

[STATE ARMS]

New South Wales

## **Motor Accidents Amendment Bill 1998**

### **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 Act 1988* so as:

- (a) to rationalise the objects of the Act, and
- (b) to make further provision concerning the consideration by the Motor Accidents Authority (*the Authority*) of third-party insurance premiums filed by insurers and concerning the arbitration of disputes about premium levels, and
- (c) to revise the procedures to be observed in dealing with claims for damages in respect of the death of or injury to a person caused by the fault of the owner or driver of a motor vehicle, in particular in the areas of initial handling of claims, referral of disputes about claims to conciliation, and commencement of court proceedings in connection with claims, and
- (d) to establish a system of liability for costs as between party and party for the purpose of encouraging parties to comply with these procedures, and
- (e) to provide for payment of conciliation and court fees as determined under regulations, and
- (f) to establish a Motor Accidents Claims Assessment Unit, which is to include a conciliation service comprising conciliators, and
- (g) to remove certain anti-competitive provisions from the Act, and
- (h) to enable the Authority to seek information for the purposes of the Act, and
- (i) to impose secrecy requirements relating to certain information acquired in the course of the exercise of functions under the Act, and

(j) to improve the operation of the Act in other respects.

The Bill also amends the *Legal Profession Amendment (Costs Assessment) Act 1998*, which contains uncommenced amendments to the *Legal Profession Act 1987* relating to costs in motor vehicle accident matters.

## 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 giving effect to the amendments to the *Motor Accidents Act 1988* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Legal Profession Amendment (Costs Assessment) Act 1998* set out in Schedule 2.

## Schedule 1 Amendment of Motor Accidents Act 1988

### Objects of Act

The Bill rationalises and simplifies the objects of the Act as set out in section 2A. See **Schedule 1 [1] – [3]**.

### Third-party insurance premiums

**Schedule 1 [8]** amends section 15B to enable the Authority to take relevant financial information into account, as well as actuarial advice, in considering whether premiums filed with the Authority under the Act are excessive.

**Schedule 1 [9]** amends section 15B to empower the Independent Pricing and Regulatory Tribunal to arbitrate, or to appoint an arbitrator from a ministerial panel to arbitrate, in a dispute between the Authority and an insurer about the rejection of a premium by the Authority.

### Insurance claims

The Bill makes a number of amendments relating to the manner in which claims relating to motor vehicle accidents are to be dealt with, and a number of these are specifically dealt with below.

### Code of Practice

**Schedule 1 [12]** authorises the Authority to prepare a Code of Practice for the guidance of insurers and others in dealing with claims.

### Initial handling of claims

**Schedule 1 [14]** inserts new section 44C, which imposes a duty on a claimant to give the insurer a notice of particulars relating to injuries sustained and other relevant matters. This is similar to the notice currently required under section 50A, but is recast to fit in with the new arrangements.

**Schedule 1 [15]** inserts new section 44D, which provides a mechanism for determining a dispute as to whether such a notice contains sufficient particulars.

**Schedule 1 [16]** inserts new section 44E, which imposes a duty on the insurer to give the claimant a notice indicating whether or not the insurer admits liability.

### Attendant care

**Schedule 1 [18]** amends section 45 to include a specific reference to attendant care services expenses among the expenses that the insurer is required to pay once liability has been admitted or determined.

**Schedule 1 [10]** amends section 40 to insert a definition of *attendant care services*.

## **Disputes about interim payments**

**Schedule 1 [19]** inserts new section 45A to deal with a dispute that may arise in connection with the payment of expenses under section 45 once liability has been admitted or determined. Such a dispute can arise because of the criteria set out in section 45 regarding the extent to which such a payment is required to be made; for example, the payment is only required to be made if it is "reasonable and necessary". New section 45A provides a mechanism to resolve this kind of dispute, involving reference of the matter to the Authority, which may make recommendations in the matter or may refer the matter to arbitration.

## **Conciliation and pre-conciliation procedures**

**Schedule 1 [21]** inserts new Division 3A into Part 5. This Division provides a new procedure for conciliation of claims where liability is admitted. The procedure is as follows:

- (a) The insurer is under a duty to make an offer of settlement within 3 months after the notice of particulars is given under proposed section 44C.
- (b) The claimant is under a duty to accept the offer, or make a counter-offer, within 4 weeks.
- (c) The insurer is under a duty to accept or reject the counter-offer within 4 weeks.
- (d) If the counter-offer is rejected, either party may refer the dispute to the Motor Accidents Claims Assessment Unit for conciliation.
- (e) The Unit is to screen the dispute and either refer it for conciliation, or issue a certificate if it decides that the dispute is not suitable for conciliation (enabling court proceedings to be commenced).
- (f) A matter referred to conciliation is to be the subject of an assessment by a conciliator.
- (g) If the conciliator's assessment is rejected by either party, the conciliator is to issue a certificate that the conciliation has failed (enabling court proceedings to be commenced).
- (h) The matter can be settled at any stage during this procedure.

## **Costs**

**Schedule 1 [29]** inserts new Part 6A. This Part provides a new procedure for liability for costs. Essentially, the procedure imposes a costs penalty on the party who rejects some step in the conciliation procedure, where the outcome of the subsequent court proceedings does not justify this rejection.

## **Motor Accidents Claims Assessment Unit**

The Bill establishes the Motor Accidents Claims Assessment Unit, as a unit associated with the Authority. The Unit is to consist of officers and conciliators. Conciliators can be officers of the Authority or persons appointed by the Governor on the recommendation of the Minister. Conciliators have an appropriate measure of independence and are given appropriate powers to exercise their functions. See **Schedule 1 [30]** and **[40]**.

## **Anti-competitive provisions**

The Bill omits section 102 (2) (e), which allows the Authority, when determining an application by an insurer for a licence under the Act, to take into consideration the appropriate maximum number of licensed insurers. The Bill also amends section 105 to render of no effect any condition of a licence that would require a licensed insurer to obtain a particular share of the insurance market. See **Schedule 1 [31]** and **[34]**.

## **Conditions regarding claims**

The Bill amends section 105 to authorise the Authority to impose conditions on licensed insurers requiring them to achieve levels of early resolution of compensation claims, and requiring them to comply with timeframes under proposed Division 3A of Part 5. A condition for the latter purpose can

be imposed only if the insurer has been in breach of those times to an extent that warrants the condition being imposed. See **Schedule 1 [35]** and **[36]**.

#### **Information**

**Schedule 1 [37]** amends section 115 to make it clear that the Authority can seek from licensed insurers financial information (in connection with insurance premiums filed under the Act) and information about claims handling.

#### **Secrecy regarding protected information**

**Schedule 1 [38]** inserts new section 132B, which protects certain information obtained about insurers from being divulged.

#### **Reports about insurers**

**Schedule 1 [39]** inserts new section 132C, which authorises the Authority to forward to the Minister reports about the level of compliance by insurers with the requirements of the Act or the conditions of licences under the Act and about complaints and other matters affecting insurers. Such a report may be tabled in Parliament if the Authority recommends this action.

#### **Savings and transitional provisions**

**Schedule 1 [41]** and **[42]** amend Schedule 4 to deal with savings and transitional matters in connection with the proposed amendments.

#### **Other amendments**

The Bill makes other amendments to the Act of a minor, consequential or ancillary nature.

## **Schedule 2 Amendment of Legal Profession Amendment (Costs Assessment) Act 1998**

The Bill amends the *Legal Profession Amendment (Costs Assessment) Act 1998* (Act No 83, 1998), which contains uncommenced amendments to the *Legal Profession Act 1987* relating to costs for legal services in motor vehicle accident matters. The Bill for that Act was the subject of amendments in committee.

The proposed amendments remove provisions that would enable costs for such legal services to be charged under costs agreements in excess of fair and reasonable costs fixed under regulations.