



# Legislative Council

## Motor Accidents Compensation

### Amendment (Terrorism) Bill Hansard

#### - Extract

09/04/2002

#### Second Reading

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.33 p.m.]: I move:

That this bill be now read a second time.

In a ministerial statement to this House on 11 December last year the Special Minister of State announced that the Government would introduce legislation in this session of Parliament to amend the Motor Accidents Scheme to respond to changes in the international reinsurance market. As members will be aware from recent media coverage, international reinsurers have decided to withdraw liability cover for terrorist-related insurance losses following the tragic September 11 terrorist attacks in the United States of America.

The withdrawal by reinsurers of cover for terrorist-related losses has wide implications across the general insurance sector in Australia. The international reinsurers' action also has particular implications for the New South Wales compulsory third party [CTP] scheme. This is because New South Wales licensed CTP insurers are required to provide unlimited liability cover for death or injury resulting from a motor vehicle accident. The statutory third party policy prescribed by the Motor Accidents Compensation Act 1999 requires a CTP insurer to indemnify the owner and/or driver of a vehicle for death or injury which is a result of and is caused, whilst the vehicle is being driven, involved in a collision or near miss, by the vehicle running out of control or by a defect in the vehicle during its use or operation.

Advice provided to the New South Wales Motor Accidents Authority from Senior Counsel confirms that the legislation is not confined only to negligent actions involving a motor vehicle, but also covers intentional injury, for example, such as could result from a terrorist action using a motor vehicle as a weapon. All New South Wales CTP insurers reinsure against losses. As a result of international reinsurers' withdrawal of cover for terrorist-related losses, CTP insurers are exposed to a potential liability that cannot be covered by reinsurance. The action of reinsurers has serious potential to impact on the affordability and viability of the New South Wales green slip scheme.

The Motor Accidents Compensation Amendment (Terrorism) Bill 2002 excludes all liability arising from a terrorist act involving a motor vehicle, from the CTP scheme. The Government is concerned to ensure that the scope of this amendment is limited strictly to only those circumstances which are clearly attributable to a national or international terrorist attack. The terrorist exclusion introduced by the bill will apply only to an incident which is reasonable to characterise as an act of terrorism, having regard to the nature of the act and the context in which the act was done. This provides the necessary and essential safeguard that the terrorist exclusion can only apply to a national or international terrorist attack. However, in the light of some continuing concerns with the definition of "act of terrorism", the Government proposes to move an amendment in Committee, to state expressly in the legislation that lawful activity and industrial action cannot be characterised as an act of terrorism.

**The Hon. Richard Jones:** Whether lawful or not. It could be unlawful.

**The Hon. IAN MACDONALD:** The Hon. Richard Jones will have his opportunity in this second reading debate or in Committee to put his views to the Chamber. I know he is a bit wounded at the moment and is getting a bit carried away, but if he listens carefully to the debate he will hear the details. Though his interventions on one occasion were welcome, when for about four hours we continued to verbally dance in this place, for the moment I think he would do best if he sat back and relaxed. The ministerial statement also indicated that the proposed amendment would operate retrospectively, from 1 January 2002. The bill has been drafted accordingly. The approach taken by the bill is to exclude liability for any terrorist act occurring after 1 January 2002 and before 1 January 2003. Once the legislation comes into force, a third party policy, whenever issued, will not extend to cover this liability, during the period of the exclusion. The Queensland Parliament has enacted a similar exclusion from the Queensland compulsory third party [CTP] scheme which, in common with the New South Wales scheme, is underwritten by private insurers.

**The Hon. Richard Jones:** What about environmental terrorists?

**The Hon. IAN MACDONALD:** This measure is temporary and is being put into place for a limited period only—the Hon. Richard Jones should remember that—to address the immediate ongoing viability of the New South Wales CTP scheme. The bill's exclusion of terrorist acts will apply only until 1 January 2003 or the proclamation of an earlier date. The inclusion of the proclamation provision is to provide a mechanism to terminate the exclusion clause before the date otherwise provided by the bill, should any viable alternative approach emerge. It is intended that the proclamation provision will be utilised if alternative arrangements are in place. Clearly there will be consultation with the CTP insurers before the Government takes that action.

This amending legislation is being introduced as a temporary measure and as an initial response to the current state of the international reinsurers market. I am sure that the Hon. Richard Jones, even in his unkindest moments, would take that into account. At present those markets are volatile, and even the Hon. Richard Jones would agree that that is so. In such an uncertain market the situation at the end of the year cannot be predicted. By the adoption of temporary measures at this time, developments in the reinsurance markets can continue to be monitored in an effort to maintain flexibility and to be able to explore whether, in the light of developments in the reinsurance market, other viable options may become available. It would be a very game person indeed who did not agree with the sense of that proposition. For example, the reinsurance market may remove the current exclusion of terrorism, or the Federal Government may accept its responsibility for responding to the terrorism exclusion issue for all general insurance.

In the event that no viable alternatives are developed during 2002, the Government necessarily would be required to extend the terrorism exclusion further into the future. The Government will continue to work closely with industry to monitor the reinsurance position and assess both the requirements and the options for any further action. That will allow the position to be reassessed in the light of any national arrangement that is put in place or any change in the availability of reinsurance cover for such incidents. As I indicated earlier, the international reinsurance issue affects the general insurance sector across Australia and is not limited only to the New South Wales CTP scheme. Following undoubtedly strong leadership from the New South Wales Government this issue was discussed by the Council of Australian Governments at its meeting on 5 April 2002 at which it was agreed that the Commonwealth will consult the States and Territories regarding the action that may need to be taken to address the withdrawal of terrorism cover in the immediate term—an issue that is affecting the whole country. The New South Wales Government calls on the Federal Government to work with the insurance industry and State and Territory governments to find an effective national solution to this problem. I commend the bill to the House.