

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Motor Accidents Compensation Act 1999 (the Act)*:

(a) to make various amendments to provisions concerned with the assessment of medical disputes between claimants and insurers about motor accident injuries and the review of those assessments, including amendments with respect to the matters within the jurisdiction of medical assessors and the independence of medical assessors, and

(b) to make various amendments to provisions dealing with the procedures for assessment by the Motor Accidents Claims Assessment and Resolution Service (**CARS**) of motor accident claims and disputes, and

(c) to clarify the duty of claimants to provide all relevant particulars of their claims and to provide a procedure for a claim to be deemed to have been withdrawn if the required particulars have not been provided within 30 months after the accident, and

(d) to require the parties to a claim to participate in a settlement conference and exchange offers of settlement before assessment of the claim by CARS, and to require the exchange of all documents on which the parties propose to rely for the assessment of the claim, and

(e) to make it clear, for the purposes of the duty of an insurer to make an offer of settlement once an injury has stabilised, that stabilisation is the point at which recovery has been reached, and

(f) to require payment of damages assessed by CARS within the time prescribed by the regulations and to provide for the payment of interest on damages not paid within the required time, and

(g) to make it clear that the limits imposed by the Act on damages that may be recovered for injuries resulting from motor accidents in NSW extend to damages assessed and recovered outside NSW, and to provide for the recovery by insurers of damages awarded outside NSW in excess of the claimant's entitlement under NSW law, and

(h) to require an insurer who has accepted liability on a claim to make interim payments for economic loss in cases of financial hardship, and

(i) to make it clear that payments by insurers for "as incurred" hospital, medical and other payments are subject to apportionment where contributory negligence is established, and

(j) to require that a motor accident in respect of which a motor accident claim is to be made must be reported to police within 28 days after the accident, and

(k) to increase from \$500 to \$5,000 the maximum amount payable by an insurer under the Accident Notification Form scheme (under which an insurer accepts provisional liability and makes early payments for treatment expenses of a person injured in a motor accident), and to include payment for past loss of earnings in the scheme, and

(l) to make it clear that the obligation of an insurer to make payments under the Accident Notification Form scheme does not apply once a full claim has been made, and

(m) to extend the Accident Notification Form scheme to the Nominal Defendant in the case of an accident involving an uninsured motor vehicle, and

(n) to remove the current exclusion on recovery of motor accident damages for the first 5 days of economic loss, and

(o) to make it clear that the duty of care owed by the driver of a motor vehicle to another person is not affected by the other person's knowledge about the driver's skill or experience, and

(p) to provide for an annual payment from CTP insurers for the cost of CTP scheme liability for workers compensation claims, and
(q) to extend the MAA Medical Guidelines to hospital, medical and other payments made by insurers after acceptance of liability, and
(r) to provide for the approved motor accident claim form to authorise disclosure of relevant information by an insurer, and
(s) to provide for the making and enforcement of costs orders by CARS assessors, and
(t) to provide for the regulations to prescribe rates at which the costs of travel to attend for a medical examination or assessment or for rehabilitation are to be paid to injured persons, and
(u) to provide for the statutory position of Principal Claims Assessor, and
(v) to make other minor, consequential or savings and transitional amendments.
The Bill also makes consequential amendments:
(a) to the *Civil Procedure Act 2005* to enable a court to make an interim award of damages for economic loss on a motor accident claim if the award is necessary to avoid financial hardship, and
(b) to the *Statutory and Other Offices Remuneration Act 1975* to provide for the remuneration of the new statutory position of Principal Claims Assessor.

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 Compensation Act 1999* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Civil Procedure Act 2005* and the *Statutory and Other Offices Remuneration Act 1975* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Motor Accidents Compensation Act 1999

Medical assessment of medical disputes

The Act provides for the assessment by medical assessors of disagreements (*medical disputes*) between claimants and insurers about various matters.

Schedule 1 [5] amends section 44 of the Act to extend the range of matters for which the MAA Medical Guidelines issued by the MAA may provide to include the procedure for the review of medical assessments.

Schedule 1 [19] provides statutory recognition for the Motor Accidents Medical Assessment Service. The Service consists of the medical assessors appointed under the Act and such officers of the Authority as the Authority determines.

Schedule 1 [25] removes the current requirement for insurer consent for an application for assessment of permanent impairment in claims where liability has been denied, and provides that only applications requesting further assessment or assessment review are required to be made to the “proper officer” of the MAA.

Schedule 1 [18], [20], [24] and [28] make consequential amendments.

Schedule 1 [21] and [23] remove disputes about whether an injury has stabilised and degree of impairment of earning capacity from disputes that are within the jurisdiction of medical assessors. **Schedule 1 [22]** makes it clear that the jurisdiction of medical assessors to deal with permanent impairment disputes is limited to disputes about whether permanent impairment exceeds the 10% threshold.

Schedule 1 [26] and [27] make consequential amendments to provide that medical

assessments are conclusive evidence in all cases (which extends the range of matters in which medical assessments are conclusive to include an assessment of whether treatment relates to an injury caused by the motor accident). **Schedule 1 [43]** makes it clear, for the purposes of the duty of an insurer to make an offer of settlement once an injury has stabilised, that stabilisation is the point at which recovery has been reached. **Schedule 1 [45] and [80]** are consequential on the amendment made by Schedule 1 [43].

Schedule 1 [29] clarifies the procedure for the making of a medical assessment of degree of permanent impairment that is based on 2 or more single medical assessor assessments. A medical assessor nominated by the MAA is to make an assessment and give a combined certificate of assessment based on the 2 or more single assessor assessments. The amendment also allows a medical assessor to issue a replacement certificate of assessment to correct an obvious error.

Schedule 1 [30] provides that the additional information or injury deterioration required to be demonstrated when applying for a further medical assessment must be such as to be capable of having a material effect on the outcome of the previous assessment.

Schedule 1 [31] makes it clear that the review of a combined certificate medical assessment is limited to a review of the single medical assessor assessment that is alleged to be incorrect.

Schedule 1 [32] makes it clear that the review of a medical assessment is a review of all the matters with which the review is concerned and is not limited to a review of the aspect of the assessment alleged to be incorrect.

Schedule 1 [33] makes consequential amendments and provides that the MAA Medical Guidelines may limit the time within which an application for review of a medical assessment may be made.

Schedule 1 [34] includes costs incurred by the MAA and costs prescribed by the regulations in the costs of medical assessments for which the MAA may impose fees.

Schedule 1 [35] provides for the regulations to prescribe rates at which the costs of travel to attend a medical assessment are to be paid to injured persons.

Schedule 1 [36] makes it clear that medical assessors are not subject to direction and control by the Authority in the exercise of their assessment powers.

Schedule 1 [49] provides for the regulations to prescribe rates at which the costs of travel to access rehabilitation services are to be paid to injured persons.

Schedule 1 [52] and [55] provide for the regulations to prescribe rates at which the costs of travel to attend a medical examination are to be paid to injured persons.

Schedule 1 [53] authorises the MAA (in addition to a medical assessor) to require a claimant to undergo a medical examination for the purposes of a medical assessment.

Schedule 1 [54] makes a consequential amendment.

Claims and dispute assessment by CARS

The Act provides for the assessment by claims assessors (as part of the Motor Accidents Claims Assessment Service) of motor accident claims and certain disputes concerning those claims.

Schedule 1 [59] and [77] make it clear that the assessment by a claims assessor of the damages to which a person injured in a motor accident is entitled to be made on the same basis as the award of damages by a court, so that the limitations imposed by the Act on a court award of damages will also apply to assessment by an assessor.

Schedule 1 [60] transfers from the Regulations under the Act provision for assessors to assess a claimant's costs on the assessment of a claim.

Schedule 1 [61] provides that the damages assessed by a claims assessor and payable by an insurer (together with any costs assessed) are to be paid within the period prescribed by the regulations. The amendment also provides for the regulations to require the payment of interest on unpaid damages and costs.

Schedule 1 [66] provides for a claims assessor to include in an assessment of a

dispute an assessment of the claimant's costs on the dispute.

Schedule 1 [70] and [71] enable a claims assessor to require a person who is not a party to an assessment to provide documents and information that the assessor considers to be relevant to the assessment. **Schedule 1 [69]** provides for a claims assessor to require a party to an assessment of a claim to provide a consent, authority or direction to facilitate the provision of information or documents by a person who is not a party to the assessment. **Schedule 1 [72]–[74]** make consequential amendments.

Schedule 1 [76] provides that for the purposes of the 3-year limitation period on commencement of court proceedings for motor accident damages time stops running from the time a claim is referred to the MAA for assessment until 2 months after the certificate of assessment is issued.

Claims procedures

Schedule 1 [2]–[4] amend section 34 and insert section 34A to provide for a claims assessor to resolve a dispute about whether there has been due inquiry and search to establish the identity of a vehicle for the purposes of a claim against the Nominal Defendant. **Schedule 1 [62]** makes a consequential amendment.

Schedule 1 [37] substitutes section 70 to require that a motor accident that gives rise to a claim must be reported to the police within 28 days and to provide for a claims assessor to resolve a dispute about whether a claimant has a full and satisfactory explanation for non-compliance with the requirement to notify the accident to police.

Schedule 1 [63] makes a consequential amendment.

Schedule 1 [38] amends section 73 to provide for a claims assessor to resolve a dispute about whether a claimant has a full and satisfactory explanation for delay in making a claim.

Schedule 1 [39]–[41] provide that the MAA approved claim form may require the claimant to authorise the insurer to disclose information and documents provided by the claimant to the insurer, and facilitate the use of a copy of an authorisation provided by the claimant for the obtaining of information and documents.

Schedule 1 [42] substitutes section 76 to provide for a claims assessor to resolve a dispute about whether a claimant's notice of claim fails to comply with the Act.

Information exchange and dispute resolution

Schedule 1 [51] inserts proposed sections 85A and 85B. Proposed section 85A makes it clear that it is the duty of the claimant in a motor accident claim to provide the insurer with all relevant particulars about the claim as expeditiously as possible after the claim is made. Proposed section 85B provides that if a claimant has failed without reasonable excuse after two and a half years to provide the insurer with relevant particulars of the claim, the claimant can be required to provide those particulars within 3 months and will be deemed to have withdrawn the claim if the particulars are not provided. The section also provides for the reinstatement of a withdrawn claim by a claims assessor if the claimant has a full and satisfactory explanation for the failure to provide the required particulars. **Schedule 1 [44], [46] and [64]** make consequential amendments.

Schedule 1 [65] (proposed section 96 (1) (h) and (i)) provide for an assessor to resolve disputes about the operation of proposed section 85B.

Schedule 1 [57] inserts proposed Division 1A (sections 89A–89E) into Part 4.4, which provide for the exchange of documents, the holding of a settlement conference and the exchange of settlement offers by the parties to a claim before assessment of the claim by CARS.

Proposed section 89A requires the parties to participate in a settlement conference as soon as practicable after the insurer makes an offer of settlement.

Proposed section 89B requires that before the parties's settlement conference they must exchange all documents on which they propose to rely for the purposes of the assessment of the claim by CARS. Failure to exchange a document precludes a party

from relying on the document for the purposes of the CARS assessment.

Proposed section 89C requires the parties to make an offer of settlement within 14 days after the conclusion of a settlement conference if the claim is not settled.

Proposed section 89D provides for a claims assessor to award a costs penalty of up to 25% against a party who fails to exchange documents, fails to participate in a settlement conference or fails to make an offer of settlement as required under the proposed Division.

Proposed section 89E provides for the kinds of claims that are excluded from the operation of the proposed Division.

Schedule 1 [58] makes a consequential amendment so that a claim cannot be referred for CARS assessment until 28 days after the new procedure for settlement conferences and offers of settlement has been followed. The amendment also makes it clear that a claim can be referred at any time for assessment of an exemption from claims assessment.

Schedule 1 [65] (proposed section 96 (1) (g)) provides for an assessor to resolve disputes about whether an insurer's request that a claimant provide specified information, documents or records is reasonable.

Early payment for treatment and lost earnings

The Act provides for an insurer to make early payments for treatment of a person injured in a motor accident following submission of an accident notification form to the insurer and acceptance of provisional liability by the insurer.

Schedule 1 [6]–[13] and [15]–[17] extend the provisions for early payment of treatment expenses to include early payment for past loss of earnings and **Schedule 1 [82]** makes a consequential amendment.

Schedule 1 [10] also makes it clear that early payments are not required to be made once a full claim is made in respect of the claim, and provides that early payments for loss of earnings are not required to be made if the insurer is reasonably of the opinion that the claimant is likely to make a full claim.

Schedule 1 [17] increases from \$500 to \$5,000 the maximum amount payable under the early payments scheme (for both treatment and loss of earnings). Treatment expenses are required to be paid in priority to payments for loss of earnings.

Schedule 1 [14] extends the provision of the early payments scheme that deems acceptance of liability by an insurer in certain circumstances to claims against the Nominal Defendant for an accident involving an uninsured motor vehicle.

Schedule 1 [50] requires an insurer, once liability has been admitted or determined, to make interim payments for economic loss in cases of financial hardship.

Schedule 1 [65] (proposed section 96 (1) (f)) provides for an assessor to resolve disputes about whether an insurer is required to make such an interim payment.

Other amendments

Schedule 1 [78] makes it clear that the limits imposed by the Act on damages that may be recovered for injuries resulting from motor accidents in NSW extend to damages assessed and recovered in a court outside NSW, and provides for the recovery by insurers of damages awarded outside NSW in excess of the claimant's entitlement under NSW law.

Schedule 1 [79] removes a provision that prevents recovery of damages for the first 5 days of loss of earnings resulting from a motor accident injury.

Schedule 1 [81] makes it clear that the duty of care owed by the driver of a motor vehicle to another person is not affected by the other person's knowledge about the driver's level of skill or experience.

Schedule 1 [83] and [84] provide for the MAA to enter into arrangements with workers compensation insurers to make payments to them on behalf of CTP insurers for the cost of CTP scheme liability for workers compensation claims.

Schedule 1 [1], [68] and [85] provide for the appointment by the Minister of a Principal Claims Assessor for a term of up to 7 years. Currently, the position of

Principal Claims Assessor is a public servant position within the MAA.

Schedule 1 [56], [67] and [75] make consequential amendments.

Schedule 1 [47] provides for the MAA Medical Guidelines to provide for what constitutes reasonable treatment, rehabilitation and attendant care for the purposes of the duty of an insurer to pay expenses that are reasonable and necessary.

Schedule 1 [48] makes it clear that payments by insurers for “as incurred” hospital, medical and other payments are subject to apportionment where contributory negligence is established.

Schedule 1 [86] and [87] enact consequential savings and transitional provisions and a savings and transitional regulation making power.

Schedule 2 Amendment of other Acts

Interim awards for economic loss

Schedule 2.1 amends the *Civil Procedure Act 2005* to enable a court in proceedings for damages to which the *Motor Accidents Compensation Act 1999* applies to make an interim award of damages for economic loss in cases of financial hardship.

Remuneration of Principal Claims Assessor

Schedule 2.2 amends the *Statutory and Other Offices Remuneration Act 1975* to provide for the remuneration of the statutory position of Principal Claims Assessor to be fixed under that Act.