



New South Wales

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*.



New South Wales

Motor Accidents Compensation Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Motor Accidents Compensation Act 1999 No 41	2
4 Consequential amendments	2
5 Repeal of Act	2
Schedule 1 Amendment of Motor Accidents Compensation Act 1999	3
Schedule 2 Consequential amendments	20



New South Wales

Motor Accidents Compensation Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Motor Accidents Compensation Act 1999* to make further provision with respect to the motor accidents to which the Act applies, no-fault recovery by children, blameless motor accidents, insurance premiums, claims against the Nominal Defendant and caps on insurer liability; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Motor Accidents Compensation Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Motor Accidents Compensation Act 1999 No 41	6
The <i>Motor Accidents Compensation Act 1999</i> is amended as set out in Schedule 1.	7 8
4 Consequential amendments	9
The Acts and Regulation set out in Schedule 2 are amended as set out in that Schedule.	10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	13 14
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16

Schedule 1	Amendment of Motor Accidents Compensation Act 1999	1
		2
	(Section 3)	3
[1]	Chapter 1, Part 1.1, heading	4
	Insert before section 1:	5
	Part 1.1 Interpretation and application	6
[2]	Section 3 Definitions	7
	Omit the definition of <i>death</i> .	8
[3]	Section 3, definition of “injury”	9
	Omit the definition. Insert instead:	10
	<i>injury</i> means personal or bodily injury and includes:	11
	(a) pre-natal injury, and	12
	(b) psychological or psychiatric injury, and	13
	(c) damage to artificial members, eyes or teeth, crutches or other aids or spectacle glasses.	14
		15
[4]	Section 3, definition of “motor accident”	16
	Omit the definition. Insert instead:	17
	<i>motor accident</i> means an incident or accident involving the use or operation of a motor vehicle that causes the death of or injury to a person where the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) during:	18
	(a) the driving of the vehicle, or	19
	(b) a collision, or action taken to avoid a collision, with the vehicle, or	20
	(c) the vehicle’s running out of control.	21
		22
		23
		24
		25
[5]	Sections 3A and 3B	26
	Insert after section 3:	27
	3A General restrictions on application of Act	28
	(1) This Act (including any third-party policy under this Act) applies only in respect of the death of or injury to a person that is caused by the fault of the owner or driver of a motor vehicle in the use or	29
		30
		31

operation of the vehicle and only if the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) during:	1
	2
	3
(a) the driving of the vehicle, or	4
(b) a collision, or action taken to avoid a collision, with the vehicle, or	5
	6
(c) the vehicle's running out of control.	7
Note. Part 1.2 (No-fault claims—children and blameless accidents) extends the operation of this Act for certain limited purposes to motor accidents that are not caused by the fault of the owner or driver of the motor vehicle.	8
	9
	10
	11
(2) This Act (including any third-party policy under this Act) does not apply in respect of an injury that arises gradually from a series of incidents.	12
	13
	14
3B Restrictions on application of claims provisions—accident must be insured or work accident	15
	16
(1) The application of Chapters 3–6 in respect of death or injury that results from the use or operation of a motor vehicle is limited to death or injury that:	17
	18
	19
(a) is caused by a motor accident for which the vehicle has motor accident insurance cover, or	20
	21
(b) gives rise to a work injury claim, other than a work injury claim in respect of the death of or injury to a coal miner (as defined in clause 3 of Part 18 of Schedule 6 to the <i>Workers Compensation Act 1987</i>).	22
	23
	24
	25
(2) For the purposes of this Act, a motor vehicle has motor accident insurance cover for a motor accident if and only if:	26
	27
(a) at the time of the motor accident the motor vehicle was subject to coverage under a third-party policy or was subject to coverage under a policy of compulsory third-party personal injury insurance or a compulsory motor vehicle accident compensation scheme under the law of a place other than New South Wales or under a law of the Commonwealth, or	28
	29
	30
	31
	32
	33
	34
(b) at the time of the motor accident, the motor vehicle was owned by the Commonwealth or by any person or body of persons representing the Commonwealth, or	35
	36
	37

(c)	there is a right of action against the Nominal Defendant in respect of the motor accident or there would be a right of action against the Nominal Defendant in respect of the motor accident if the motor accident had been caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.	1 2 3 4 5 6
(3)	For the purposes of this Act, death or injury gives rise to a work injury claim if it is:	7 8
(a)	the death of a worker resulting from or caused by an injury to the worker (being an injury caused by the negligence or other tort of the worker's employer), or	9 10 11
(b)	an injury to a worker caused by the negligence or other tort of the worker's employer,	12 13
	with expressions used in this subsection having the same meanings as they have in Part 5 of the <i>Workers Compensation Act 1987</i> .	14 15 16
[6]	Section 5A Chapters 3, 4, 5 and 6 not to apply to coal miner work injury claim resulting from uninsured off-road accident	17 18
	Omit the section.	19
[7]	Chapter 1, Part 1.2	20
	Insert after section 7:	21
	Part 1.2 No-fault claims—children and blameless accidents	22 23
	Division 1 Recovery for blameless accidents	24
7A	Definition of "blameless motor accident"	25
	In this Division:	26
	<i>blameless motor accident</i> means a motor accident not caused by the fault of the owner or driver of any motor vehicle involved in the accident in the use or operation of the vehicle and not caused by the fault of any other person (with the exception of the fault by way of contributory negligence of a person whose death or injury results from the motor accident).	27 28 29 30 31 32

7B	Liability for damages in case of blameless motor accident	1
(1)	The death of or injury to a person that results from a blameless motor accident involving a motor vehicle that has motor accident insurance cover for the accident is, for the purposes of and in connection with any claim for damages in respect of the death or injury, deemed to have been caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.	2 3 4 5 6 7
	Note. Section 3B defines what is meant by a motor vehicle having motor accident insurance cover for a motor accident.	8 9
(2)	If the blameless motor accident involved more than one motor vehicle that has motor accident insurance cover for the accident, the death or injury is deemed to have been caused by the fault of the owner or driver of each of those motor vehicles in the use or operation of the vehicle.	10 11 12 13 14
7C	Presumption that motor accident is blameless	15
	In proceedings on a claim for damages in respect of the death of or injury to a person resulting from a motor accident, an averment by the plaintiff that the motor accident was a blameless motor accident is evidence of that fact in the absence of evidence to the contrary.	16 17 18 19 20
7D	Accident must occur in New South Wales after commencement	21
	This Division applies only in respect of motor accidents that occur in the State after the commencement of this Division.	22 23
7E	No coverage for driver who caused accident	24
	There is no entitlement to recover damages under this Division in respect of the death of or injury to the driver of a motor vehicle if the motor accident concerned was caused by an act or omission of that driver (even though that act or omission does not constitute fault by the driver in the use or operation of the vehicle).	25 26 27 28 29 30
7F	Contributory negligence	31
	This Division does not prevent the reduction of damages by reason of the contributory negligence of the deceased or injured person.	32 33 34
	Note. The contributory negligence of a deceased or injured child does not reduce damages of the kind to which the special entitlement to damages conferred by Division 2 applies. See section 7P.	35 36 37

7G	Recovery of contribution from person actually at fault	1
	A person whose liability for damages in respect of the death of or injury to a person results from the person being deemed under this Division to be a person whose fault caused the death or injury is entitled to recover contribution in respect of that liability from a person (whether or not the driver of a motor vehicle) whose fault actually caused the death or injury.	2 3 4 5 6 7
7H	No recovery by Nominal Defendant unless owner or driver actually at fault	8 9
	The Nominal Defendant is not entitled to recover any amount under section 39 from the owner or driver of a motor vehicle in respect of amounts properly paid by the Nominal Defendant in connection with the operation of this Division unless the motor accident concerned was actually caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.	10 11 12 13 14 15 16
7I	Other entitlements not affected	17
	This Division does not affect any entitlement to damages apart from this Division.	18 19
Division 2	No-fault recovery by children	20
7J	Damages for children where driver not at fault	21
(1)	If the death of or injury to a child results from a motor accident not caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle, the death or injury is, for the purposes of the special entitlement to recover damages conferred by this Division, deemed to have been caused by the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle if the motor vehicle was involved in the accident and has motor accident insurance cover for the accident.	22 23 24 25 26 27 28 29
	Note. Section 3B defines what is meant by a motor vehicle having motor accident insurance cover for a motor accident.	30 31
(2)	If more than one motor vehicle involved in the motor accident has motor accident insurance cover for the accident, the death or injury is (for the purposes of that special entitlement) deemed to have been caused by the fault of the owner or driver of each such motor vehicle in the use or operation of the vehicle.	32 33 34 35 36
(3)	The <i>special entitlement</i> to recover damages conferred by this Division is an entitlement to recover damages for the following in respect of the death of or injury to the child:	37 38 39

(a)	hospital, medical and pharmaceutical expenses,	1
(b)	rehabilitation expenses,	2
(c)	respite care expenses,	3
(d)	attendant care services expenses,	4
(e)	funeral or cremation expenses.	5
(4)	The special entitlement to recover damages for funeral or cremation expenses is an entitlement to recover those damages under the <i>Compensation to Relatives Act 1897</i> , but this Division confers no other entitlement to recover damages under that Act.	6 7 8 9
(5)	The motor accident must occur in the State after the commencement of this Division and the child must be a resident of the State at the time of the motor accident.	10 11 12
(6)	In this Division: <i>child</i> means a person who is under 16 years of age at the time of the motor accident.	13 14 15
7K	Claims where child at fault	16
(1)	This Division applies even if the death of or injury to the child was caused by the fault of the child, except as provided by this section.	17 18 19
(2)	A court is not to award damages pursuant to this Division in respect of the death of or injury to a child if the court is satisfied that:	20 21 22
(a)	the death of or injury to the child occurred at the time of, or following, conduct of the child that, on the balance of probabilities, constitutes a serious offence, and	23 24 25
(b)	that conduct contributed materially to the death or injury or to the risk of death or injury.	26 27
(3)	A <i>serious offence</i> is an offence punishable by imprisonment for 6 months or more.	28 29
(4)	This section operates whether or not the child whose conduct is alleged to constitute an offence has been, will be or is capable of being proceeded against or convicted of any offence concerned.	30 31 32
(5)	There is to be no reduction of the damages provided for by this Division by reason of the contributory negligence of the deceased or injured person, except as provided by this section.	33 34 35

7L	Special provision where child and driver at fault	1
	In a case in which this Division would confer a special entitlement to recover damages in respect of the death of or injury to a child but for the fact that the motor accident was caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle, a liability for damages of the kind to which that special entitlement relates (including any such liability of an insurer under section 83 or 84) is not to be reduced on account of the contributory negligence of the child (even though this Division does not confer that special entitlement in the case).	2 3 4 5 6 7 8 9 10 11
	Note. The special entitlement to damages conferred by this Division is only applicable where the owner/driver is not at fault. Where the owner/driver is at fault, this section prevents a reduction in special entitlement type damages that would otherwise result from the contributory negligence of the child.	12 13 14 15 16
7M	Recovery of contribution from person actually at fault	17
	A person whose liability for damages in respect of the death of or injury to a person results from the person being deemed under this Division to be a person whose fault caused the death or injury is entitled to recover contribution in respect of that liability from a person (whether or not the driver of a motor vehicle) whose fault actually caused the death or injury.	18 19 20 21 22 23
7N	No recovery by Nominal Defendant unless owner or driver actually at fault	24 25
	The Nominal Defendant is not entitled to recover any amount under section 39 from the owner or driver of a motor vehicle in respect of amounts properly paid by the Nominal Defendant in connection with the operation of this Division unless the motor accident concerned was actually caused by the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.	26 27 28 29 30 31 32
7O	Other entitlements not affected	33
	This Division does not affect any entitlement to damages apart from this Division.	34 35
7P	Relationship with Division 1	36
	(1) This Division does not apply in a case to which Division 1 (Recovery for blameless accidents) applies, subject to subsection (2).	37 38 39

(2)	In a case in which this Division would confer a special entitlement to recover damages in respect of the death of or injury to a child but for the fact that the case is one to which Division 1 applies, a liability for damages arising under that Division of the kind to which that special entitlement relates (including any such liability of an insurer under section 83 or 84) is not to be reduced on account of the contributory negligence of the child (despite section 7F).	1 2 3 4 5 6 7 8
[8]	Section 14 Cancellation of third-party policies	9
	Omit section 14 (4). Insert instead:	10
(4)	If the whole or any part of the premium payable in respect of a third-party policy is paid by cheque or credit card, and the cheque is not met on due presentation or the credit card transaction is not duly honoured or is fraudulent, the licensed insurer may request the RTA to suspend the registration of the motor vehicle to which the policy relates for a period of 14 days.	11 12 13 14 15 16
(4A)	If the insured person under a third-party policy deliberately avoided paying the correct premium for the third-party policy by making a statement in connection with the issue of the policy that the insured person knew was false, the licensed insurer may request the RTA to suspend the registration of the motor vehicle to which the policy relates for a period of 14 days.	17 18 19 20 21 22
(4B)	A licensed insurer is not to request the RTA to suspend the registration of a motor vehicle except with the prior approval in writing of the Authority and is not to make such a request unless the amount outstanding remains unpaid.	23 24 25 26
[9]	Section 14 (5)	27
	Omit “will be cancelled”. Insert instead “may be cancelled”.	28
[10]	Section 14 (6)–(6C)	29
	Omit section 14 (6). Insert instead:	30
(6)	The RTA must comply with a request by a licensed insurer under this section to suspend the registration of a motor vehicle.	31 32
(6A)	If the amount outstanding remains unpaid, the licensed insurer may request the RTA before the end of the suspension period to cancel the registration of the motor vehicle at the expiration of the suspension period. A licensed insurer is not to request the RTA to cancel the registration of a motor vehicle except with the prior approval in writing of the Authority.	33 34 35 36 37 38

(6B)	The RTA must comply with a request by a licensed insurer under this section to cancel the registration of a motor vehicle.	1 2
(6C)	The Authority may establish guidelines that provide for the circumstances in which the Authority will or will not give its approval to the making of a request for the suspension or cancellation of the registration of a motor vehicle.	3 4 5 6
[11]	Section 14 (8) (a) (ii) Insert “or is fraudulent” after “not duly honoured”.	7 8
[12]	Section 23A Insert after section 23:	9 10
23A	Limit on insurer liability for single incident	11
(1)	If the liability of a licensed insurer under a third-party policy in respect of all claims arising from a single incident exceeds the prescribed maximum amount, the insurer is entitled to be indemnified by the Nominal Defendant for the amount by which the insurer’s liability exceeds that prescribed maximum amount.	12 13 14 15 16
(2)	The <i>prescribed maximum amount</i> is:	17
(a)	\$200 million, or	18
(b)	such other amount as may be prescribed by the regulations as the prescribed maximum amount for the purposes of this section.	19 20 21
(3)	A change to the prescribed maximum amount does not apply in respect of a liability arising in connection with a motor accident that occurs before the change takes effect.	22 23 24
(4)	The Nominal Defendant is not personally liable to pay any amount payable in satisfaction of the liability of the Nominal Defendant to indemnify an insurer under this section, but every such amount is to be paid by the Nominal Defendant out of the Nominal Defendant’s Fund established under Part 2.4.	25 26 27 28 29
[13]	Section 30 Maximum commission payable to insurers’ agents Omit “4%” from section 30 (1). Insert instead “5% (or such other percentage as may be prescribed by the regulations)”.	30 31 32 33

[14] Section 33 Claim against Nominal Defendant where vehicle not insured	1
Insert after section 33 (3):	2
(3A) If the motor accident resulting in the death of or injury to a person occurred on land that is a road related area under the <i>Road Transport (Vehicle Registration) Act 1997</i> because it is an area that is open to or used by the public for driving, riding or parking vehicles, there is no right of action against the Nominal Defendant under this section if at the time of the motor accident the person was a trespasser on the land.	3 4 5 6 7 8 9
[15] Section 33 (5)	10
Omit the subsection. Insert instead:	11
(5) For the purposes of this section, and any regulations made for the purposes of this section:	12
<i>motor vehicle</i> means a motor vehicle:	13 14
(a) that is exempt from registration, or	15
(b) that is not exempt from registration, is required to be registered to enable its lawful use or operation on a road in New South Wales and:	16 17 18
(i) was at the time of manufacture capable of registration, or	19 20
(ii) was at the time of manufacture, with minor adjustments, capable of registration, or	21 22
(iii) was previously capable of registration but is no longer capable of registration because it has fallen into disrepair.	23 24 25
[16] Section 34 Claim against Nominal Defendant where vehicle not identified	26
Insert after section 34 (1):	27
(1A) If the motor accident resulting in the death of or injury to a person occurred on land that is a road related area under the <i>Road Transport (Vehicle Registration) Act 1997</i> because it is an area that is open to or used by the public for driving, riding or parking vehicles, there is no right of action against the Nominal Defendant under this section if at the time of the motor accident the person was a trespasser on the land.	28 29 30 31 32 33 34
[17] Section 40 Establishment of Nominal Defendant's Fund	35
Omit "section 37" from section 40 (3) (a). Insert instead "section 23A or 37".	36

[18] Section 43 Application of Chapter	1
Omit the note to the section. Insert instead:	2
Note. This Chapter applies only if the injury was caused by a motor accident for which the vehicle has motor accident insurance cover or that gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.	3 4 5 6
[19] Section 54 Bulk billing arrangements for hospital, ambulance and other expenses	7 8
Omit “licensed insurers and” from section 54 (1).	9
[20] Section 54 (2) and (2A)	10
Omit section 54 (2). Insert instead:	11
(2) A bulk billing arrangement is an arrangement made with the Minister for Health, service providers or others acting on their behalf for the payment by the Authority of any such expenses of injured persons at the rate provided by the arrangement.	12 13 14 15
(2A) A bulk billing arrangement may provide for the payments due by the Authority under the arrangement to be paid by means of lump sum payments to cover the payments due in respect of expenses incurred during a specified period.	16 17 18 19
[21] Section 54 (3) (a)	20
Omit the paragraph.	21
[22] Section 59A	22
Insert after section 59:	23
59A Protection of medical assessors	24
(1) A matter or thing done or omitted to be done by a medical assessor under this Part in the exercise of the assessor’s functions does not, if the matter or thing was done or omitted in good faith, subject the assessor personally to any action, liability, claim or demand.	25 26 27 28 29
(2) A medical assessor is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a medical assessor.	30 31 32 33 34
(3) Any liability that would attach to a person were it not for the operation of subsection (1) attaches instead to the Crown.	35 36

[23] Section 67 Application of Chapter	1
Omit the note to the section. Insert instead:	2
Note. This Chapter applies only if the vehicle has motor accident insurance cover for the claim. See section 3B.	3 4
[24] Section 122 Damages in respect of motor accidents	5
Omit “The application of this Chapter in respect of coal miner work injury matters is limited by section 5A.” from the note to the section.	6 7
Insert instead “This Chapter applies only if the death or injury was caused by a motor accident for which the vehicle has motor accident insurance cover or that gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.”.	8 9 10 11
[25] Section 148 Application of Chapter	12
Omit the note to the section. Insert instead:	13
Note. This Chapter applies only if the vehicle has motor accident insurance cover for the motor accident or the motor accident gives rise to a work injury claim (except a work injury claim by a coal miner). See section 3B.	14 15 16 17
[26] Section 211 Definitions	18
Omit the definition of <i>premium income</i> .	19
[27] Section 212 Motor Accidents Authority Fund	20
Omit section 212 (2) (a). Insert instead:	21
(a) money contributed under this Part by persons to whom third-party policies are issued,	22 23
[28] Section 212 (3) (c1)	24
Insert after section 212 (3) (c):	25
(c1) expenditure incurred by the Authority pursuant to any bulk billing arrangement under section 54,	26 27
[29] Section 213 Assessment by Authority of amount to be contributed to Fund	28 29
Omit “from licensed insurers under this Part” from section 213 (c).	30
Insert instead “under this Part from persons to whom third-party policies are issued”.	31 32

[30] Section 213 (d) and (e)	1
Omit “by licensed insurers” wherever occurring.	2
Insert instead “by persons to whom third-party policies are issued”.	3
[31] Sections 214–214C	4
Omit section 214. Insert instead:	5
214 Contributions to Fund by persons to whom third-party policies issued	6 7
(1) The amount determined under section 213 (d) as the total amount to be contributed to the Fund under this Part in respect of a financial year is to be contributed by the payment to the Authority of a levy (the <i>Fund levy</i>) by persons to whom third-party policies are issued during the financial year.	8 9 10 11 12
(2) The Fund levy is to be an amount determined by the Authority. The Fund levy can be determined as a fixed amount or as a percentage of the premium payable for a third-party policy, or as a combination of a fixed amount and percentage of premium.	13 14 15 16
(3) A Fund levy can be determined to differ according to any classification or other criteria for the determination of third-party policy premiums as provided for by the MAA Premiums Determination Guidelines under Part 2.3.	17 18 19 20
(4) The Authority is to notify each licensed insurer of the Fund levy determined for a financial year.	21 22
214A Payment and collection of Fund levy	23
(1) The Fund levy for a financial year is payable to the Authority by each person to whom a third-party policy is issued during the financial year and is to be collected, in conjunction with the payment of the premium for the policy, on behalf of the Authority by the insurer who issues the policy.	24 25 26 27 28
(2) A licensed insurer is not to issue a third-party policy to a person unless the Fund levy payable by the person has been paid. Section 14 (Cancellation of third-party policies) applies in respect of the Fund levy payable in connection with the issue of a third-party policy in the same way as it applies in respect of the premium payable for the policy.	29 30 31 32 33 34
(3) Fund levies collected by a licensed insurer are to be paid to the Authority at the times and in accordance with such arrangements as the Authority may notify to the insurer from time to time.	35 36 37

(4)	If a payment required to be made by a licensed insurer has not been paid as and when required under those arrangements:	1
	(a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and	2
	(b) the amount of the required payment together with interest calculated at the rate of 15% per annum compounded quarterly (or, where another rate is prescribed by the regulations, that other rate) may be recovered from the insurer as a debt due to the Authority.	3
(5)	A certificate purporting to be signed by the Chief Executive Officer of the Authority as to the amount of a payment required to be made under this section by a licensed insurer specified in the certificate and the due date for payment is admissible in proceedings under this section and is evidence of the matters specified in the certificate.	4
(6)	The obligation of a licensed insurer to make a payment under this section in respect of any period during which the person was a licensed insurer does not cease merely because the person subsequently ceases to be a licensed insurer.	5
214B	Records relating to collection of Fund levies	6
(1)	A licensed insurer must keep such accounting and other records in relation to Fund levies collected by the insurer under this Part:	7
	(a) as may be prescribed by the regulations, and	8
	(b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.	9
(2)	The regulations may prescribe the manner in which collection of Fund levies is to be accounted for in any such records.	10
(3)	A licensed insurer must lodge with the Authority returns in relation to Fund levies collected by the insurer under this Part in such form, containing such particulars and accompanied by such documents:	11
	(a) as may be prescribed by the regulations, and	12
	(b) subject to the regulations, as may be directed by the Authority by notice served on the insurer.	13
(4)	Returns must be lodged at such other times as may be prescribed by the regulations or, subject to the regulations, at such times as the Authority, by notice served on the insurer, directs.	14

(5)	The Authority may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.	1 2 3
(6)	A licensed insurer who contravenes any requirement imposed on the insurer by or under this section is guilty of an offence. Maximum penalty: 100 penalty units.	4 5 6
(7)	The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.	7 8
214C	Audit of Fund levy records	9
(1)	The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records of a licensed insurer relating to Fund levies collected by the insurer under this Part.	10 11 12 13
(2)	A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect relevant accounting and other records of the licensed insurer.	14 15 16
(3)	A licensed insurer must provide all reasonable assistance to enable the exercise of those functions.	17 18
(4)	A person must not wilfully obstruct or delay a person exercising a function under this section.	19 20
(5)	A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.	21 22 23 24
(6)	A licensed insurer or another person who contravenes any requirement imposed on the insurer or other person by or under this section is guilty of an offence. Maximum penalty: 100 penalty units.	25 26 27 28
[32]	Schedule 5 Savings, transitional and other provisions	29
	Insert at the end of clause 2 (1):	30
	<i>Motor Accidents Compensation Amendment Act 2006</i>	31

[33] Schedule 5, Part 5	1
Insert at the end of the Schedule:	2
Part 5 Provisions arising from the Motor Accidents Compensation Amendment Act 2006	3
	4
	5
18 Definition	6
In this Part:	7
<i>2006 amending Act</i> means the <i>Motor Accidents Compensation Amendment Act 2006</i> .	8
	9
19 Amendments concerning application of Act	10
An amendment made by the 2006 amending Act to Chapter 1 of this Act does not apply in respect of a motor accident that occurs before the commencement of the amendment.	11
	12
	13
20 Suspension and cancellation of registration	14
An amendment made by the 2006 amending Act to section 14 extends to a third-party policy issued before the commencement of the amendment.	15
	16
	17
21 Cap on insurer liability	18
Section 23A does not apply in respect of a liability arising in connection with a motor accident that occurs before the commencement of that section.	19
	20
	21
22 Nominal Defendant liability	22
An amendment made by the 2006 amending Act to section 33 or 34 does not apply in respect of a motor accident that occurs before the commencement of the amendment.	23
	24
	25
23 Contributions to Fund	26
(1) On and from the commencement of the amendments made by the 2006 amending Act to Part 8.4, an amount received into the Fund under that Part as an amount contributed by a licensed insurer is taken to have been received as an amount collected by the insurer on behalf of the Authority as Fund levy payable by persons to whom third-party policies were issued by the insurer.	27
	28
	29
	30
	31
	32

-
- (2) Any amount payable by a licensed insurer as a contribution to the Fund under Part 8.4 remains payable despite any amendment made to that Part by the 2006 amending Act and a provision of that Part that is amended by that Act continues to apply to and in respect of such a liability that accrued before the commencement of the amendment as if the amendment had not been made.
- 1
2
3
4
5
6

Schedule 2	Consequential amendments	1
	(Section 4)	2
2.1	Road Transport (Vehicle Registration) Regulation 1998	3
[1]	Clause 42 Suspension or cancellation of registration	4
	Omit “third party insurance legislation,” from clause 42 (1) (c).	5
[2]	Clause 42 (1) (d)	6
	Omit “(or a third party insurance premium submitted to an insurer)”.	7
2.2	Workers Compensation Act 1987 No 70	8
	Section 151E Application—modified common law damages	9
	Omit “as described in section 3D of the <i>Motor Accidents Act 1988</i> and section 5A of the <i>Motor Accidents Compensation Act 1999</i> ” from the note to section 151E (2).	10 11 12
	Insert instead “see section 3D of the <i>Motor Accidents Act 1988</i> and section 3B of the <i>Motor Accidents Compensation Act 1999</i> ”.	13 14
2.3	Workplace Injury Management and Workers Compensation Act 1998 No 86	15 16
	Section 250 Interpretation	17
	Omit “as described in section 3D of the <i>Motor Accidents Act 1988</i> and section 5A of the <i>Motor Accidents Compensation Act 1999</i> ” from the note to the definition of <i>work injury damages</i> in section 250 (1).	18 19 20
	Insert instead “see section 3D of the <i>Motor Accidents Act 1988</i> and section 3B of the <i>Motor Accidents Compensation Act 1999</i> ”.	21 22