

Motor Accidents Compensation Amendment Bill 2006

Explanatory note

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

This Bill is cognate with the *Motor Accidents (Lifetime Care and Support) Bill 2006*.

Overview of Bill

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

- (a) to provide a no-fault benefit for children injured in motor accidents, covering hospital, medical and pharmaceutical expenses, rehabilitation expenses, respite care expenses, attendant care services expenses and (in the case of death) funeral or cremation expenses,
- (b) to provide an entitlement to recover common law damages under the motor accidents compensation scheme for injury or death caused by a blameless (or “inevitable”) motor accident, except for the driver whose act or omission caused the accident,
- (c) to clarify the application of the Act by providing that the Act will only apply to a motor accident injury if the injury is caused during the driving of the vehicle, a collision involving the vehicle or the vehicle’s running out of control, and the injury is not one that arises gradually from a series of incidents,
- (d) to limit the operation of the Act to motor accident injuries for which a motor accident insurer (or the Nominal Defendant) is “on risk” under a third-party policy or that give rise to a work injury claim under workers compensation legislation (other than claims by coal miners),
- (e) to remove the existing right of action against the Nominal Defendant in respect of motor accidents occurring on land that constitutes a road because it is open to or used by the public for driving, riding or parking vehicles in those cases where the injured person is a trespasser on the land,
- (f) to clarify the circumstances in which a vehicle is considered to be “capable of registration” for the purposes of claims against the Nominal Defendant,
- (g) to cap the liability of a motor accident insurer arising from a single incident at \$200 million, with provision for the Nominal Defendant to indemnify the insurer for the amount by which the insurer’s liability exceeds that amount,
- (h) to extend provisions for the suspension and cancellation of vehicle registration for non-payment of third-party insurance premiums to cover cases of credit card fraud and underpayment resulting from the provision of false information, and to make it clear that the RTA is required to suspend and cancel registration under those provisions when the Motor Accidents Authority (**the Authority**) approves of an insurer request for that action,
- (i) to authorise the Authority to enter into bulk billing arrangements under which the Authority agrees to make bulk billing payments (instead of insurers as at present),
- (j) to provide that contributions currently made by insurers to the Motor Accidents Authority Fund are made on behalf of third-party policy holders and are payable by policy holders as a levy on third-party premiums (rather than as a component of premium as at present),
- (k) to protect medical assessors against personal liability incurred in good faith and against compellability to give evidence,
- (l) to make other amendments of a minor, consequential or savings and transitional nature.

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 consequential amendments to Acts and a Regulation 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

No-fault benefit for children injured in motor accidents

Schedule 1 [7] (proposed sections 7J–7P) provides a special entitlement to recover damages for children (persons aged under 16) whose death or injury results from a motor accident not caused by the fault of the owner or driver of the motor vehicle concerned. The principal features of this special entitlement are as follows:

(a) The special entitlement is an entitlement to recover damages for hospital, medical and pharmaceutical expenses, rehabilitation expenses, respite care expenses, attendant care services expenses and (in the case of death) funeral or cremation expenses.

(b) The special entitlement will only apply to motor accidents that occur in the State and for which a third-party insurer (or the Nominal Defendant) is “on risk” and only applies to children resident in the State at the time of the accident.

(c) The special entitlement will not be available for a child injured or killed while, or following, engaging in conduct that constitutes an offence punishable by 6 months or more in prison (which is consistent with parallel provisions of the *Civil Liability Act 2002*).

Cover for injury or death caused by blameless motor accident

Schedule 1 [7] (proposed sections 7A–7I) provides an entitlement to recover damages in respect of death or injury resulting from a blameless (or “inevitable”) motor accident (which is an accident not caused by the fault of the owner or driver of a motor vehicle or anyone else). The principal features of this entitlement are as follows:

(a) The entitlement will only apply to motor accidents that occur in the State and for which a third-party insurer (or the Nominal Defendant) is on risk.

(b) The entitlement will not be available in respect of the death of or injury to the driver of a motor vehicle whose act or omission caused the accident (even though that act or omission does not constitute fault).

Application of the Act

Schedule 1 [5] inserts proposed sections 3A and 3B which:

(a) make it clear that the Act only applies to a motor accident death or injury caused during the driving of a motor vehicle, a collision involving a motor vehicle or a motor vehicle’s running out of control, and does not apply to injury that arises gradually from a series of incidents, and

(b) limit the application of the Act to motor accident injuries for which a motor accident insurer (or the Nominal Defendant) is “on risk” or that give rise to a work injury claim (other than a claim by a coal miner).

The clarification referred to in paragraph (a) deals in particular with the issue of a defect in a vehicle causing an accident not during the driving of the vehicle but (for example) as a result of the use of faulty unloading equipment during the unloading of the vehicle. The issue of an injury arising from a series of incidents is typified by

an injury caused over a period of time by poor seating in a vehicle, which is an injury caused during the driving of the vehicle but is not caused by a single incident “accident”.

The limitation referred to in paragraph (b) effectively limits the application of the Act to on-road motor accidents, off-road motor accidents where the vehicle is registered (and so has third-party insurance), and off-road motor accidents that give rise to a workers compensation work injury claim (except a claim by a coal miner). This changes the current position under which the Act applies to motor accidents no matter where they occur and whether or not the vehicle is registered/insured or is registrable/insurable (subject to the existing exception for off-road accidents involving unregistered and uninsured vehicles that give rise to work injury claims by coal miners).

Schedule 1 [1]–[4], [6], [18] and [23]–[25] make consequential amendments.

Claims against the Nominal Defendant

Schedule 1 [14] and [16] remove the existing right of action against the Nominal Defendant in respect of motor accidents occurring on land that constitutes a road because it is open to or used by the public for driving, riding or parking vehicles in those cases where the injured person is a trespasser on the land.

Schedule 1 [15] revises a definition in the provision of the Act dealing with claims against the Nominal Defendant for motor accidents involving uninsured vehicles that are registrable so that instead of a vehicle being considered registrable if it is capable of registration following the repair of minor defects (the current position), a vehicle will be considered registrable if it is capable of registration at the time of manufacture (or at the time of manufacture with minor adjustments) or if it was previously capable of registration but is no longer capable of registration because it has fallen into disrepair.

Cap on insurer liability for single incident

Schedule 1 [12] provides that if the liability of a licensed insurer under a third-party policy in respect of all claims arising from a single incident exceeds \$200 million, the insurer is entitled to be indemnified by the Nominal Defendant for the amount by which the insurer’s liability exceeds \$200 million.

Schedule 1 [17] is a consequential amendment.

Suspension and cancellation of registration—payment of premiums

Schedule 1 [8]–[11] amend provisions that provide for the suspension and cancellation of vehicle registration for non-payment of third-party insurance premiums:

- (a) to extend the provisions to cover cases of credit card fraud and underpayment resulting from the provision of false information,
- (b) to provide for a licensed insurer to request the cancellation of registration at the end of a suspension period if the amount outstanding remains unpaid (in place of provisions of the *Road Transport (Vehicle Registration) Regulation 1998* that provide for automatic cancellation of registration in such a case),
- (c) to require the approval of the Motor Accidents Authority for the making of a request for the suspension or cancellation of registration under the provisions,
- (d) to make it clear that the RTA is required to suspend or cancel registration under those provisions when such a request is made by a licensed insurer and approved by the Authority.

Bulk billing arrangements

Schedule 1 [19]–[21] provide that bulk billing arrangements with the Minister for Health and service providers are to provide for the payment of treatment and related expenses of injured persons by the Authority, rather than by licensed insurers as at present. The amendments also make it clear that bulk billing arrangements can provide for lump sum payments to cover the payments due in respect of expenses incurred during a specified period.

Schedule 1 [28] provides for expenditure incurred by the Authority pursuant to a bulk billing arrangement to be paid out of the Motor Accidents Authority Fund (which is financed by contributions from third-party policy holders).

Contributions to the Motor Accidents Authority Fund

Schedule 1 [26], [27] and [29]–[31] make amendments to provisions that establish and fund the Motor Accidents Authority Fund. The amendments provide for the amount required to finance the Fund to be paid by third-party policy holders by way of a levy paid at the time a policy is issued and collected by licensed insurers on behalf of the Authority. At present contributions are paid by insurers as a percentage of third-party policy premium income and passed on to third-party policy holders as a component of premium.

Schedule 1 [13] makes a consequential amendment to the provision that sets the maximum commission payable to an insurer's agent. The maximum rate of commission is set as a percentage of premium and the amendments that distinguish premium from levies makes an adjustment to the rate of commission necessary.

Protection of medical assessors

Schedule 1 [22] provides protection against personal liability for medical assessors in respect of the exercise in good faith of their functions under the Act, and provides that medical assessors are competent but not compellable in legal proceedings to give evidence or produce documents in respect of matters involving the exercise of functions as a medical assessor. A liability against which a medical assessor is protected will become a liability of the Crown instead.

Savings and transitional provisions

Schedule 1 [32] and [33] make consequential savings and transitional amendments.

Schedule 2 Consequential amendments

Schedule 2 makes consequential amendments to the *Road Transport (Vehicle Registration) Regulation 1998*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.