

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [5.20 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The purpose of this bill is to firstly, implement changes to the administration of the Motor Accidents Authority and the Lifetime Care and Support Authority; and secondly to address a decision of the New South Wales Court of Appeal in the matter of *Zotti v Australian Associated Motor Insurers Limited* [2009] New South Wales CA 323.

The bill amends the *Motor Accidents Compensation Act* 1999 to provide for the appointment of an additional member to the Board of Directors of the Motor Accidents Authority and additional members to the Motor Accidents Council.

As well, the bill amends the *Motor Accidents (Lifetime Care and Support) Act 2006* for the appointment of an additional member to the Board of Directors of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council.

The bill also provides for the appointment of private legal practitioners as claims assessors in the Motor Accidents Authority's Claims Assessment and Resolution Service.

Lastly, the bill seeks to close a potential insurance gap which could leave motorists personally liable to pay compensation to injured persons.

As Honourable Members may recall, last year the Parliament enacted the *Public Sector (Miscellaneous Amendments) Act 2009*, which, among other things, amalgamated the administrative functions of a number of agencies concerned with the administration of compensation schemes for personal injury.

These agencies were brought together under the Compensation Authorities Staff Division, led by one Chief Executive Officer. The Motor Accidents Authority and Lifetime Care and Support Authority are two of those agencies, together with the WorkCover Authority of NSW, the Dust Diseases Board and the Long Service Payments Corporation.

The *Public Sector Restructure (Miscellaneous Amendments) Act 2009* made amendments to the *Motor Accidents Compensation Act* and the *Motor Accidents (Lifetime Care and Support) Act* to give effect to the new structural arrangements.

Under these changes the Chief Executive Officer of the Compensation Authorities Staff Division of the Government Service is now the Chief Executive Officer of the Motor Accidents Authority and the Lifetime Care and Support Authority.

The Chief Executive Officer of the Compensation Authorities Staff Division is also a director of the Boards of the Motor Accidents Authority and the Lifetime Care and Support Authority and a member of the Motor Accidents Council and the Lifetime Care and Support Advisory Council.

Prior to the creation of the Compensation Authorities Staff Division, the General Manager of the Motor Accidents Authority and Executive Director of the Lifetime Care and Support Authority had been a member of their respective Board and Advisory Council.

The bill makes minor amendments to the respective governing legislation of each Authority to ensure that the chief administrative officer with day-to-day management responsibility for each agency and who has extensive knowledge on operational issues, will be in a position to directly contribute to decisions of the agency's Board and advisory Council.

The Government has recently agreed to the appointment of a representative of the Motorcycle Council of New South Wales to the Motor Accidents Council.

The Motor Accidents Council is a statutory advisory body that provides an important forum for facilitating input to Government from the various stakeholders who have an interest in the operation of the motor accidents scheme.

It is appropriate that a representative of the peak body advocating on behalf of motor bike riders in this State should be included in the Government's advisory forum.

The bill therefore proposes an amendment to the Motor Accidents Compensation Act to provide for the appointment of additional members to Motor Accidents Council.

The bill also provides for the appointment of suitably qualified persons as a claims assessor in the Claims Assessment and Resolution Service.

The Claims Assessment and Resolution Service is an alternative dispute resolution body established under the *Motor Accidents Compensation Act*. The Claims Assessment and Resolution Service is designed to provide a non-adversarial

forum for resolving motor accident claims outside of the court system.

The majority of persons appointed as claims assessors since the inception of the Service are senior legal practitioners with an extensive knowledge of the assessment of compensation for motor accident claims.

At present only a member of staff of the Compensation Authorities Staff Division can be appointed as a claims assessor. Recent advice indicates that private legal practitioners who have been appointed as claims assessors may not be considered as members of staff.

To remove any doubt about the status of the private legal practitioners previously appointed as claims assessors and the assessment decisions they have made, it is proposed to make amendments to the *Motor Accidents Compensation Act*.

These amendments will enable the appointment of any suitably qualified person as a claims assessor and will validate appointments, acts or omissions of claims assessors who may not have been members of staff or officers of the Motor Accidents Authority when they were appointed.

I now turn to the amendments concerning a 2009 decision of the Court of Appeal in *Zotti v Australian Associated Motor Insurers Limited*.

The Zotti case involved a person who was injured when the bicycle he was riding slipped on an oil slick that was left on the road after an earlier motor vehicle accident. The Court was, in that case, required to interpret the definition of "injury" in the Act as it existed at the date of Mr Zotti's accident in December 2005.

While that definition has since been changed, the Act currently defines a "motor accident" in the same terms as the definition considered by the Court in the Zotti case.

The Court of Appeal found that because Mr Zotti's injury was not caused at the time of the motor accident crash, the compulsory third party insurer of the vehicle at fault in the earlier accident was not required to indemnify the vehicle driver for any damages to which Mr Zotti may later become entitled.

This left open the possibility that Mr Zotti could seek to recover damages directly from the vehicle driver.

An important object of the *Motor Accidents Compensation Act* is "to provide compensation for compensable injuries sustained in motor vehicle accidents" and to set up a scheme whereby all motor vehicles are covered by insurance for any injury caused.

The decision in the Zotti case results in two unsatisfactory outcomes. Firstly, the injured cyclist was not entitled to recover compensation from the compulsory third party scheme for his injuries. Secondly, the motor vehicle driver was not covered by his Green Slip insurance policy and could face the possibility of being personally liable to pay compensation.

Indeed the Court of Appeal also thought that this was an unsatisfactory situation deserving of consideration by the legislature.

The Government has heeded the Court's call and proposes to amend the definition of 'motor accident' in the *Motor Accident Compensation Act* to extend the cover provided by the compulsory third party policy to explicitly include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision or any vehicle running out of control.

Common sense would dictate that any situation caused by a road accident that then results in an injury to another road user must be a dangerous situation and should be included in the definition of a motor accident for the purpose of the motor accidents scheme.

This is an important amendment. While the number of such cases is anticipated to be extremely few, the change to the definition of 'motor accident' proposed by the bill will make sure that the cover (or indemnity) provided to the vehicle driver by their compulsory third party policy is always consistent with the driver's liability.

It will remove any possibility of a motorist having to meet, from their own pocket, the cost of defending an action by an injured person seeking compensation.

In making this change to the motor accidents scheme the Government is also concerned to ensure that the affordability of the Green Slip scheme is not jeopardised. Advice from the Motor Accidents Authority indicates that any effect on Green Slip premium cost should be minimal.

It is important to clarify that the proposed extension of the definition of 'motor accident' will expand the coverage provided by the compulsory third party policy to dangerous situations resulting from motor accidents but only in circumstances where the driver is liable for that dangerous situation.

Accordingly, this change will not make a compulsory third party insurer responsible for situations that currently some other party, such as a road authority or property owner, has responsibility for.

I commend the bill to the House.