
  - (a) subject to subsection (4), a licensed insurer has contravened its licence or this Act or the regulations or the Insurance Industry Deed, or
  - (b) the insurer ceases to be an insurer authorised to carry on business under the *Insurance Act 1973* of the Commonwealth, or
  - (c) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the insurer, or
  - (d) the insurer is given a direction under section 51 or 62 of the *Insurance Act 1973* of the Commonwealth or an inspector is appointed to investigate the affairs of the insurer under Part V of that Act, or
  - (e) after receiving a report under section 177, the Authority is of the opinion that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under third-party policies taken to have been issued by it, or
  - (f) there is any default by the insurer in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the insurer (except where the default occurs because the insurer genuinely disputes its liability to make the payment), or
  - (g) the insurer enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms which have been approved by the Authority), or
  - (h) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the insurer or a resolution is passed for the winding up or dissolution of the insurer (except for the purposes of a reconstruction or amalgamation, on terms which have been approved by the Authority), or

- (i) there is a change in the effective control of the insurer or the insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or
  - (j) the Authority is of the opinion that the insurer has failed to comply at any time with a condition imposed on its authority to carry on insurance business under the *Insurance Act 1973* of the Commonwealth, or
  - (k) a person claiming to be a creditor by assignment or otherwise of the insurer for a sum exceeding \$100,000 then due has served on the insurer, by leaving at its registered office, a demand requiring the insurer to pay the sum so claimed to be due, and the insurer has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or
  - (l) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the insurer and the amount unsatisfied exceeds \$100,000, or
  - (m) the insurer has agreed to the suspension.
- (4) If the contravention by a licensed insurer of its licence or this Act or the regulations or the Insurance Industry Deed is capable, in the opinion of the Authority, of being remedied within 21 days after the contravention occurred (or such longer period as the Authority, having regard to the nature of the contravention and the need to protect the interests of policy holders and other persons, may reasonably allow), the Authority must not suspend the licence during that period.
- (5) The Authority may, by notice served on the licensed insurer, terminate the suspension of the insurer's licence if the Authority is satisfied that the licensed insurer is able to comply with the requirements that would be imposed on the licensed insurer if it were then to be granted a licence for the first time.

#### **166 Imposition of civil penalty on or censure of licensed insurer**

- (1) If the Authority is satisfied that a licensed insurer has contravened its licence or this Act or the regulations or the Insurance Industry Deed, the Authority may, instead of suspending the insurer's licence:
- (a) impose a civil penalty on the insurer not exceeding \$50,000, or
  - (b) issue a letter of censure to the insurer.
- (2) Before imposing a civil penalty, the Authority is required to refer the matter to a special committee for advice and to consider any advice provided by the committee.
- (3) Any such special committee:
- (a) is to comprise the Chairperson of the Board of Directors of the Authority, a

nominee of the Insurance Council of Australia Limited and another member nominated jointly by the Authority and that Council, and

- (b) is required to give the licensed insurer concerned an opportunity to make written submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.

If that Council fails to make a nomination for the purposes of constituting any such special committee within the time required by the Authority, the Minister may make that nomination on its behalf.

- (4) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (5) A civil penalty that is paid or recovered is payable into the Motor Accidents Authority Fund.

**167 Cancellation of licences** (cf s 107 MAA)

- (1) The Authority may, by notice served on the licensed insurer, cancel a licence granted under this Part.
- (2) The Authority may cancel a licence for any reason it thinks fit, but must give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Authority may cancel a licence for reasons that relate to the motor accidents scheme under this Act generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.
- (4) The Authority must, as far as practicable, give a licensed insurer whose licence it proposes to cancel an opportunity to make representations on the matter.
- (5) A licence surrendered by a licensed insurer is not cancelled until the Authority approves of the surrender.
- (6) The Authority must not cancel a licence unless the Authority is satisfied that the licensed insurer has discharged all of its past, present and future liabilities:
- (a) under any third-party policy in respect of which it is the insurer, and
  - (b) to the Motor Accidents Authority Fund, and
  - (c) to any other licensed insurer,
- or that the insurer has provided security or entered into other arrangements satisfactory to the Authority in respect of those liabilities.
- (7) If the Authority is unable to cancel a licence because of any such liabilities, the Authority may, instead, impose a condition on the licence that prohibits the insurer

from issuing any further third-party policies.

**168 Assignment of policies following cancellation of licence and in other cases** (cf s 108 MAA)

(1) In this section:

**insurer** means a licensed insurer, and includes a person whose licence has been cancelled or has otherwise ceased to be in force.

(2) The Authority may assign the third-party policies of an insurer to another insurer if:

- (a) the licence of the insurer is cancelled or otherwise ceases to be in force, or
- (b) the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.

(3) Policies may be assigned under this section by notice served by the Authority on the insurers concerned.

(4) On the service of any such notice:

- (a) the policies of insurance to which it relates are cancelled as from the date and time specified in the notice, and
- (b) the insurer to whom those policies are assigned is taken (as from the time and date of cancellation) to have issued third-party policies on the same terms as, and for the balance of the periods of, those policies.

(5) On the cancellation of a third-party policy under subsection (4) (a), the insurer whose policy is cancelled must pay to the insurer to whom the policy is assigned:

- (a) the same proportion of the premium paid or to be paid in respect of the policy as the balance of the indemnity period of the policy bears to the whole indemnity period of the policy, and
- (b) such additional amount as the Authority directs relating to the income from investment and the management fee with respect to the premium.

(6) Any amount payable under subsection (5) to an insurer may be recovered by the insurer as a debt in a court of competent jurisdiction.

(7) The effect of the cancellation of a third-party policy under this section is to terminate the indemnity period of the policy but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the policy in respect of that period before its termination.

**169 Records and evidence relating to licences** (cf s 109 MAA)

(1) The Authority must keep records in relation to all licences granted by the Authority

under this Part, including particulars of:

- (a) the granting, refusal, conditions, suspension and cancellation of licences, the assignment of licences and notices served under section 165, and
  - (b) such other matters relating to licences as the Authority thinks fit.
- (2) A certificate purporting to be signed by the Chief Executive Officer of the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

**170 Reviews of licensing decisions by Administrative Decisions Tribunal** (cf s 109A MAA)

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Authority under this Part:
- (a) a decision to refuse the person's application for a licence,
  - (b) a decision to impose a condition on the person's licence,
  - (c) a decision to vary any condition imposed on the person's licence,
  - (d) a decision to refuse to grant approval to the person to assign a licence,
  - (e) a decision to suspend the person's licence,
  - (f) a decision to impose a fine on the person,
  - (g) a decision to cancel the person's licence.
- (2) Despite the provisions of Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*, the Tribunal may not order that a decision referred to in subsection (1) be stayed pending the determination of an application for its review.

## **Part 7.2 Supervision of licensed insurers**

### **171 Authority guidelines for market practice**

- (1) The Authority may issue to licensed insurers guidelines with respect to the issue of third-party policies.
- (2) The Authority may amend, revoke or replace any such guidelines.
- (3) The Authority is to consult licensed insurers before it issues, amends or replaces any such guidelines.
- (4) It is a condition of a licence granted under Part 7.1 that the licensed insurer must

comply with the guidelines in force under this section.

**172 Determination of market share of each insurer** (cf s 115A MAA)

- (1) A licensed insurer must, within such time after the end of each quarter and each year as is determined by the Authority, notify the Authority of the amount of insurance premiums received by it in relation to all third-party policies taken to have been issued by it during that quarter or year.
- (2) The Authority must, after notifications have been received from all licensed insurers in respect of a quarter or year, determine, in relation to each insurer, the proportion that the insurance premiums for third-party policies received by the insurer for the quarter or year bears to the aggregate amount of insurance premiums for third-party policies received by all licensed insurers for the quarter or year.
- (3) The Authority may round a proportion determined under this section to one-tenth of a percent.
- (4) After determining the proportion for each licensed insurer, the Authority must inform all licensed insurers of the proportions so determined.
- (5) In this section:

**quarter** means a quarter ending on the last day of September, December, March and June in each year.

**year** means a year commencing on 1 July.

**173 Business plans of licensed insurers** (cf s 110 MAA)

- (1) A licensed insurer must prepare and deliver to the Authority a business plan for its third-party insurance business as soon as practicable after it is requested to do so by the Authority.
- (2) The licensed insurer must revise its business plan:
  - (a) whenever it departs significantly from its business plan, and
  - (b) at such intervals of not less than 12 months as the Authority directs.
- (3) The licensed insurer must, as far as practicable, conduct its third-party insurance business in accordance with its current business plan, but if it departs significantly from that plan the insurer must notify the Authority accordingly.
- (4) A business plan must be prepared in accordance with such guidelines as the Authority determines from time to time and notifies to licensed insurers.
- (5) A business plan must describe the manner in which the insurer's third-party insurance business is to be conducted (including claims handling, management, expenses and

systems).

- (6) It is a condition of a licence granted under Part 7.1 that the licensed insurer must comply with this section.
- (7) In this section, a reference to the third-party insurance business of a licensed insurer is a reference to any business associated with third-party policies.

**174 Re-insurance arrangements of licensed insurers** (cf s 111 MAA)

- (1) It is a condition of a licence granted under Part 7.1 that the licensed insurer must notify the Authority of:
  - (a) particulars of arrangements made or proposed to be made for re-insurance in respect of liabilities under third-party policies issued by the licensed insurer, and
  - (b) the terms of any approval of the Insurance and Superannuation Commissioner under the *Insurance Act 1973* of the Commonwealth in respect of any such re-insurance.
- (2) A licensed insurer must not, without the prior written consent of the Authority, effect any form of re-insurance if the aggregate premium payable for the re-insurance exceeds 15% of the gross direct premium written by the insurer.

**175 Investment of funds of licensed insurer** (cf s 112 MAA)

- (1) It is a condition of a licence granted under Part 7.1 that the licensed insurer, if required to do so by the Authority, must provide the Authority with details of the way in which its third-party funds and other funds are invested.
- (2) The third-party funds of a licensed insurer are the funds of the insurer derived from the payment of insurance premiums for third-party policies and from their investment.

**176 Accounts, returns and other records of licensed insurer** (cf s 113 MAA)

- (1) A licensed insurer must keep such accounting and other records in relation to the business or financial position of the insurer:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (2) The regulations may prescribe the manner in which financial transactions are to be accounted for in any such records.
- (3) A licensed insurer must lodge with the Authority returns in relation to the business or financial position of the insurer in such form, containing such particulars and accompanied by such documents:



- (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (4) Returns must be lodged:
- (a) subject to paragraph (b), within 6 weeks after each 31 March, 30 June, 30 September and 31 December, or
  - (b) at such other times as the Authority, by notice served on the insurer, directs.
- (5) The regulations may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.
- (6) A licensed insurer who contravenes any requirement imposed on the insurer by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.

- (8) In this section:

**accounting records** include invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and also include such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.

**177 Audit of accounting records and of compliance with guidelines** (cf s 114 MAA)

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of a licensed insurer, including accounting and other records relating to:
- (a) the manner in which its third-party funds and other funds are invested, or
  - (b) compliance with any guideline under this Act.
- (2) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the licensed insurer.
- (3) A licensed insurer must provide all reasonable assistance to enable the exercise of those functions.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.

- (5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (6) A licensed insurer or another person who contravenes any requirement imposed on the insurer or other person by or under this section is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (7) The Authority may from time to time carry out an audit to determine the profitability of a licensed insurer and for that purpose may exercise the functions of a person appointed under subsection (1). The Authority is to report on any such audit to the Parliamentary Committee, on a confidential basis.
- (8) In this section, **accounting records** has the same meaning as in section 173.

**178 Information and documents as to business and finances to be supplied to Authority by insurers and former insurers** (cf s 115 MAA)

- (1) In this section:

**documents** includes returns and accounts furnished under the [Corporations Law](#), the [Corporations Act 2001](#) of the Commonwealth and the [Insurance Act 1973](#) of the Commonwealth.

**insurer** means a licensed insurer or a former licensed insurer.

- (2) The Authority may require an insurer:
  - (a) to disclose to the Authority specified information relating to the business and financial position of the insurer or of any corporation which is a related body corporate (within the meaning of the [Corporations Act 2001](#) of the Commonwealth), or
  - (b) to forward to the Authority, or make available for inspection, specified documents, or copies of or extracts from specified documents, kept by the insurer or by any corporation which is such a related body corporate.
- (3) Subsection (2) extends to requiring:
  - (a) financial information that is or may be relevant to the consideration by the Authority of insurance premiums filed by the insurer under this Act, and
  - (b) information about the cost of claims handling incurred by the insurer, about the settlement of claims by the insurer, and
  - (c) information about other matters concerning the insurer,but this subsection does not affect the generality of subsection (2), section 26 or any

other provision of this Act regarding the obtaining of information by the Authority, and does not limit any other manner in which the Authority may obtain information.

- (4) A requirement under this section:
- (a) must be made in writing and served on the insurer, and
  - (b) must specify the manner in which and the time within which the requirement is to be complied with.
- (5) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or an actuary approved by the Authority as to the correctness of any specified information or specified documents (or copies of or extracts from specified documents).
- (6) Unless the insurer satisfies the court that it is not within its power to comply with the requirement, an insurer that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

**179 Reports about insurers** (cf s 132C MAA)

- (1) The Authority may from time to time forward to the Minister reports relating to:
- (a) the level of compliance by insurers with:
    - (i) any requirements of this Act, and
    - (ii) any conditions of licences under this Act (including any guidelines under this Act), and
  - (b) complaints made about insurers, and any other matters relating to insurers, in connection with any matters to which this Act relates.
- (2) A report may relate to insurers generally, or to any class of insurers, or to any particular insurers.
- (3) A report may identify particular insurers.
- (4) A report may include such observations and recommendations as the Authority thinks fit.
- (5) The Minister may make a report public and may lay a report or cause it to be laid before both or either of the Houses of Parliament.
- (6) Nothing in this section affects reports that may be made apart from this section.

**180 Power of Supreme Court to deal with insurers unable to meet liabilities** (cf s 116 MAA)

- (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of the holders of third-party policies taken to have been issued by a licensed insurer or a former licensed insurer.
- (2) The Supreme Court may make such an order if it is satisfied that the licensed insurer or former licensed insurer:
  - (a) is not able to meet the insurer's liabilities under the third-party policies or may not be able to do so, or
  - (b) has acted or may act in a manner that is prejudicial to the interests of the holders of the third-party policies.
- (3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
  - (a) an order regulating the administration and payment of claims under the third-party policies,
  - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or former licensed insurer,
  - (c) an order requiring the licensed insurer or former licensed insurer to discharge its liabilities under the third-party policies out of its assets and the assets of any related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth),
  - (d) an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or part of the property of the licensed insurer or former licensed insurer or of any such related body corporate.
- (4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court is not to require the Authority, as a condition of granting an interim order, to give any undertaking as to damages.
- (6) The Authority is to give the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission notice of its intention to apply for an order under this section.
- (7) The Australian Prudential Regulation Authority and the Australian Securities and

Investments Commission each has a right to appear and be heard in proceedings for an order under this section.

- (8) If the Supreme Court has made an order under this section, the Supreme Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the first mentioned order.
- (9) A person who contravenes, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (10) The Supreme Court is not to exercise its powers under this section in respect of a corporation which is in the course of being wound up.
- (11) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.

**181 Notification to Authority of certain defaults in relation to insurers** (cf s 117 MAA)

- (1) A licensed insurer and a former licensed insurer must notify the Authority in writing of the occurrence of any of the events or things referred to in section 165 (paragraphs (a), (e), (j) and (m) excepted) within 21 days after the event or thing happens (whether within or outside the State).
- (2) A licensed insurer must notify the Authority in writing of:
  - (a) a decrease or proposed decrease in the issued capital of the insurer within 21 days after the decrease or proposal to effect the decrease, and
  - (b) the receipt by the insurer of any bidder's statement or target's statement within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

Maximum penalty: 100 penalty units.

**182 Powers of entry and inspection by authorised officers of Authority** (cf s 118 MAA)

- (1) In this section:

**authorised officer** means a member of staff, or other person, in either case authorised by the Authority for the purposes of a specified investigation under this section.

**insurer** means a licensed insurer or a former licensed insurer, and includes any insurance broker or commission agent engaged in third-party insurance business.

**premises** includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not).

(2) An authorised officer may:

- (a) on production of his or her authority, enter at any reasonable hour any premises (not being a dwelling-house) used, or that the authorised officer reasonably suspects to be used, by an insurer for conduct of the insurer's business or the storage or custody of any document, and
- (b) remain in or on those premises while exercising any power conferred by this section, and
- (c) require an insurer or any other person in or on those premises to produce any such document that is in his or her possession or under his or her control and is capable of being produced, and
- (d) require an insurer or any other person having possession or control of any such document that is not written, or is not written in the English language, or is not decipherable on sight, to produce a statement, written in the English language and decipherable on sight, of the information contained in the document, and
- (e) inspect, or make copies of or take extracts from, a document produced pursuant to paragraph (c) or a statement produced pursuant to paragraph (d), or retain such a statement, and
- (f) require an insurer or any other person in or on those premises to answer questions relating to:
  - (i) the business or financial position of an insurer, or
  - (ii) the observance of this Act or the regulations.

(3) A person must not:

- (a) refuse or fail to allow an authorised officer to enter premises under this section, or
- (b) wilfully obstruct or delay an authorised officer when exercising any powers under this section, or
- (c) unreasonably refuse or fail to produce a document or statement to an authorised officer under this section, or
- (d) if an authorised officer informs a person that by virtue of this Act the person is obliged to answer questions relating to any matter referred to in subsection (2) (f):
  - (i) refuse or fail to answer such a question, or
  - (ii) give an answer to such a question that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

- (4) A person may not refuse to answer a question under subsection (2) on the ground that it might tend to incriminate the person, but neither the question nor the answer is admissible in any civil or criminal proceedings against the person other than proceedings for an offence under this section.

**183 Proceedings for failure to comply with licence** (cf s 118A MAA)

No proceedings may be taken against a licensed insurer for failure to comply with the terms of the licensed insurer's licence or this Act or the regulations, except by the Authority.

## **Part 7.3 Insolvent insurers**

**184 Interpretation** (cf s 119 MAA)

- (1) In this Part:

***insolvent insurer*** means an insurer to whom:

- (a) an order of the Treasurer in force under section 16A of the *Insurance Protection Tax Act 2001* relates, or
- (b) an order of the Minister in force under section 185 relates.

***insurer*** means a licensed insurer or a former licensed insurer, but does not include an insolvent insurer.

***liquidator*** includes a provisional liquidator.

***third-party policy issued by an insolvent insurer*** means:

- (a) a third-party policy issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer, or
- (b) a third-party policy, issued by a person other than an insolvent insurer, in respect of which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement whereby the insolvent insurer is (or would but for its dissolution be) liable to indemnify the person against liability of the person under the policy.

- (2) In this Part, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.
- (3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer has outside New South Wales the functions conferred or imposed on the liquidator by this Part, in addition to having those functions within New South Wales.
- (4) In this Part, a reference to a third-party policy, a licensed insurer and a former

licensed insurer includes a reference to a third-party policy, a licensed insurer and a former licensed insurer within the meaning of the *Motor Accidents Act 1988* (as in force immediately before the commencement of this Part), respectively.

- (5) This Part has effect despite any provisions of the *Corporations (New South Wales) Act 1990* or of the applicable provisions (as defined in that Act) of the State.

**185 Insolvent insurers** (cf s 120 MAA)

- (1) If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may with the approval of the Treasurer, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Part.
- (2) The Minister is to consult with the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission before making an order under this section.

**Note—**

**Declared insolvent insurers** under the *Insurance Protection Tax Act 2001* are also insolvent insurers for the purposes of this Part. See the definition of **insolvent insurer** in section 184 of this Act.

**186 Liquidator to notify Nominal Defendant of claims** (cf s 121 MAA)

The liquidator of an insolvent insurer must, on receiving any claim relating to any third-party policy issued by the insolvent insurer, forward the claim to the Nominal Defendant.

Maximum penalty: 20 penalty units.

**187 Delivery of documents to Nominal Defendant** (cf s 122 MAA)

The liquidator of an insolvent insurer must, whenever requested to do so by the Nominal Defendant:

- (a) deliver to the Nominal Defendant all documents relating to third-party policies issued by the insolvent insurer and all claims or judgments made in respect of any such policies in the liquidator's possession, and
- (b) supply to the Nominal Defendant all information in the liquidator's possession relating to any such policies or any such claims or judgments.

Maximum penalty: 20 penalty units.

**188 Appointment of Nominal Defendant as agent and attorney of insured** (cf s 123 MAA)

- (1) The Nominal Defendant is by this section appointed as the agent and attorney of the person insured under a third-party policy issued by an insolvent insurer.
- (2) As agent and attorney of such a person, the Nominal Defendant may exercise the



rights and discharge the obligations of the person:

- (a) for the purpose of dealing with and finalising any claim against which the person is indemnified under the third-party policy, and
  - (b) for the purpose of satisfying any such claim or any judgment against which the person is indemnified under the third-party policy, and
  - (c) for any other purpose prescribed by the regulations.
- (3) As agent and attorney of such a person, the Nominal Defendant may exercise the rights of the person in connection with the third-party policy:
- (a) for the purpose of proving in the winding-up of the insolvent insurer and receiving any dividends or other money payable to the person in the winding-up, and
  - (b) for the purpose of recovering any money which the person is entitled under the third-party policy to recover from the person who issued the policy, being a policy referred to in paragraph (b) of the definition of **third-party policy issued by an insolvent insurer** in section 184, and
  - (c) for any other purpose prescribed by the regulations.
- (4) The Nominal Defendant may exercise rights and discharge obligations as agent in the name of the person concerned, or in its own name.
- (5) All rights vested in an insurer and all obligations imposed on an insurer, being rights or obligations:
- (a) arising from or relating to a third-party policy issued by an insolvent insurer to a person, and
  - (b) which may or must be exercised or discharged for the purpose of:
    - (i) dealing with and finalising any claim, or
    - (ii) satisfying any claim or judgment, against which the person is indemnified under the policy,
- are vested in or imposed on the person.
- (6) Subsection (5) is not to be construed so as to vest in or impose on a person, or to affect in any other way:
- (a) a right of an insurer to be indemnified by a re-insurer or an obligation of an insurer to indemnify a person, or
  - (b) any other prescribed right or obligation.
- (7) If the Nominal Defendant is, under this section, empowered to exercise any rights, or

to discharge any obligations, of a person as agent and attorney, the person is not entitled, without the consent of the Nominal Defendant, to exercise those rights or discharge those obligations.

- (8) The appointment effected by this section may be revoked only by an Act.
- (9) If the Nominal Defendant is the agent and attorney of a person insured under a third-party policy issued by an insolvent insurer, the Nominal Defendant is also the agent and attorney for the purposes of this Part of any person who is authorised by this Act to take proceedings for damages against the insolvent insurer under the third-party policy.

**189 Payments to insured or liquidator** (cf s 124 MAA)

- (1) Where a person insured under a third-party policy issued by an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Part) any claim or judgment in respect of which the person has not been indemnified under that policy, the Nominal Defendant may pay from the Nominal Defendant's Fund to the person an amount equal to the whole or any part of the amount paid by the person in satisfaction of the claim or judgment.
- (2) Where the liquidator of an insolvent insurer has satisfied (whether before or after the insurer became an insolvent insurer for the purposes of this Part) any claim or judgment in respect of which a person is entitled to be indemnified under a third-party policy issued by the insolvent insurer, the Nominal Defendant may pay from the Nominal Defendant's Fund to the liquidator an amount equal to the whole or any part of the amount paid by the liquidator in satisfaction of the claim or judgment.
- (3) Where:
  - (a) a payment is made under subsection (1) to a person in respect of a claim or judgment, the Nominal Defendant is taken, to the extent of the payment, to have satisfied the claim or judgment as agent and attorney of the person, or
  - (b) a payment is made under subsection (2) to the liquidator of an insolvent insurer in respect of a claim by or on behalf of any person or a judgment for the benefit of any person, the Nominal Defendant is taken, to the extent of the payment, to have satisfied the claim or judgment as agent and attorney of the person in respect of whom the payment is made.
- (4) The powers conferred by subsections (1) and (2) are exercisable at the absolute discretion of the Nominal Defendant and neither of those subsections operates nor the exercise of any of those powers operates so as to confer, directly or indirectly, any right on any person to whom a payment is or may be made under those subsections or on any other person.

**190 Application of Nominal Defendant's Fund** (cf s 125 MAA)

- (1) Out of the Nominal Defendant's Fund, the Nominal Defendant:
  - (a) is to pay the amount of any claim or judgment arising from or relating to any third-party policy issued by an insolvent insurer, being a claim or judgment that it proposes to satisfy as agent and attorney of a person, and any other amounts required by this Part to be paid from that Fund, and
  - (b) is entitled to be indemnified against all payments made by it and all costs and expenses that it may incur in or in connection with the exercise of its functions under this Part.
- (2) Where a payment is made by the Nominal Defendant as agent and attorney of a person, being a payment authorised by this Part, the Nominal Defendant is not entitled to recover the amount of that payment from the person.

**191 Recovery of amounts under contracts or arrangements for re-insurance** (cf s 126 MAA)

To the extent that any amounts are paid out of the Nominal Defendant's Fund in respect of a claim or judgment pursuant to section 190 the Nominal Defendant is, where an insolvent insurer (if it had provided indemnity to that extent under a third-party policy) would have been entitled to recover any sum under a contract or arrangement for re-insurance, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Nominal Defendant to recover from the re-insurer and pay into the Nominal Defendant's Fund the amount due under that contract or arrangement.

**192 Payments of compensation when insolvent insurer dissolved** (cf s 127 MAA)

- (1) When an insolvent insurer has been dissolved, the payments under judgments relating to third-party policies issued by the insolvent insurer which would, but for the dissolution taking place, be payable by the insolvent insurer are to continue and are to be paid out of the Nominal Defendant's Fund by the Nominal Defendant.
- (2) When an insolvent insurer has been dissolved, a person who would have had, but for the dissolution of the insolvent insurer, an entitlement to payment of any amount arising from or relating to any third-party policy issued by the insolvent insurer (being a policy in respect of which the insolvent insurer is the insurer) is entitled to payment of that amount out of the Nominal Defendant's Fund.
- (3) A person referred to in subsection (2) may make a claim against the Nominal Defendant in respect of an entitlement to payment of an amount under that subsection.
- (4) The Nominal Defendant is entitled to deal with and finalise a claim made under subsection (3) in relation to a third-party policy issued by an insolvent insurer to the

same extent as it would have been entitled to do so if the insolvent insurer had not been dissolved.

**193 Borrowings for the purposes of the Nominal Defendant's Fund** (cf s 127A MAA)

The Nominal Defendant may from time to time borrow such amounts as the Nominal Defendant considers are necessary to satisfy claims and judgments arising from or pertaining to third-party policies issued by an insolvent insurer which would otherwise be unable to be met from the money in the Nominal Defendant's Fund.

**194 Inspection of documents by person authorised by Minister** (cf s 128 MAA)

The liquidator of an insolvent insurer must, whenever requested to do so by a person authorised by the Minister, make any documents relating to third-party policies issued by the insolvent insurer and any claims or judgments made in respect of any such policies in the liquidator's possession available for inspection by that person.

Maximum penalty: 20 penalty units.

**195 Nominal Defendant may take certain legal proceedings** (cf s 129 MAA)

(1) If:

- (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding-up, or
- (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Part or not, is challenged, reviewed or called into question in proceedings before any court, or
- (c) any other matter that concerns or may affect the operation of this Part is raised in proceedings before any court,

the Nominal Defendant may intervene at any stage of the proceedings before that court, by an Australian legal practitioner or an agent, and the Nominal Defendant thereupon becomes a party to, and has all the rights of a party to, those proceedings before that court, including the right to appeal against any order, judgment or direction of the court.

- (2) In any case in which the Attorney General might take proceedings on the relation or on behalf of or for the benefit of a person who is (or who would but for the dissolution of the insolvent insurer be) entitled, under a third-party policy issued by an insolvent insurer, to be indemnified against a claim or judgment arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Part, any Act or any rule of law, the Nominal Defendant is taken to represent sufficiently the interests of the public and may take the proceedings in its own name.

- (3) The Nominal Defendant is entitled to be paid, out of the Nominal Defendant's Fund, all the costs and expenses incurred by the Nominal Defendant in exercising the powers conferred by this section.

**196 Insurers or other persons may act for Nominal Defendant** (cf s 130 MAA)

The Nominal Defendant may appoint a licensed insurer or other person as its agent for the purposes of exercising its functions under this Part.

**197 Regulations** (cf s 131 MAA)

The regulations may make provision for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act in relation to the dealing with or finalising of claims, or the satisfying of judgments, by the Nominal Defendant as agent and attorney of a person under this Part.

## **Chapter 8 Administration**

### **Part 8.1 Motor Accidents Authority**

#### **Division 1 Constitution of Authority**

**198 Constitution of Authority** (cf s 83 MAA)

- (1) There is constituted by this Act a corporation with the corporate name of the Motor Accidents Authority of New South Wales.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

**199 Board of Directors** (cf s 84 MAA)

- (1) There is to be a Board of Directors of the Authority.
- (2) The Board is to consist of the following directors:
  - (a) the Chief Executive Officer of the Authority,
  - (b) 5 part-time directors appointed by the Governor on the recommendation of the Minister.
- (3) Of the part-time directors:
  - (a) one is to be appointed as the Chairperson of the Board, and
  - (b) one is to be appointed as the Deputy Chairperson of the Board.
- (4) A person can be both a director of the Board and a member of the Motor Accidents Council.
- (5) Schedule 1 has effect with respect to the Board.

**200, 201 (Repealed)**

**Division 2 Management of Authority**

**202 The Minister** (cf s 88 MAA)

- (1) If the Minister is satisfied that it is desirable in the public interest to do so, the Minister may, by notice in writing to the Board of Directors of the Authority or the Chief Executive Officer of the Authority, give directions to the Board or Chief Executive Officer with respect to the exercise of their respective functions.
- (2) The Board of Directors of the Authority and the Chief Executive Officer of the Authority must comply with any direction given under this section by the Minister to the Board or Chief Executive Officer, as the case requires.
- (3) The Authority must include in its annual report particulars of each direction given under this section during the year to which the report relates.
- (4) Except as provided by this or any other section of this Act, the Board of Directors of the Authority and the Chief Executive Officer of the Authority are not, in the exercise of their respective functions, subject to the control and direction of the Minister.

**203 Board of Directors** (cf s 85 MAA)

- (1) The Board of Directors of the Authority has the function of determining the administrative policies of the Authority.
- (2) In exercising that function, the Board must ensure that, as far as practicable, the activities of the Authority are carried out properly and efficiently.

**204 Chief Executive Officer** (cf s 87 MAA)

- (1) Subject to this Division, the affairs of the Authority are to be managed and controlled by the Chief Executive Officer of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer of the Authority is taken to have been done by the Authority.

**205 Delegation of functions** (cf s 96 MAA)

- (1) The Authority may delegate to an authorised person any of the functions of the Authority (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section:

***authorised person*** means:

- (a) a member of staff, or
- (b) a person of a class prescribed by the regulations or of a class approved by the Board of Directors of the Authority.

### **Division 3 Functions of Authority**

#### **206 Functions of Authority** (cf ss 36, 90 MAA)

- (1) The Authority has such functions as are conferred or imposed on it by or under this or any other Act.

**Note—**

The Authority has, for example, functions conferred under Chapter 2 in connection with third-party insurance and as the Nominal Defendant and Chapter 7 in connection with the licensing and control of insurers.

- (2) The Authority also has the following functions:
- (a) to monitor the operation of the motor accidents scheme under this Act, and in particular to conduct (or arrange for other persons to conduct) research into and to collect statistics or other information on the level of damages awarded by the courts, the handling of claims by insurers and other matters relating to that scheme,
  - (b) to advise the Minister as to the administration, efficiency and effectiveness of that scheme,
  - (c) to publicise and disseminate information concerning that scheme,
  - (d) to issue and keep under review relevant guidelines under this Act,
  - (e) to provide an advisory service to assist claimants in connection with the claims assessment procedure under this Act,
  - (f) to provide funding for:
    - (i) measures for preventing or minimising injuries from motor accidents, and
    - (ii) safety education,
  - (g) to provide administrative and other support to the Motor Accidents Council, sufficient to assist the Council to meet its priorities,
  - (h) to provide advice and make recommendations to the Motor Accidents Council on such matters as the Council requests or the Authority considers appropriate.
- (3) The Authority has the following functions in relation to the provision of acute care, treatment, rehabilitation, long term support and other services for persons injured in motor accidents:

- (a) to monitor those services,
  - (b) to provide support and funding for programs that will assist effective injury management,
  - (c) to provide support and funding for research and education in connection with those services that will assist effective injury management,
  - (d) to develop and support education programs in connection with effective injury management.
- (4) The Authority is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Motor Accidents Council.
- (5) The Authority cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Authority to exercise its functions.

## **Part 8.2 Motor Accidents Council**

### **207 Constitution of Council**

- (1) There is constituted by this Act a corporation with the corporate name of the Motor Accidents Council of New South Wales.
- (2) The Motor Accidents Council is subject to the control and direction of the Minister, except in relation to the contents of any advice, report or recommendation given to the Minister or the Authority.

### **208 Membership and procedure of Council**

- (1) The Motor Accidents Council is to consist of the following 12 members:
  - (a) the Chairperson of the Board of Directors of the Authority, who is to be the Chairperson of the Council,
  - (b) the Deputy Chairperson of the Board of Directors of the Authority, who is to be the Deputy Chairperson of the Council,
  - (c) 2 persons involved in the insurance industry appointed by the Minister after consultation with the Insurance Council of Australia,
  - (d) 2 Australian lawyers appointed by the Minister after consultation with the Councils of the Law Society and Bar Association,
  - (e) 2 health practitioners appointed by the Minister after consultation with the Australian Medical Association (NSW) Limited and such other associations of



health practitioners as the Minister considers appropriate,

- (f) 1 person not involved in the insurance industry appointed by the Minister on the nomination of the NRMA,
- (g) 1 person appointed by the Minister after consultation with such associations concerned with injured persons as the Minister considers appropriate,
- (h) 1 person appointed by the Minister after consultation with such consumer organisations as the Minister considers appropriate,
- (i) the Chief Executive Officer of the Authority.

(2) Schedule 2 has effect with respect to the Motor Accidents Council.

### **209 Functions of Council**

(1) The functions of the Motor Accidents Council are as follows:

- (a) to advise and make recommendations to the Authority on, and to keep under review, the MAA Medical Guidelines and MAA Claims Assessment Guidelines,
- (b) to monitor the operation of the services provided under this Act for the assessment of injuries and the assessment of claims,
- (c) to monitor the operation of Part 3.2 (Early payment for treatment and lost earnings of injured persons),
- (d) to advise the Board of Directors of the Authority or the Minister (through the Board) on any matter relating to the motor accidents scheme under this Act that the Council considers appropriate or that the Board or Minister refers to the Council for advice,
- (e) such other functions as are conferred or imposed on it by or under this or any other Act.

(2) The Motor Accidents Council is to exercise its functions consistently with the objects of this Act set out in Chapter 1.

(3) The Motor Accidents Council may seek advice from any appropriate source, and accordingly is not limited to seeking advice from bodies constituted under this Act.

(4) The Motor Accidents Council is not prevented from exercising any function that is the same as or similar to a function being exercised or capable of being exercised by the Authority.

## Part 8.3 Supervision of Authority and Motor Accidents Council

### 210 Appointment of Parliamentary Committee

- (1) As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Part.
- (2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the exercise of the functions of the Authority and the Motor Accidents Council under this Act.

## Part 8.4 Financial provisions

### 211 Definitions (cf s 92 MAA)

In this Part:

**financial year** means a year commencing on 1 July.

**Fund** means the Motor Accidents Authority Fund established under this Part.

**relevant period**—see section 213 (2).

### 212 Motor Accidents Authority Fund (cf s 93 MAA)

- (1) There is established a fund, to be known as the Motor Accidents Authority Fund, belonging to and vested in the Authority.
- (2) The following is to be paid into the Fund:
  - (a) money contributed under this Part by persons to whom third-party policies are issued,
  - (b) the interest from time to time accruing from the investment of the Fund,
  - (c) money required to be paid into the Fund by or under this or any other Act,
  - (d) all other money received by the Authority and not otherwise appropriated.
- (3) The following is to be paid from the Fund:
  - (a) the remuneration, allowances, office accommodation and other associated costs of the Chief Executive Officer of the Authority, the part-time directors of the Board of Directors of the Authority and those members of staff who are principally involved in the administration of this Act,
  - (b) the remuneration, allowances and other associated costs of members of the Motor Accidents Council,

- (c) expenditure incurred by the Authority in the provision of services under Part 3.4 (Medical assessment) and Part 4.4 (Claims assessment and resolution),
  - (c1) expenditure incurred by the Authority pursuant to any bulk billing arrangement under section 54,
  - (c2) expenditure incurred by the Authority pursuant to any arrangements under section 215A (Payment of workers compensation indemnity on behalf of insurers),
  - (d) all payments required to meet expenditure incurred in relation to the functions of the Authority or the Motor Accidents Council, where money is not otherwise provided for that purpose,
  - (e) all other money required by or under this or any other Act to be paid from the Fund.
- (4) The Authority may invest money in the Fund which is not immediately required for the purposes of the Fund:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the Authority to invest money in the Fund—in any other manner approved by the Minister with the concurrence of the Treasurer.

### **213 Assessment by Authority of amount to be contributed to Fund**

- (1) The Authority is required, as soon as practicable in respect of each relevant period:
- (a) to make an estimate of the total of the amounts to be paid from the Fund during that relevant period, and
  - (b) to determine what amounts, if any, are to be set aside as provisions to meet expenditure from the Fund in future periods, and specify for what purpose each such amount is being set aside, and
  - (c) to make an estimate of the total amounts (including the amounts already received) to be received into the Fund during that relevant period otherwise than by way of contributions in respect of that relevant period under this Part from persons to whom third-party policies are issued, and
  - (d) to determine the total amount to be contributed to the Fund under this Part in respect of that relevant period by persons to whom third-party policies are issued after having regard to the amounts likely to be standing to the credit of the Fund at the beginning of the period, including any amounts set aside in earlier periods as provisions to meet expenditure in later periods, and the amounts estimated under paragraph (c) to be received into the Fund during the relevant period, and

(e) to specify in writing the estimates, provisions and amounts to be contributed to the Fund by persons to whom third-party policies are issued.

- (2) A **relevant period** is a financial year or such other period as the Authority determines from time to time to be a relevant period for the purposes of this section. Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must not be longer than 12 months.

#### **214 Contributions to Fund by persons to whom third-party policies issued**

- (1) The amount determined under section 213 (d) as the total amount to be contributed to the Fund under this Part in respect of a relevant period is to be contributed by the payment to the Authority of a levy (the **Fund levy**) by persons to whom third-party policies are issued during the relevant period.
- (2) The Fund levy is to be an amount determined by the Authority. The Fund levy can be determined as a fixed amount or as a percentage of the premium payable for a third-party policy, or as a combination of a fixed amount and percentage of premium.
- (3) A Fund levy can be determined to differ according to any classification or other criteria for the determination of third-party policy premiums as provided for by the MAA Premiums Determination Guidelines under Part 2.3.
- (4) The Authority is to notify each licensed insurer of the Fund levy determined for a relevant period.

#### **214A Payment and collection of Fund levy**

- (1) The Fund levy for a relevant period is payable to the Authority by each person to whom a third-party policy is issued during the relevant period and is to be collected, in conjunction with the payment of the premium for the policy, on behalf of the Authority by the insurer who issues the policy.
- (2) A licensed insurer is not to issue a third-party policy to a person unless the Fund levy payable by the person has been paid. Section 14 (Cancellation of third-party policies) applies in respect of the Fund levy payable in connection with the issue of a third-party policy in the same way as it applies in respect of the premium payable for the policy.
- (3) Fund levies collected by a licensed insurer are to be paid to the Authority at the times and in accordance with such arrangements as the Authority may notify to the insurer from time to time.
- (4) If a payment required to be made by a licensed insurer has not been paid as and when required under those arrangements:
- (a) the insurer is guilty of an offence and liable to a penalty not exceeding 100

penalty units, and

- (b) the amount of the required payment together with interest calculated at the rate of 15% per annum compounded quarterly (or, where another rate is prescribed by the regulations, that other rate) may be recovered from the insurer as a debt due to the Authority.
- (5) A certificate purporting to be signed by the Chief Executive Officer of the Authority as to the amount of a payment required to be made under this section by a licensed insurer specified in the certificate and the due date for payment is admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (6) The obligation of a licensed insurer to make a payment under this section in respect of any period during which the person was a licensed insurer does not cease merely because the person subsequently ceases to be a licensed insurer.

#### **214AA Refund of Fund levy**

- (1) The Fund levy is to be refunded, on a pro rata basis, to any person to whom a third-party policy was issued if the policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates (except where the registration is cancelled under Division 3 of Part 4 of the *Fines Act 1996*).
- (2) The Authority may give directions or issue guidelines to licensed insurers with respect to the administrative arrangements of licensed insurers for payment of refunds under this section.

#### **214B Records relating to collection of Fund levies**

- (1) A licensed insurer must keep such accounting and other records in relation to Fund levies collected by the insurer under this Part:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.
- (2) The regulations may prescribe the manner in which collection of Fund levies is to be accounted for in any such records.
- (3) A licensed insurer must lodge with the Authority returns in relation to Fund levies collected by the insurer under this Part in such form, containing such particulars and accompanied by such documents:
  - (a) as may be prescribed by the regulations, and
  - (b) subject to the regulations, as may be directed by the Authority by notice served

on the insurer.

- (4) Returns must be lodged at such other times as may be prescribed by the regulations or, subject to the regulations, at such times as the Authority, by notice served on the insurer, directs.
- (5) The Authority may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.
- (6) A licensed insurer who contravenes any requirement imposed on the insurer by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.

#### **214C Audit of Fund levy records**

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records of a licensed insurer relating to Fund levies collected by the insurer under this Part.
- (2) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect relevant accounting and other records of the licensed insurer.
- (3) A licensed insurer must provide all reasonable assistance to enable the exercise of those functions.
- (4) A person must not wilfully obstruct or delay a person exercising a function under this section.
- (5) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (6) A licensed insurer or another person who contravenes any requirement imposed on the insurer or other person by or under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

#### **215 (Repealed)**

#### **215A Payment of workers compensation indemnity on behalf of insurers**

The Authority may enter into arrangements with one or more licensed insurers under the [Workers Compensation Act 1987](#) for the payment by the Authority on behalf of licensed insurers under this Act (**motor accident insurers**) of amounts required to be paid by

motor accident insurers by way of indemnity referred to in section 151Z of that Act.

## Chapter 9 Miscellaneous

### **216 No contracting out of Act** (cf s 132 MAA)

This Act applies despite any contract to the contrary.

### **217 Secrecy of information obtained from or relating to insurers or proposed insurers** (cf s 132B MAA)

(1) A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person if the person is aware that it is protected information, except in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

(2) Despite subsection (1), protected information may be divulged:

(a) to a particular person or persons, if the Authority certifies that it is necessary in the public interest that the information be divulged to the person or persons, or

(b) to a prescribed person or prescribed authority, or

(c) to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or

(d) to the Minister.

(3) A person cannot be required:

(a) to produce in any court any document or other thing that contains protected information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or

(b) to divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act.

(4) Despite subsection (3), a person may be required to produce such a document or other thing in a court or to divulge protected information to a court if:

(a) the Authority certifies that it is necessary in the public interest to do so, or

(b) a person to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.

(5) An authority or person to whom protected information is divulged under subsection

(2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.

(6) This section does not apply to the divulging of information to, or the production of any document or other thing to:

(a) any law enforcement agency, or

(b) any person or body prescribed for the purposes of this subsection.

(7) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**functions under this Act** includes functions under the regulations or other instruments under this Act.

**produce** includes permit access to.

**protected information** means:

(a) information concerning the business, commercial, professional or financial affairs of an applicant for a licence under this Act or of a licensed insurer, or

(b) information obtained in the course of an investigation of an application for such a licence, or

(c) information that was obtained by the Authority under this Act from a licensed insurer and that is the subject of an unrevoked declaration by the licensed insurer to the effect that the information is confidential,

not being information that is publicly available.

#### **218 Act to bind Crown** (cf s 4 MAA)

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.

#### **219 Recovery of money by Authority** (cf s 99 MAA)

Any charge, fee or money due to the Authority, or to the Crown in respect of any of the activities of the Authority, may be recovered by the Authority as a debt in a court of competent jurisdiction, if no express provision is otherwise made for its recovery.



## **220 Seal of Authority**

The seal of the Authority is to be kept by the Chief Executive Officer and may be affixed to a document only:

- (a) in the presence of the Chief Executive Officer or a member of staff authorised for the purpose by the Chief Executive Officer, and
- (b) with an attestation by the signature of the Chief Executive Officer or that member of staff of the fact of the affixing of the seal.

## **221 Certificate evidence** (cf s 132A MAA)

(1) A certificate issued by the Authority or a person authorised by the Authority as to the name of a licensed insurer by whom a third-party policy has been issued for a particular period for:

- (a) a particular motor vehicle, or
- (b) motor vehicles to which a particular trader's plate is fixed,

is admissible in any proceedings and is evidence of the matters certified by the certificate.

(2) A certificate issued by the Authority or a person authorised by the Authority stating that a third-party policy was not in force on a particular date or during a particular period in relation to:

- (a) a particular motor vehicle, or
- (b) motor vehicles to which a particular trader's plate was fixed,

is admissible in any proceedings and is evidence of the matters certified by the certificate.

## **222 Service of documents generally** (cf s 133 MAA)

(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 or the Motor Accidents Council, 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) is taken to have been given or served on its being so delivered or left or, if it is sent by post, is, in the absence of evidence to the contrary, prima facie taken to have been given or served when it would have been delivered in the ordinary course of post.

### **223 Service of documents on Authority or Motor Accidents Council** (cf s 98 MAA)

(1) A document may be served on the Authority or the Motor Accidents Council by leaving it at, or by sending it by post addressed to, the Authority's office or, if it has more than one office, any of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority or the Motor Accidents Council in any other manner.

(3) This section does not apply to the service of documents on the Authority as the Nominal Defendant.

### **224 Service of documents on Nominal Defendant** (cf s 34 MAA)

(1) A document may be served on the Nominal Defendant by leaving it at, or by sending it by post addressed to, the Nominal Defendant at:

(a) an address prescribed by the regulations for the purposes of this section, or

(b) if no such address is prescribed—the address of the head office of the Authority.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Nominal Defendant in any other manner.

**225 Personal liability** (cf Sch 2, cl 11 MAA)

(1) In this section:

**body** means the Authority, the Board of Directors of the Authority or the Motor Accidents Council.

(2) A matter or thing done by a body, by a member of a body or by a person acting under the direction of a body does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of a body or a person so acting personally to any action, liability, claim or demand.

**226 Offences by corporations** (cf s 134 MAA)

(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 is 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.

**227 Proceedings for offences** (cf s 135 MAA)

(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

(2) Proceedings for an offence against section 117 (False claims) may be commenced at any time within 2 years after the date of commission of the offence.

**228 Regulations** (cf s 136 MAA)

(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 adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**229, 230 (Repealed)**

### 231 Repeals

- (1) The *Motor Accidents Amendment Act 1998* is repealed.
- (2) The *Motor Accidents Regulation 1995* is repealed.

### 232 Savings, transitional and other provisions (cf s 137 MAA)

Schedule 5 has effect.

### 233 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as practicable after the period of 2 years from the commencement of this Act and a report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of that period of 2 years.
- (3) The review is to consider all aspects of the scheme established by this Act, including the following matters:
  - (a) the impact of the 10% permanent impairment threshold referred to in section 131 and the MAA Medical Guidelines on persons injured in motor vehicle accidents,
  - (b) the level of competition between licensed insurers in setting premiums for third-party policies (having regard to the financial information provided to the Authority under this Act),
  - (c) whether the new procedures introduced by this Act to resolve motor accident claims have stabilised the level of premiums for third-party policies,
  - (d) whether further changes are needed to the scheme.

## Schedule 1 Provisions relating to Board of Directors of Authority

(Section 199)

### 1 Definitions

In this Schedule:

**Board** means the Board of Directors of the Authority.

**director** means any director of the Board.

**part-time director** means a director of the Board other than the Chief Executive Officer.

## **2 Deputies of part-time directors**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time director, and the Minister may revoke any such appointment.
- (2) In the absence of a part-time director, the director's deputy:
  - (a) may, if available, act in the place of the absent director, and
  - (b) while so acting, has all the functions of the director (other than any functions the director has as Chairperson or Deputy Chairperson of the Board) and is taken to be a director.
- (3) A person while acting in the place of a part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a director is taken to be an absence of the director.

## **3 Terms of office of part-time directors**

Subject to this Schedule, a part-time director holds office for such period (not exceeding 3 years) as is specified in the director's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **4 Remuneration**

A part-time director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

## **5 Vacancy in office of part-time director**

- (1) The office of a part-time director becomes vacant if the director:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or under Part 8 of the [Public Sector Management Act 1988](#), or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been

absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may at any time remove a part-time director from office.

## **6 Disclosure of pecuniary interests**

(1) If:

- (a) a director has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

(3) The Board must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Board from time to time.

(4) After a director has disclosed the nature of an interest in any matter, the director must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

### **7 Filling of vacancy in office of part-time director**

If the office of a part-time director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **8 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a part-time director.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time director or from accepting and retaining any remuneration payable to the person under this Act as such a director.

### **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

### **10 Quorum**

The quorum for a meeting of the Board is 4 directors.

### **11 Presiding member**

(1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.

- (2) In the absence of both the Chairperson and the Deputy Chairperson, another part-time director elected to chair the meeting by the directors present at the meeting is to preside at the meeting.
- (3) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which the directors (or some of them) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each director have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the Board.
- (5) Papers may be circulated among the directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **14 Committees**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not directors of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.



## 15 First meeting

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

## Schedule 2 Provisions relating to Motor Accidents Council

(Section 208)

### 1 Definitions

In this Schedule:

**appointed member** means any member of the Motor Accidents Council, other than the Chairperson, the Deputy Chairperson or the Chief Executive Officer of the Authority.

**Chairperson** means the Chairperson of the Motor Accidents Council and of the Board of Directors of the Authority.

**Deputy Chairperson** means the Deputy Chairperson of the Motor Accidents Council and of the Board of Directors of the Authority.

**member** means any member of the Motor Accidents Council.

### 2 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member (other than the Chief Executive Officer of the Authority), and the Minister may revoke any such appointment.
- (2) In the absence of a member (other than the Chief Executive Officer of the Authority), the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member (other than any functions the member has as Chairperson or Deputy Chairperson) and is taken to be a member.
- (3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### 3 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **4 Allowances**

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

#### **5 Vacancy in office of appointed member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Motor Accidents Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Motor Accidents Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Motor Accidents Council for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove an appointed member from office.

#### **6 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Motor Accidents Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Motor

Accidents Council.

- (2) A disclosure by a member at a meeting of the Motor Accidents Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Motor Accidents Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Motor Accidents Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Motor Accidents Council otherwise determines:
- (a) be present during any deliberation of the Motor Accidents Council with respect to the matter, or
  - (b) take part in any decision of the Motor Accidents Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Motor Accidents Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Motor Accidents Council for the purpose of making the determination, or
  - (b) take part in the making by the Motor Accidents Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Motor Accidents Council.
- (7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing that arises by reason only of the member having the qualification required for appointment.

## **7 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, to

be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **9 General procedure**

The procedure for the calling of meetings of the Motor Accidents Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Motor Accidents Council.

## **10 Quorum**

The quorum for a meeting of the Motor Accidents Council is 7 members.

## **11 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Motor Accidents Council.
- (2) In the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting by the members present at the meeting is to preside at the meeting.
- (3) The person presiding at any meeting of the Motor Accidents Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Motor Accidents Council at which a quorum is present is the decision of the Council.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Motor Accidents Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in

writing approved in writing by a majority of the voting members is taken to be a decision of the Motor Accidents Council.

(2) The Motor Accidents Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

each member has the same voting rights (if any) as they have at an ordinary meeting of the Motor Accidents Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Motor Accidents Council.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **14 Attendance by non-members**

(1) A person authorised by the Motor Accidents Council or Chairperson may attend a meeting of the Motor Accidents Council, and may participate in the meeting to the extent that the Motor Accidents Council determines.

(2) A person attending a meeting of the Motor Accidents Council under this clause cannot cast a vote at the meeting.

#### **15 First meeting**

The Minister is to call the first meeting of the Motor Accidents Council in such manner as the Minister thinks fit.

### **Schedule 3 Provisions relating to Principal Claims Assessor**

(Section 99A)

#### **1 Term of office**

(1) The Principal Claims Assessor holds office for the period, not exceeding 7 years, specified in his or her instrument of appointment.

(2) A person is eligible for re-appointment as Principal Claims Assessor.

## **2 Remuneration and allowances**

The Principal Claims Assessor is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine.

## **3 Acting Principal Claims Assessor**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Principal Claims Assessor during the illness or absence of the Principal Claims Assessor (or during a vacancy in the office of Principal Claims Assessor) and a person, while so acting, has all the functions of the Principal Claims Assessor.
- (2) The Minister may, at any time, remove a person from the office of acting Principal Claims Assessor.
- (3) The acting Principal Claims Assessor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **4 Vacancy in office**

- (1) The office of Principal Claims Assessor becomes vacant if the person:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (h) engages in any paid employment outside the duties of the office of Principal

Claims Assessor, except with the consent of the Minister.

- (2) The Minister may remove a person from the office of Principal Claims Assessor at any time.

## 5 Filling of vacancy in office

If the office of Principal Claims Assessor becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## 6 Leave

- (1) The entitlement of the Principal Claims Assessor to annual and other leave is to be as stated in the Principal Claims Assessor's instrument of appointment.
- (2) The Principal Claims Assessor may be granted leave by the Chief Executive Officer.

## 7 Effect of certain other Acts

The *Public Sector Employment and Management Act 2002* does not apply to the appointment of the Principal Claims Assessor and a person is not, as Principal Claims Assessor, subject to that Act (except Chapter 5).

## Schedule 4 (Repealed)

## Schedule 5 Savings, transitional and other provisions

(Section 232)

### Part 1 Preliminary

#### 1 Definitions

- (1) In this Schedule:

**1988 Act** means the *Motor Accidents Act 1988*.

- (2) A reference in this Act or the 1988 Act to the commencement of this Act is a reference to the commencement of the majority of the provisions of this Act.

#### 2 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

*Motor Accidents Compensation Amendment (Medical Assessments) Act 2000*

*Motor Accidents Legislation Amendment Act 2004*

*Motor Accidents Compensation Amendment Act 2006*

*Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*

*Civil Liability Legislation Amendment Act 2008*

*Motor Accidents Compensation Amendment Act 2009*

- (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**

### **3 Continuation of Motor Accidents Authority**

The Motor Accidents Authority constituted under Part 8.1 of this Act is a continuation of, and the same legal entity as, the Motor Accidents Authority constituted under Part 7 of the 1988 Act.

### **4 Board of Directors of Authority**

- (1) The Board of Directors of the Motor Accidents Authority constituted under section 84 of the 1988 Act is abolished.
- (2) A person who held office as a part-time director of that Board immediately before its abolition ceases to hold office and is not entitled to any remuneration, or compensation, for loss of that office. However, any such person is eligible (if otherwise qualified) to be appointed as a part-time director of the Board of Directors of the Authority constituted under this Act.
- (3) The regulations under this Schedule may make provision for or with respect to the re-constitution of that Board before its abolition by this clause in accordance with the provisions applicable to the constitution of the Board of Directors of the Authority under this Act.



## **5 Continuation of Motor Accidents Authority Fund**

The Motor Accidents Authority Fund established under Part 7 of the 1988 Act becomes, on the commencement of this Act, the Motor Accidents Authority Fund established under Part 8.4 of this Act.

## **6 Financial provisions**

- (1) Any obligation of an insurer to pay a contribution under section 95 of the 1988 Act in respect of a financial year that commenced before the commencement of this Act is not affected by the repeal of that section. Any such obligation extends to the obligation to pay an instalment of a contribution that is not due until after the commencement of this Act.
- (2) Any such contribution paid or recovered after the commencement of this Act is to be paid into the Motor Accidents Authority Fund established under Part 8.4 of this Act.

## **7 Nominal Defendant**

Anything that was done under or had effect under a provision of Division 5 of Part 3 of the 1988 Act in relation to the Nominal Defendant is, after the commencement of this Act, also taken to have been done under or to have effect under the corresponding provision of this Act.

## **8 Claims register**

The claims register kept under section 67 of the 1988 Act becomes, on the commencement of this Act, the claims register under section 120 of this Act.

## **9 Insurers**

- (1) A licence granted under Division 1 of Part 8 of the 1988 Act, and in force immediately before the commencement of this Act, is taken to be a licence granted under Part 7.1 of this Act.
- (2) Anything that was done under or had effect under a provision of the 1988 Act in relation to any such licence is, after the commencement of this Act, also taken to have been done under or to have effect under the corresponding provision of this Act.

## **10 Insurance Industry Deed**

- (1) Until an Insurance Industry Deed is in force under this Act, the Industry Deed in force under the 1988 Act immediately before the commencement of this Act is taken to be the Insurance Industry Deed for the purposes of this Act.
- (2) Any provisions of the Industry Deed that are inconsistent with this Act or any regulation under this Act do not have effect.

## **11 Rehabilitation guidelines**

Rehabilitation guidelines in force under section 37 of the 1988 Act immediately before the commencement of this Act are taken to be MAA Medical Guidelines until any such guidelines are issued under this Act with respect to the provision of rehabilitation services.

## **12 References to 1988 Act**

A reference to the *Motor Accidents Act 1988* in any Act (other than in this Act), in any instrument made under any such Act or in any document is to be read as including a reference to this Act, unless the regulations or the context otherwise requires.

## **13 MAA Premiums Determination Guidelines—unearned premium surplus**

- (1) MAA Premiums Determination Guidelines under Part 2.3 of this Act are to ensure that any unearned premium surplus of insurers associated with policies in force at the commencement of this Act is taken into account for the purpose of subsidising the premiums payable for policies issued within 12 months after the commencement of this Act.
- (2) The MAA Premiums Determination Guidelines may make provision for or with respect to the following:
  - (a) identifying unearned premium surplus,
  - (b) determining how insurers are to apply the unearned premium surplus.
- (3) For the purpose of giving effect to the provisions of the MAA Premiums Determination Guidelines relating to the application of the unearned premium surplus among insurers, the Authority may, under Part 8.4 of this Act, include a special levy in the contributions of licensed insurers to the Motor Accidents Authority Fund to recoup the unearned premium surplus for payment of relevant amounts to other insurers according to the arrangements for the application of the unearned premium surplus. Any such levy may apply to an insurer that ceases to issue third-party policies.

## **14 Initial premiums for third-party policies**

- (1) This clause applies to third-party policies issued or taken to have been issued during the period of 12 months after the commencement of this Act.
- (2) The grounds on which the Authority may, under Part 2.3 of this Act, reject a premium or set of premiums filed under that Part for any such policy include that the Authority is not satisfied (after taking into account independent actuarial advice) that the majority of policies relating to passenger motor vehicles in metropolitan areas will attract a premium of not more than approximately \$330.
- (3) This clause does not prevent a change in the initial premium or set of premiums filed under Part 2.3 of this Act if:

- (a) the change results in a reduction in the premium or set of premiums, or
- (b) the change is to take account of a change in the taxation treatment of relevant third-party policies or any other matter that could not have been reasonably anticipated at the time the premium or set of premiums was filed.

**15 Additional insurance coverage beyond basic premium rate**

- (1) The premium for third-party policies referred to in clause 10 is the basic premium rate for benefit coverage under this Act.
- (2) Insurers may provide additional optional benefit coverage for persons who wish to take up that coverage in the event of their injury or death in a motor vehicle accident.

**15A Third-party insurance policies issued under [Motor Accidents Act 1988](#) where insurer becomes insolvent**

- (1) Part 7.3 extends to any claim made under a third-party policy of insurance issued under the [Motor Accidents Act 1988](#) in respect of a motor accident occurring before the commencement of that Part as if the policy had been issued under this Act.
- (2) Part 7.3 extends as referred to in subclause (1):
  - (a) whether or not the third-party policy of insurance has had effect for any period after the commencement of that Part, and
  - (b) whether the claim was made before or after the commencement of that Part, and
  - (c) whether the relevant insurer became an insolvent insurer before or after the commencement of this clause.

**Part 3 Provisions arising from the [Motor Accidents Compensation Amendment \(Medical Assessments\) Act 2000](#)**

**16 Application of amendment**

The amendment made to section 61 by the [Motor Accidents Compensation Amendment \(Medical Assessments\) Act 2000](#) extends:

- (a) to any certificate given by a medical assessor under Part 3.4 of Chapter 3 before the commencement of that amendment, and
- (b) to any court proceedings commenced, but not finally determined, before the commencement of that amendment.

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

## Legislation Amendment Act 2004

### 17 Application of section 5A

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

## Part 5 Provisions arising from the Motor Accidents Compensation Amendment Act 2006

### 18 Definition

In this Part:

**2006 amending Act** means the *Motor Accidents Compensation Amendment Act 2006*.

### 19 Amendments concerning application of Act

An amendment made by the 2006 amending Act to Chapter 1 of this Act does not apply in respect of a motor accident that occurs before the commencement of the amendment.

### 20 Suspension and cancellation of registration

An amendment made by the 2006 amending Act to section 14 extends to a third-party policy issued before the commencement of the amendment.

### 21 Cap on insurer liability

Section 23A does not apply in respect of a liability arising in connection with a motor accident that occurs before the commencement of that section.

### 22 Nominal Defendant liability

An amendment made by the 2006 amending Act to section 33 or 34 does not apply in respect of a motor accident that occurs before the commencement of the amendment.

### 23 Contributions to Fund

- (1) On and from the commencement of the amendments made by the 2006 amending Act to Part 8.4, an amount received into the Fund under that Part as an amount contributed by a licensed insurer is taken to have been received as an amount collected by the insurer on behalf of the Authority as Fund levy payable by persons to whom third-party policies were issued by the insurer.
- (2) Any amount payable by a licensed insurer as a contribution to the Fund under Part 8.4 remains payable despite any amendment made to that Part by the 2006 amending Act and a provision of that Part that is amended by that Act continues to apply to and in respect of such a liability that accrued before the commencement of the amendment.

as if the amendment had not been made.

## **Part 6 Provisions arising from the Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007**

### **24 Definition**

In this Part:

**2007 amending Act** means the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*.

### **25 General operation of amendments**

Except as otherwise provided by this Part or by regulations under this Schedule, an amendment made by the 2007 amending Act does not apply in respect of a motor accident that occurs before the commencement of the amendment.

### **26 Settlement conferences**

Division 1A (Document exchange and settlement conference before claims assessment) of Part 4.4 extends to a claim made after the commencement of the Division even if the motor accident concerned occurred before that commencement.

### **27 Duty of insurers to make hospital, medical and other payments**

An amendment made by the 2007 amending Act to section 83 extends to a claim made after the commencement of the amendment even if the motor accident concerned occurred before that commencement.

### **28 Provision of relevant particulars of claim**

Sections 85A and 85B extend to a claim made after the commencement of those sections even if the motor accident concerned occurred before that commencement.

### **29 Medical assessment**

An amendment made by the 2007 amending Act to Chapter 3 (Motor accident injuries) extends to a matter referred for assessment under Part 3.4 after the commencement of the amendment even if the motor accident concerned occurred before that commencement.

### **30 Duty of insurer to make offer of settlement**

An amendment made by the 2007 amending Act to section 82 extends to a claim made after the commencement of the amendment even if the motor accident concerned occurred before that commencement.

### **31 Claims and assessment procedures**

The following amendments and provisions extend to a claim made after the commencement of the amendment or provision even if the motor accident concerned occurred before that commencement:

- (a) an amendment made by the 2007 amending Act to Part 2.4 (Uninsured or unidentified motor vehicles), Part 4.2 (Claims and other preliminary matters) or Division 2 (Assessment of claims) of Part 4.4,
- (b) sections 85A (Duty of claimant to provide relevant particulars of claim) and 85B (Consequences of failure to provide relevant particulars of claim).

### **32 General regulation of court awards**

An amendment made by the 2007 amending Act to section 123 extends to a claim made after the commencement of the amendment even if the motor accident concerned occurred before that commencement.

### **33 Standard of care of inexperienced driver**

Section 141 (as inserted by the 2007 amending Act) extends to a claim made after the commencement of the section even if the motor accident concerned occurred before that commencement.

## **Part 7 Provision arising from the [Civil Liability Legislation Amendment Act 2008](#)**

### **34 Restrictions on compensation for attendant care services**

An amendment made to this Act by the [Civil Liability Legislation Amendment Act 2008](#) extends to liability arising, and to proceedings commenced, before the commencement of the amendment but does not apply to any proceedings determined before that commencement.

## **Part 8 Provisions arising from [Motor Accidents Compensation Amendment Act 2009](#)**

### **35 Extension of early payment scheme**

Section 50, as amended by the [Motor Accidents Compensation Amendment Act 2009](#), does not apply in respect of a motor accident that occurs before the commencement of that amendment.

### **36 Extension of bulk billing arrangements**

Section 54, as amended by the [Motor Accidents Compensation Amendment Act 2009](#), does not apply in respect of expenses incurred before the commencement of that

amendment.