



New South Wales

# Motor Accidents Legislation Amendment Bill 2003

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The claims procedures of the *Workplace Injury Management and Workers Compensation Act 1998* and the scheme under the *Workers Compensation Act 1987* for determining common law damages do not apply to claims against an employer for damages for death or injury arising from a motor accident occurring in the course of employment. Instead, the claims procedures and scheme for determining common law damages under the *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* apply to such claims.

The object of this Bill is to insert new provisions in the *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* to reverse this position if:

- (a) the motor accident did not arise from the use or operation of a motor vehicle on a road or road related area, and

- (b) there is no motor accident insurer on risk (including any insurer under a third-party policy) in respect of the motor accident and there is no right of action against the Nominal Defendant.

The Bill contains transitional provisions that extend the operation of the new provisions to motor accidents occurring before the commencement of those new provisions, but not so as to affect court proceedings commenced before 5 December 2002 (being the date on which the Minister made a statement in the Legislative Council to the effect that the amendments made by the Bill would commence from that date).

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Motor Accidents Act 1988* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Motor Accidents Compensation Act 1999* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to Schedule 3 which inserts a note to section 151E of the *Workers Compensation Act 1987* and a note to the definition of **work injury damages** in section 250 (1) of the *Workplace Injury Management and Workers Compensation Act 1998*.

## Schedule 1 Amendment of Motor Accidents Act 1988

This Schedule sets out the amendments to the *Motor Accidents Act 1988* explained in the Overview.

## Schedule 2 Amendment of Motor Accidents Compensation Act 1999

This Schedule sets out the amendments to the *Motor Accidents Compensation Act 1999* explained in the Overview.

### **Schedule 3   Amendment of workers compensation legislation**

This Schedule inserts a note into the *Workers Compensation Act 1987* to alert readers to the effect of the proposed provisions explained in the Overview in relation to the award of common law damages. It also inserts a note into the *Workplace Injury Management and Workers Compensation Act 1998* to alert readers to the effect of the proposed provisions explained in the Overview in relation to the claims procedures of that Act.





New South Wales

# Motor Accidents Legislation Amendment Bill 2003

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Act 1988 No 102	2
4 Amendment of Motor Accidents Compensation Act 1999 No 41	2
5 Amendment of workers compensation legislation	2
Schedule 1 Amendment of Motor Accidents Act 1988	3
Schedule 2 Amendment of Motor Accidents Compensation Act 1999	5
Schedule 3 Amendment of workers compensation legislation	7





New South Wales

# Motor Accidents Legislation Amendment Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* in respect of motor accidents occurring in the course of employment; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Motor Accidents Legislation Amendment Act 2003*.

**2 Commencement**

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

**3 Amendment of Motor Accidents Act 1988 No 102**

The *Motor Accidents Act 1988* is amended as set out in Schedule 1.

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

The *Motor Accidents Compensation Act 1999* is amended as set out in Schedule 2.

**5 Amendment of workers compensation legislation**

The *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* are amended as set out in Schedule 3.



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**Schedule 1 Amendment of Motor Accidents Act 1988**  
(Section 3)

**[1] Section 3D**

Insert after section 3C:

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

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

Motor Accidents Legislation Amendment Bill 2003

Schedule 1      Amendment of Motor Accidents Act 1988

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<b>[2]    Sections 34B, 41 and 69</b>	1
Insert at the end of the sections, respectively:	2
<b>Note.</b> The application of this Part in respect of work injury matters is limited by section 3D.	3 4
<b>[3]    Schedule 4 Savings, transitional and other provisions</b>	5
Insert at the end of clause 1 (1):	6
the <i>Motor Accidents Legislation Amendment Act 2003</i>	7
<b>[4]    Schedule 4, Part 12</b>	8
Insert after Part 11:	9
 <b>Part 12      Provisions arising from the enactment of                     the Motor Accidents Legislation                     Amendment Act 2003</b>	10 11 12
 <b>35    Application of section 3D</b>	13
Section 3D extends to motor accidents occurring before the section commences. However, section 3D does not affect court proceedings commenced before 5 December 2002 or any decision of a court made before the section commences.	14 15 16 17

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## Schedule 2 Amendment of Motor Accidents Compensation Act 1999

(Section 4)

### [1] Section 5A

Insert after section 5:

#### **5A Chapters 3, 4, 5 and 6 not to apply to work injury claim resulting from uninsured off-road accident**

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

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<b>[2]    Sections 43, 67 and 148</b>	1
Insert at the end of the sections, respectively:	2
<b>Note.</b> The application of this Chapter in respect of work injury matters is limited by section 5A.	3 4
<b>[3]    Section 122 Damages in respect of motor accidents</b>	5
Omit the note to the section. Insert instead:	6
<b>Note.</b> See <i>Motor Accidents Act 1988</i> for motor accidents occurring before the commencement of this Act.	7 8
See section 121 of the <i>Transport Administration Act 1988</i> for the application of this Chapter to railway, ferry and other public transport accidents.	9 10 11
The application of this Chapter in respect of work injury matters is limited by section 5A.	12 13
<b>[4]    Schedule 5 Savings, transitional and other provisions</b>	14
Insert at the end of clause 2 (1):	15
<i>Motor Accidents Legislation Amendment Act 2003</i>	16
<b>[5]    Schedule 5, Part 4</b>	17
Insert after Part 3:	18
 <b>Part 4            Provisions arising from the enactment of the Motor Accidents Legislation Amendment Act 2003</b>	19 20 21
 <b>17    Application of section 5A</b>	22
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.	23 24 25 26

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## Schedule 3 Amendment of workers compensation legislation

(Section 5)

### 3.1 Workers Compensation Act 1987

#### Section 151E Application—modified common law damages

Insert after section 151E (2):

**Note.** However, this Division will generally apply if the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (as described in section 3D of the *Motor Accidents Act 1988* and section 5A of the *Motor Accidents Compensation Act 1999*).

### 3.2 Workplace Injury Management and Workers Compensation Act 1998

#### Section 250 Interpretation

Insert at the end of the definition of *work injury damages* in section 250 (1):

**Note.** However, *work injury damages* generally extends to damages from a worker's employer where the injury is caused by an off-road motor accident and there is no motor accident insurer on risk (as described in section 3D of the *Motor Accidents Act 1988* and section 5A of the *Motor Accidents Compensation Act 1999*).