

[Home](#) » [Hansard & Papers](#) » [Legislative Assembly](#) » [27 November 2007](#) » [Full Day Hansard Transcript](#) » [Item 25 of 45](#) »

# Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Bill 2007

About this Item

Speakers - [Judge Ms Virginia](#); [Acting-Speaker \(Ms Diane Beamer\)](#)

Business - Bill, Bill Introduced, Agreement in Principle, Motion

## MOTOR ACCIDENTS COMPENSATION AMENDMENT (CLAIMS AND DISPUTE RESOLUTION) BILL 2007

Page: 4425

**Bill introduced on motion by Ms Virginia Judge, on behalf of Mr John Watkins.**

### Agreement in Principle

**Ms VIRGINIA JUDGE** (Strathfield—Parliamentary Secretary) [4.53 p.m.], on behalf of Mr John Watkins: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Bill 2007. The purpose of the bill is to make further efficiency improvements in the motor accidents claims and dispute resolution processes and procedures currently operating under the Motor Accidents Compensation Act 1999. These reforms build on the Government's 1999 overhaul of the Motor Accidents Compensation Scheme and continue the Government's commitment to providing people injured in motor vehicle accidents with faster and less formal methods for resolving motor accident compensation claims and disputes outside of the court system.

The Government recognises the importance of providing injured people with access to compensation as soon as possible. A key reform to the claims process introduced in 1999 was the introduction of an early accident notification process designed to encourage injured people to access early treatment with the goal of maximising recovery from their accident injuries. An accident notification lodged within 28 days of the accident provides early injury notification to the insurer and enables the injured person to access up to \$500 in medical treatment, and pharmaceutical and rehabilitation expenses. The bill expands the early notification and payment process to provide claimants with more minor injuries the option of a simplified process for the recovery of up to \$5,000 in treatment expenses and lost earnings. This initiative will provide a fast-track process for more efficiently resolving small claims.

The bill also introduces processes to promote the earlier resolution of motor accident injury claims in disputed cases by requiring claimants and green slip insurers to cooperate with each other in exchanging information about claims and to participate in settlement conferences before claims can be referred for dispute resolution. In cases where settlement is unable to be achieved through these new processes, these negotiations will assist the parties to narrow the issues in dispute prior to referring the matter for dispute resolution.

The bill also streamlines processes relating to the operation of the Motor Accidents Authority's Motor Accidents Assessment Service, which comprises the Medical Assessment Service and the Claims Assessment and Resolution Service. The Medical Assessment Service and the Claims Assessment and Resolution Service were established as part of the Government's 1999 reforms to the Motor Accidents Scheme to facilitate the resolution of motor accident claims without the need to resort to litigation. The Medical Assessment Service provides an independent forum for assessing disputes between insurers and injured people concerning an injured person's medical treatment and impairment. Assessment is by way of referral to expert medical specialists and other healthcare professionals.

The Claims Assessment and Resolution Service resolves claims outside the court system and deals with all disputed motor accident claims as a precondition to commencing court proceedings. These changes flow from close examination and review of the motor accidents claims process and the dispute resolution services against a background of more than seven years experience with the operation of the reformed scheme. The Motor Accidents Authority has also engaged in extensive consultation with representatives from the insurance industry, legal profession, medical assessors and claims assessors to identify strategies to improve the operation of the Motor Accidents Assessment Service. This consultation has identified a number of procedural and process changes to promote greater scheme efficiency as well as facilitate earlier resolution of motor accident claims.

I now turn to the main provisions of the bill. The bill makes amendments to the Motor Accidents Compensation Act 1999 to promote the earlier resolution of motor accident injury claims. The bill also makes several miscellaneous amendments to the Act to improve the operation of the Motor Accidents Scheme. Items [6] to [17] of schedule 1 to

the bill amend part 3.2 of the Act dealing with early accident notification and payments. The amendments will simplify the claim process for motor accident victims with more minor injuries. The bill extends the early payment provisions to include payment for lost earnings in addition to treatment expenses. The maximum limit on early payments is increased from \$500 to \$5,000.

To support this expansion, the bill also repeals section 124 of the Act, which excludes recovery of the first five days economic loss. Economic loss will now be recoverable from the first day of lost earnings. This expansion will operate within the framework currently applying for the early accident notification process. If, within the early accident notification period, the injured person lodges a full claim, the claim will take precedence. Items [18] to [36] of schedule 1 to the bill amend part 3.4 of the Act dealing with medical assessments. The bill clarifies a number of procedural issues relating to medical assessments including the processes for referral of disputes for medical assessment and further assessment, the correction of obvious errors in assessment certificates and the conduct of review assessments, and provides for the issuing of combination certificates in cases of multiple injuries that require assessment by more than one medical assessor to determine the extent of a person's permanent impairment.

The bill also refines the dispute jurisdiction of the Medical Assessment Service to focus on its core functions of dealing with disputes about treatment for motor accident injuries and assessment of permanent impairment. The Medical Assessment Service will discontinue dealing with matters about impairment of earning capacity and injury stabilisation, other than considering whether an injury has stabilised to enable an assessment of the extent of permanent impairment to be determined.

The bill also provides statutory recognition of the medical assessment service and makes it absolutely clear that medical assessors are not subject to the control or direction of the Motor Accidents Authority in the exercise of their assessment functions. The bill also enables the medical assessment service to recoup the administrative costs associated with medical assessments. This may include, for example, costs associated with the processing of applications involving non-New South Wales insurers. To overcome unnecessary disputation, the bill provides for the regulation of reimbursement rates for claimants' travel expenses.

Items [37] to [77] of schedule 1 to the bill amend chapter 4 of the Act relating to motor accident claims. Items [37] to [42] of schedule 1 are largely clarifying amendments of existing provisions dealing with disputes about preliminary claims matters, such as reporting the accident to police, late claims and notice of claim. Amendments proposed by items [43] to [55] of schedule 1 clarify the duties of the parties in relation to the claim. Item [47] of schedule 1 provides for the authority's medical guidelines to approve what constitutes reasonable treatment, rehabilitation and attendant care for the purposes of an insurer's obligation to pay for an injured person's reasonable and necessary treatment, rehabilitation and care expenses.

Item [50] of schedule 1 to the bill imposes a new obligation on insurers in matters where liability has been admitted to make advance payments of economic loss entitlements in cases of economic hardship. Item [51] of schedule 1 clarifies a claimant's duty to provide all relevant particulars about a claim as expeditiously as possible and introduces a procedure to deal with inactive claims. This new procedure enables an insurer to issue an approved notice requiring the claimant to provide relevant particulars about the claim after two years and six months from the date of the accident. If the claimant does not comply with the notice, the claimant is taken to have withdrawn the claim. A claimant will, however, have a right to apply for reinstatement of a claim subject to a satisfactory explanation for the delay.

Item [57] of schedule 1 to the bill places new obligations on the parties to a claim to exchange documentation about the claim, participate in a settlement conference and exchange offers of settlement before the claim can be referred to the claims assessment and resolution service for assessment of the claim. The bill also provides that only those documents that have been exchanged by the parties may be included in a claims assessment. If one party refuses to cooperate and fails to exchange documents or participate in the settlement conference, a claims assessor may, in assessing costs, impose a costs penalty of up to 25 per cent on that party.

The bill also provides for the regulations to prescribe time frames in which an insurer is to pay compensation entitlements assessed by a claims assessor once the claimant has accepted the assessment. The bill expands the interim or special dispute jurisdiction of the claims assessment and resolution service to assist the continued progress of claims. Claims assessors may now also consider procedural disputes about interim payments of economic loss in cases of financial hardship; whether due inquiry and search about the identity of a vehicle has been made where a claim is made against the nominal defendant arising from an accident involving an unidentified vehicle; whether an insurer is entitled to require the claimant to provide relevant particulars about a claim; and the reinstatement of a claim taken to have been withdrawn.

The bill extends the powers of claims assessors to require information about a claim. Currently a claims assessor can direct a claimant or insurer to provide information and documents that the assessor considers relevant to the claim. The bill enables a claims assessor to direct a third party to produce specified information or documents that are considered relevant to a claim. The bill also provides for the position of a principal claims assessor as a statutory office with remuneration determined by the Statutory and Other Offices Remuneration Tribunal.

Finally, the bill makes several miscellaneous reforms to the Motor Accidents Scheme. The bill makes clear that "as incurred" payments made by insurers are subject to apportionment when there is a finding of contributory negligence that requires a proportionate reduction in the damages awarded. The bill clarifies that the provisions in the Act for damages for personal injury arising from motor vehicle accidents in New South Wales are part of the substantive law of the State. This amendment is necessary to protect the Motor Accidents Scheme from the impact of overseas awards of damages in excess of the compensation entitlements provided in the New South Wales scheme.

The bill also provides that an insurer is not required to pay damages to the extent those damages exceed entitlements provided by the Act, and has a right to recover any excess if an award exceeds entitlements provided by the Motor Accidents Compensation Act. The New South Wales scheme is fully funded from green slip premiums. If insurers are exposed to liability for awards in other jurisdictions, which exceed entitlements provided by the New South Wales scheme, this will impact on green slip premiums for the motorists of this State. The bill also provides that for the purposes of the Motor Accidents Scheme the standard of care required of the driver of a motor vehicle is not affected by the driver's skill or experience.

This amendment responds to the decision of the High Court in the case of *Cook v Cook* in which the court determined that the standard of care expected of an inexperienced driver, such as a learner driver, is different from the standard of care ordinarily expected of a driver in relation to their passengers. The High Court reasoned that a supervising passenger, for example, is aware that a learner driver is less skilled and experienced. It is not desirable that the costs of injury to an instructor or supervisor from an accident caused by the actions of a learner driver could be borne primarily by the injured person—a parent, for example—depending on the view of a court as to the standard of care required of the particular learner driver. This amendment will ensure that such injuries are covered by the green slip scheme.

In conclusion, I reiterate that the reforms proposed in the bill make further improvements to the claims and dispute resolution processes operating under the Motor Accidents Compensation Act. The changes will promote speedier resolution of motor accident matters, which will result in injured people finalising their claims and receiving compensation payments earlier. The changes will also create greater certainty in the underwriting of claims by insurers and therefore promote stability in green slip premiums for motorists. I commend the bill to the House.

**Debate adjourned on motion by Mr Russell Turner and set down as an order of the day for a future day.**

**ACTING-SPEAKER (Ms Diane Beamer):** Order! It being shortly before 5.15 p.m., with the concurrence of the House I propose to proceed to the taking of private members' statements.

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