

# Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007 No 95

[2007-95]



New South Wales

## Status Information

### Currency of version

Repealed version for 13 December 2007 to 1 October 2008 (accessed 11 July 2024 at 18:25)

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

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by sec 5 (1) of this Act with effect from 2.10.2008.

### Authorisation

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

File last modified 2 October 2008

# Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007 No 95



New South Wales

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# Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007 No 95



New South Wales

An Act to amend the *Motor Accidents Compensation Act 1999* to make further provision for claims procedures and assessment, dispute resolution and medical assessment; and for other purposes.

## 1 Name of Act

This Act is the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*.

## 2 Commencement

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

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

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

## 4 Amendment of other Acts

Each of the Acts specified in Schedule 2 is amended as set out in that Schedule.

## 5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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

## Schedule 1 Amendment of *Motor Accidents Compensation Act 1999*

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order:

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

**[2] Section 34 Claim against Nominal Defendant where vehicle not identified**

Omit “after due inquiry and search” from section 34 (1).

**[3] Section 34 (1AA)**

Insert after section 34 (1):

(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.

**[4] Section 34A**

Insert after section 34:

**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.

**[5] Section 44 Medical Guidelines of Authority**

Insert “and review of assessments” after “procedure for assessment” in section 44 (1) (d).

**[6] Part 3.2, heading**

Omit the heading. Insert instead:

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

**[7] Section 46 Definitions**

Insert in alphabetical order:

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

**[8] Section 47 Payment for treatment and lost earnings of injured persons**

Insert “and lost earnings” after “treatment expenses” in section 47 (1).

**[9] Section 47 (2)**

Omit the subsection. Insert instead:

- (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).

**[10] Section 47 (3) and (4)**

Insert after section 47 (2):

- (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.

**[11] Section 48 Notification of motor accident to police and submission of accident notification form to insurer**

Insert “or lost earnings” after “treatment expenses”.

**[12] Section 49 Accident notification forms**

Insert after section 49 (2) (b):

- (b1) information about any loss of earnings suffered by the injured person to be completed by or on behalf of the injured person, and

**[13] Section 50 Acceptance of provisional liability by insurer**

Insert “and lost earnings” after “treatment expenses” wherever occurring in section 50 (1), (3) and (7).

**[14] Section 50 (5)**

Omit the subsection. Insert instead:

- (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.

**[15] Section 50 (7)**

Omit “in respect of those expenses”. Insert instead “in respect of them”.

**[16] Section 50 (8)**

Omit the subsection. Insert instead:

- (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.

**[17] Section 51**

Omit the section. Insert instead:

**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.

**[18] Section 57 Definitions**

Insert in alphabetical order:

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

**[19] Section 57A**

Insert after section 57:

**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.

**[20] Section 58 Application**

Insert “(referred to in this Part as *medical assessment matters*)” after “the following matters” in section 58 (1).

**[21] Section 58 (1) (c)**

Omit the paragraph.

**[22] Section 58 (1) (d)**

Omit the paragraph. Insert instead:

- (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%,

**[23] Section 58 (1) (e)**

Omit the paragraph.

**[24] Section 60 Medical assessment procedures**

Insert “to the Authority” after “referred” in section 60 (1).

**[25] Section 60 (2)**

Omit section 60 (2)–(4). Insert instead:

- (2) The Authority is to arrange for the dispute to be referred to one or more medical assessors.

**[26] Section 61 Status of medical assessments**

Omit section 61 (2). Insert instead:

- (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.



**[27] Section 61 (3)**

Omit the subsection.

**[28] Section 61 (7) and (8)**

Omit “matter referred to in subsection (2) (a), (b), (b1) or (c)” wherever occurring.

Insert instead “medical assessment matter”.

**[29] Section 61 (10) and (11)**

Insert after section 61 (9):

(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.

**[30] Section 62 Referral of matter for further medical assessment**

Insert after section 62 (1):

(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 officer of the Authority designated by the Authority for the purpose (in this Part referred to as the ***proper officer of the Authority***).

**[31] Section 63 Review of medical assessment by review panel**

Insert after section 63 (2):

(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.

**[32] Section 63 (3A)**

Insert after section 63 (3):

(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.

**[33] Section 63 (5)-(7)**

Omit section 63 (5). Insert instead:

(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.

**[34] Section 64 Costs of medical assessment**

Omit section 64 (3). Insert instead:

(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.

**[35] Section 64 (5)**

Insert after section 64 (4):

- (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.

**[36] Section 65 MAA monitoring and oversight**

Insert after section 65 (2):

- (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.

**[37] Section 70**

Omit the section. Insert instead:

**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.

**[38] Section 73 Late making of claims**

Omit section 73 (3) and (4). Insert instead:

- (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.

**[39] Section 74 Form of notice of claim**

Omit “either or both” from section 74 (2).

Insert instead “any one or more”.

**[40] Section 74 (2) (c)**

Insert after section 74 (2) (b):

- (c) authorise the insurer to provide information and documents so obtained by the insurer to persons specified in the authorisation.

**[41] Section 74 (2A)**

Insert after section 74 (2):

(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.

**[42] Section 76**

Omit the section. Insert instead:

**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.

**[43] Section 82 Duty of insurer to make offer of settlement**

Omit section 82 (1) (a). Insert instead:

(a) within 1 month after the injury is sufficiently recovered to enable the claim to be quantified, or

**[44] Section 82 (1) (b)**

Omit the paragraph. Insert instead:

(b) within 2 months after the claimant has provided to the insurer all relevant particulars about the claim as required by section 85A,

**[45] Section 82 (4) (b) and (c)**

Omit section 82 (4) (b). Insert instead:

(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.

**[46] Section 82 (5)**

Omit the subsection.

**[47] Section 83 Duty of insurer to make hospital, medical and other payments**

Insert after section 83 (2):

(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.

**[48] Section 83 (6)**

Insert after section 83 (5):

- (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.

**[49] Section 84 Duty of insurer with respect to rehabilitation of injured person**

Insert after section 84 (5):

- (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.

**[50] Section 84A**

Insert after section 84:

**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.

**[51] Sections 85A and 85B**

Insert after section 85:

**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.

**[52] Section 86 Medical and other examination of claimant**

Omit “the travelling and other expenses of the claimant of or incidental to the examination or assessment” from section 86 (2).

Insert instead “the reasonable and necessary costs and expenses incurred by the claimant in connection with the examination or assessment”.

**[53] Section 86 (3)**

Insert “or the Authority” after “a medical assessor”.

**[54] Section 86 (4) (a)**

Omit “a claims assessor”. Insert instead “the Authority”.

**[55] Section 86 (5)**

Insert after section 86 (4):

- (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.

**[56] Section 88 Definitions**

Omit the definition of *Principal Claims Assessor* from section 88 (1).

**[57] Part 4.4, Division 1A**

Insert after Division 1 of Part 4.4:

## **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.

### **[58] Section 91**

Omit the section. Insert instead:

### **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.

**[59] Section 94 Assessment of claims**

Omit section 94 (1) (b). Insert instead:

- (b) the amount of damages for that liability (being the amount of damages that a court would be likely to award).

**[60] Section 94A**

Insert after section 94:

**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.

**[61] Section 95 Status of assessments**

Insert after section 95 (2):

(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.

**[62] Section 96 Special assessments of certain disputes in connection with claims**

Insert before section 96 (1) (a):

(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

**[63] Section 96 (1) (b)**

Omit the paragraph. Insert instead:

(b) whether the claimant has a full and satisfactory explanation for non-compliance with the police accident report requirement under section 70, or

**[64] Section 96 (1) (d)**

Omit the paragraph. Insert instead:

(d) whether the insurer is entitled to delay the making of an offer of settlement under section 82, or

**[65] Section 96 (1) (f)-(i)**

Insert at the end of section 96 (1) (e):

, 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 cooperate 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.

**[66] Section 96 (5) and (6)**

Insert after section 96 (4):

- (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.

**[67] Section 99 Claims assessors**

Omit section 99 (3).

**[68] Section 99A**

Insert after section 99:

**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 of the Authority any of the Principal Claims Assessor's functions under this Act, except this power of delegation.
- (4) Schedule 3 has effect.

**[69] Section 100 Power of claims assessor to require information**

Insert at the end of section 100 (1) (b):



, 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).

**[70] Section 100 (1A) and (1B)**

Insert after section 100 (1):

(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).

**[71] Section 100 (2)**

Omit "party to an assessment". Insert instead "person".

**[72] Section 100 (4) (b)**

Omit "subsection (1)". Insert instead "this section".

**[73] Section 101 Power of claims assessor to provide documents and information to a party**

Insert after section 101 (1):

(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.

**[74] Section 101 (2) (c)**

Omit "another party". Insert instead "a party".

**[75] Section 105 Control and direction of claims assessors**

Insert at the end of section 105 (3):

The Principal Claims Assessor is, in the exercise of his or her functions, subject to the general direction and control of the General Manager.

**[76] Section 109 Time limitations on commencement of court proceedings**

Omit section 109 (2). Insert instead:

- (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.

**[77] Section 122 Damages in respect of motor accidents**

Insert after section 122 (2):

- (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.

**[78] Section 123 General regulation of court awards**

Insert at the end of the section:

- (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.

**[79] Section 124 Damages for economic loss—no compensation for first 5 days of loss of**

**earnings etc**

Omit the section.

**[80] Section 132 Assessment of impairment required before award of damages for non-economic loss if dispute over impairment threshold**

Omit “until the assessor is satisfied that the injury has stabilised” from section 132 (3).

Insert instead “until the assessor is satisfied that the impairment caused by the injury has become permanent”.

**[81] Section 141**

Insert after section 140:

**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.

**[82] Section 209 Functions of Council**

Insert “and lost earnings” after “treatment” in section 209 (1) (c).

**[83] Section 212 Motor Accidents Authority Fund**

Insert after section 212 (3) (c1):

- (c2) expenditure incurred by the Authority pursuant to any arrangements under section 215A (Payment of workers compensation indemnity on behalf of insurers),

**[84] Section 215A**

Insert after section 215:

## **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.

### **[85] Schedule 3**

Insert after Schedule 2:

## **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 General Manager.

#### **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).

**[86] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007*

**[87] Schedule 5, Part 6**

Insert after Part 5:

**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.

## **Schedule 2 Amendment of other Acts**

(Section 4)

### **2.1 Civil Procedure Act 2005 No 28**

#### **[1] Section 81 Definitions and application**

Omit section 81 (2) (not including the note to that subsection). Insert instead:

- (2) This Division does not apply to an award of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies except as specifically provided by section 82 (7).

**[2] Section 82 Court may order interim payments**

Insert after section 82 (6):

- (7) The court may make an order under this section in proceedings for the recovery of damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies, but only an order for one or more payments to be made to the plaintiff of part of the damages for economic loss sought to be recovered in the proceedings and only if the court is satisfied that the plaintiff would suffer financial hardship if such a payment were not made.

**2.2 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**Schedule 2 Public offices**

Insert at the end of Part 1:

Principal Claims Assessor under the *Motor Accidents Compensation Act 1999*