



New South Wales

# **Motor Accidents Compensation Amendment (Medical Assessments) Bill 2000**

## **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 Compensation Act 1999* so as to make it clear that a court does not have an unfettered power to reject a certificate given by a medical assessor under the Act as to whether the degree of permanent impairment of an injured person is greater than 10% and substitute its own determination as to the degree of permanent impairment of the injured person. A court will be able to substitute its own determination only if there has been a denial of procedural fairness in the issue of the certificate and the court is satisfied that admission of the certificate as to that matter would cause a substantial injustice to a party to the proceedings.

Explanatory note

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At present, the *Motor Accidents Compensation Act 1999* provides that certain disputes between a claimant and an insurer in respect of a motor accident claim may be referred to a medical assessor for assessment. The medical assessor is to give a certificate as to the matters referred for assessment. Such a certificate is conclusive evidence in any court proceedings as to certain matters, including any assessment by the medical assessor as to whether the degree of permanent impairment of the injured person is greater than 10%. No damages may be awarded for non-economic loss unless the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.

Section 61 (4) of the Act provides that a court may reject the certificate on the grounds of a denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that the admission of the certificate would cause substantial injustice to that party. In such a case, the court must adjourn the proceedings and refer the matter again for assessment under Part 3.4 of the Act.

Section 61 (6) of the Act, which is uncommenced, further provides that a court may reject a certificate as to the degree of permanent impairment of an injured person and either refer the matter again for assessment under Part 3.4 of the Act or substitute a determination of the court as to the degree of permanent impairment of the injured person.

This Bill clarifies the powers of a court with respect to certificates given by medical assessors. The amendments set out in the Bill provide that:

- (a) a court may reject a certificate as to all or any of the matters that are certified in the certificate, but only on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, and only if the court is satisfied that the admission of the certificate as to the matter concerned would cause substantial injustice to that party, and
- (b) if a certificate as to whether or not the degree of permanent impairment of an injured person is greater than 10% is rejected, the court may substitute its own determination as to that matter or refer the matter again for assessment by a medical assessor or assessors, and
- (c) if a certificate as to any other matter (such as a certificate as to whether the injury has stabilised) is rejected, the court must refer that matter again for assessment by a medical assessor or assessors, unless the matter is a matter in respect of which a certificate is not conclusive evidence, and
- (d) the circumstances set out in paragraph (b) are the only circumstances in which the court may substitute its own determination as to a matter in respect of which a certificate is conclusive evidence.

## 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 to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Motor Accidents Compensation Act 1999* set out in Schedule 1.

**Schedule 1** makes the amendments to the *Motor Accidents Compensation Act 1999* described above.

First print



New South Wales

# Motor Accidents Compensation Amendment (Medical Assessments) Bill 2000

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New South Wales

# **Motor Accidents Compensation Amendment (Medical Assessments) Bill 2000**

No. , 2000

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## **A Bill for**

An Act to amend the *Motor Accidents Compensation Act 1999* to make further provision with respect to certificates of medical assessors.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Motor Accidents Compensation Amendment (Medical Assessments) Act 2000</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day to be appointed by proclamation.	6
<b>3 Amendment of Motor Accidents Compensation Act 1999 No 41</b>	7
The <i>Motor Accidents Compensation Act 1999</i> is amended as set out in Schedule 1.	8 9

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## Schedule 1 Amendments

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(Section 3)

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### [1] Section 61 Status of medical assessments

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Omit section 61 (4)–(7). Insert instead:

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- (4) In any court proceedings, the court may (despite anything to the contrary in this section) reject a certificate as to all or any of the matters certified in it, on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that admission of the certificate as to the matter or matters concerned would cause substantial injustice to that party. 5  
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- (5) If a certificate as to any matter is rejected under subsection (4), the court is to refer that matter again for assessment under this Part and adjourn the proceedings until a further certificate is given and admitted in evidence in the proceedings. 12  
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- (6) However, if a certificate as to whether or not the degree of permanent impairment of the injured person is greater than 10% is rejected under subsection (4), the court may, if it considers it appropriate, substitute a determination of the court as to the degree of permanent impairment of the injured person (assessed by the court in accordance with section 133) instead of referring that matter again for assessment under this Part. 16  
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- (7) Except as provided by subsection (6), a court may not substitute its own determination as to any matter referred to in subsection (2) (a), (b) or (c). 23  
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- (8) This section: 26
  - (a) does not prevent a court from referring a matter again for assessment under this Part (as provided for by section 62), and 27  
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  - (b) does not require a court to refer a matter again for assessment under this Part if the matter is not a matter referred to in subsection (2) (a), (b) or (c). 30  
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Schedule 1 Amendments

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(9) A certificate is to set out the reasons for any finding by the medical assessor or assessors as to any matter certified in the certificate in respect of which the certificate is conclusive evidence.	1 2 3 4
<b>[2] Schedule 5 Savings, transitional and other provisions</b>	5
Insert at the end of clause 2 (1):	6
<i>Motor Accidents Compensation Amendment (Medical Assessments) Act 2000</i>	7 8
<b>[3] Schedule 5, Part 3</b>	9
Insert after clause 15:	10
<b>Part 3 Provisions arising from the Motor Accidents Compensation Amendment (Medical Assessments) Act 2000</b>	11 12 13
<b>16 Application of amendment</b>	14
The amendment made to section 61 by the <i>Motor Accidents Compensation Amendment (Medical Assessments) Act 2000</i> extends:	15 16 17
(a) to any certificate given by a medical assessor under Part 3.4 of Chapter 3 before the commencement of that amendment, and	18 19 20
(b) to any court proceedings commenced, but not finally determined, before the commencement of that amendment.	21 22 23