

MOTOR ACCIDENTS (AMENDMENT) ACT 1990 No. 90

NEW SOUTH WALES



TABLE OF PROVISIONS

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2. Commencement
3. Amendment of Motor Accidents Act 1988 No. 102
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SCHEDULE 1 - AMENDMENTS



MOTOR ACCIDENTS (AMENDMENT) ACT 1990 No. 90

NEW SOUTH WALES



Act No. 90, 1990

An Act to amend the Motor Accidents Act 1988 to make further provision concerning compulsory insurance against liability for the death of or injury to persons as a consequence of motor accidents; and to amend the Motor Accidents (Amendment) Act 1989. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Accidents (Amendment) Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Section 4 commences on the date of assent.

(3) Schedule 1 (2), (3) and (6) commence on 1 July 1991.

(4) Schedule 1 (8), (9), (18) and (19) are taken to have commenced on 1 July 1989.

Amendment of Motor Accidents Act 1988 No. 102

3. The Motor Accidents Act 1988 is amended as set out in Schedule 1.

Amendment of Motor Accidents (Amendment) Act 1989 No. 47

4. The Motor Accidents (Amendment) Act 1989 is amended by omitting Schedule 2 (2), (3) and (4).

Validation

5. Clause 4 of the Motor Accidents Regulation 1989 is taken to have commenced on 1 July 1989.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Interpretation**):

- (a) From the definition of "motor vehicle" in section 3 (1), omit "and includes a trailer, but does not include", insert instead "but does not include a trailer or".

SCHEDULE 1 - AMENDMENTS - *continued*

(b) Insert in section 3 (1) in alphabetical order:

"trailer" means any vehicle without motive power capable of being drawn by a motor vehicle attached to it.

(2) Part 3, Division 2:

Omit the Division, insert instead:

Division 2 - Method of effecting and duration of third-party insurance

Issue of certificate of insurance

10. (1) If a licensed insurer accepts a premium for the insurance under a third-party policy of a motor vehicle, the licensed insurer must immediately issue a certificate of insurance to the owner of the vehicle.

(2) If a licensed insurer accepts a premium for the insurance under a third-party policy of motor vehicles to which a trader's plate is or is to be fixed, the licensed insurer must immediately issue a certificate of insurance to the trader.

(3) A licensed insurer who issues such a certificate is taken to have issued a third-party policy for the motor vehicle or motor vehicles to which the certificate relates.

Evidence of insurance in respect of motor vehicle

11. The Roads and Traffic Authority must not register or renew the registration of a motor vehicle or issue a trader's plate unless:

- (a) the applicant produces a certificate of insurance issued under section 10 in relation to the motor vehicle or trader's plate; or
- (b) the Roads and Traffic Authority is satisfied that there is evidence, of a type approved by the Motor Accidents Authority, of the existence of a third-party policy in relation to the motor vehicle or trader's plate.

SCHEDULE 1 - AMENDMENTS - *continued*

Duration of third-party policy

12. (1) A third-party policy taken to have been issued for a motor vehicle (other than a third-party policy taken to have been issued for motor vehicles to which a trader's plate is or is to be fixed) takes effect:

- (a) on the date of registration of the motor vehicle; or
- (b) on the date the renewal of the registration of the motor vehicle takes effect if the renewal fee is paid on or before the date for renewal; or
- (c) on the date on which the renewal of the registration of the motor vehicle is effected if the renewal is effected after the date for renewal.

(2) Such a policy terminates on the date on which the registration of the motor vehicle expires or the date on which the policy is cancelled under section 13.

(3) A third-party policy relating to motor vehicles to which a trader's plate is or is to be fixed takes effect on the date of commencement of the period for which the trader's plate is issued and terminates on the date of expiration of that period.

(4) Despite subsections (2) and (3), if the renewal of the third-party policy in respect of a motor vehicle, or motor vehicles to which a trader's plate is or is to be fixed, is effected:

- (a) within 15 days after the termination of the previous third-party policy in respect of the motor vehicle or motor vehicles; or
- (b) during the named month in which that previous third-party policy terminates,

the previous third-party policy is taken not to have terminated but to have continued in force until the renewal.

Cancellation of third-party policies

13. (1) A licensed insurer has no power to cancel a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) A third-party policy may only be cancelled in accordance with this section.

(3) A third-party policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except where the registration is cancelled under section 18C of the Traffic Act 1909.

(4) If the whole or any part of the premium payable in respect of a third-party policy is paid by cheque and the cheque is not met on due presentation, the licensed insurer may request the Roads and Traffic Authority to cancel the registration of the motor vehicle to which the policy relates.

(5) Before requesting the Roads and Traffic Authority to cancel the registration of the motor vehicle, the licensed insurer must notify the owner of the motor vehicle that the registration and third-party insurance policy will be cancelled if the amount outstanding is not paid.

(6) If the licensed insurer certifies to the Roads and Traffic Authority that the relevant premium remains unpaid and that the licensed insurer has complied with subsection (5), the Roads and Traffic Authority must cancel the registration of the motor vehicle within 14 days of receipt of the certificate from the licensed insurer, and on such cancellation the third-party policy taken to have been issued for the motor vehicle is also cancelled.

(7) If the registration of a motor vehicle is cancelled, other than under section 18C of the Traffic Act 1909 or subsection (6), but restored before the date for renewal of the registration, the third-party policy cancelled is taken to have remained in force during the period of cancellation.

- (3) **Section 14 (Determination by Minister of insurance premiums):**

Omit the section.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 14A:

Before section 15, insert:

Authority guidelines for the determination of premiums

14A. (1) The Authority may prepare and issue to licensed insurers guidelines for the determination of insurance premiums for third-party policies.

(2) The Authority may revoke, substitute or amend the guidelines.

(3) A guideline, or the revocation, substitution or amendment of a guideline, has no effect until it has been approved by the Board of Directors of the Authority.

(4) It is a condition of a licence granted under Division 1 of Part 8 that the licensed insurer must comply with the guidelines in force under this section.

(5) A guideline issued before 1 July 1993 must be substantially in conformity with the Motor Accidents Authority 1991/92 and 1992/93 Premium Filing Guidelines for Insurers, dated 16 October 1990.

(5) Section 15B (**Rejection of premiums by the Authority**):

At the end of section 15B (1) (b), insert:

; or

(c) the premium does not conform to the Authority's guidelines in force under section 14A.

(6) Sections 20 (**Effect of late renewal of registration of motor vehicle**), 21 (**Cancellation of third-party policy**):

Omit the sections.

(7) Section 27 (**Claim against Nominal Defendant where vehicle not insured**):

After section 27 (4), insert:

(5) In this section, "motor vehicle" includes a trailer, not being:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) a trailer which is attached to a motor vehicle; or
 - (b) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.
- (8) Section 31 (**Recovery from owner or driver**):
- After section 31 (2), insert:
- (3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of:
 - (a) a motor vehicle which was lawfully used or operated on a public street; or
 - (b) a trailer, not being:
 - (i) a trailer which is attached to a motor vehicle; or
 - (ii) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.
- (9) Section 37 (**Provision of rehabilitation services**):
- In section 37 (5), after "injured person", insert "whose claim has been settled or".
- (10) Section 42 (**Accident must be reported within 28 days**):
- (a) From section 42 (1), omit "as soon as is reasonably practicable after the accident", insert instead "within 28 days after the date of the accident".
 - (b) Omit section 42 (2).
 - (c) Omit section 42 (4), insert instead:
 - (4) If a person commences proceedings in respect of a claim without having complied with the duty under this section, the person must provide a full and satisfactory explanation to the court for the non-compliance.
 - (5) If the court is satisfied that sufficient cause existed to justify the delay in making the report and that a report of the accident was made within such period as the court

SCHEDULE 1 - AMENDMENTS - *continued*

considers reasonable, having regard to the duty under this section, the court may allow the proceedings to continue.

(11) Section 43 (**Time for and notice of making of claims**):

Omit section 43 (4), insert instead:

(4) A claim is made by giving notice of the claim to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.

(12) Section 44:

Omit the section, insert instead:

Form of notice of claim

44. (1) A notice of a claim under section 43 (4) must:

- (a) be in the form approved by the Authority; and
- (b) set out such particulars and information as may be required by that form.

(2) The Authority may approve different forms according to the persons to whom the notice is to be given.

(3) A notice of a claim given to a third-party insurer must be verified by statutory declaration.

(13) Section 45 (**Duty of insurer to try to resolve claim etc.**):

After section 45 (3), insert:

(4) Payments made under this section are taken to form part of any damages payable to the claimant.

(14) Section 67 (**Claims register**):

From section 67 (1), omit "30 days after receiving notice of a claim", insert instead "such period after receiving notice of a claim as the Authority may reasonably require".

(15) Section 110 (**Business plans of licensed insurers**):

From section 110 (1), omit "granted a licence", insert instead "requested to do so by the Authority".

SCHEDULE 1 - AMENDMENTS - *continued*

(16) Section 132A (**Certificate evidence**):

From section 132A (1), omit "conclusive".

(17) Section 138 (**Definitions**):

Omit the definition of "intermediate transport accident", insert instead:

"intermediate transport accident" means a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before 1 July 1989, being the date of commencement of Part 2:

- (a) in relation to which a person is entitled to benefits under the 1987 Act; or
- (b) in relation to which a person would be entitled to damages assessed in accordance with this Act if the person at fault had, on the occurrence of the accident, been an insured person;

(18) Sections 145A, 145B:

After section 145, insert:

Claims in respect of certain intermediate transport accidents

145A. (1) This section applies to an intermediate transport accident in respect of which a claim had not been made under the 1987 Act before 1 July 1989.

(2) A claim relating to an intermediate transport accident to which this section applies and any proceedings brought to enforce the claim may, in respect of a form of transportation or conveyance described in Column 1 of the Table to this subsection, be made or taken against the person (or, as the case may be, one or more of the persons) specified in Column 2 of that Table opposite that form of transportation or conveyance as if a person specified in Column 3 of that Table opposite that form of transportation or conveyance were the insurer under a third-party policy of the owner and driver of that form of transportation or conveyance.

SCHEDULE 1 - AMENDMENTS - *continued*

TABLE		
Column 1	Column 2	Column 3
New South Wales registered motor vehicle	Owner, driver	GIO
Unidentified motor vehicle	GIO	GIO
Uninsured motor vehicle	GIO	GIO
Motor vehicle registered in Australia elsewhere than in New South Wales	Owner, driver, GIO	The insurer of, or compensation authority in respect of, the vehicle, GIO
A form of transportation or conveyance, not being a motor vehicle	Owner, driver, operator	GIO

(3) This section is taken to have commenced on 1 July 1989.

Contribution from other insurers in respect of intermediate transport accident claims

145B. (1) For the purposes of assessing and apportioning any liability for contribution between the GIO as manager of the TAC Fund and an insurer of a person at fault in respect of an intermediate transport accident, the GIO is taken to be the insurer of the person under a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) This section is taken to have commenced on 1 July 1989.

- (19) Section 146 (**Provisions applicable to claims concerning intermediate transport accidents**):
- (a) From section 146 (1), omit "Part 5 (Claims and court proceedings to enforce claims) applies", insert instead "Parts 4, 4A, 5, 6, 9 and 10 apply".
 - (b) From section 146 (1), omit "it applies", insert instead "they apply".
 - (c) From section 146 (1), omit "that Part", insert instead "Part 5".
- (20) Schedule 1 (**Third-party policy**):
- (a) Omit clause 2 (a), insert instead:
 - (a) a trailer attached to the motor vehicle and a trailer running out of control because it has become accidentally detached from the towing motor vehicle; and
 - (b) From clause 2 (b), omit "town truck", insert instead "tow truck".
- (21) Schedule 3 (**General Manager and Deputy General Manager of the Authority**):
- (a) In clause 3 (1), after "may", insert ", with the approval of the Board of Directors of the Authority".
 - (b) In clause 3 (2), omit "Minister", insert instead "Board of Directors of the Authority".

[*Minister's second reading speech made in -
Legislative Assembly on 14 November 1990
Legislative Council on 28 November 1990*]







MOTOR ACCIDENTS (AMENDMENT) BILL 1990

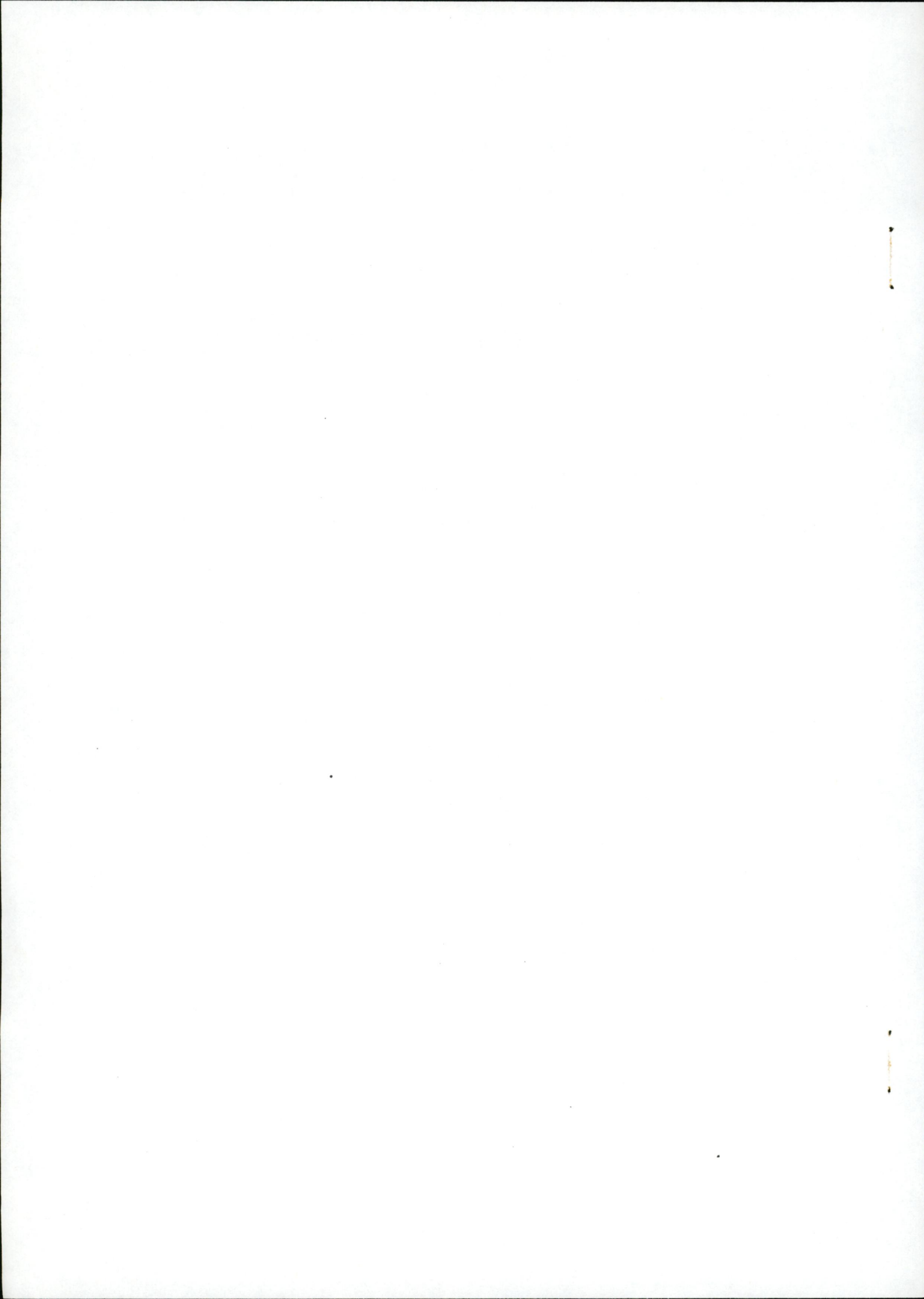
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Accidents Act 1988 No. 102
4. Amendment of Motor Accidents (Amendment) Act 1989 No. 47
5. Validation

SCHEDULE 1 - AMENDMENTS



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, , 1990

NEW SOUTH WALES



Act No. , 1990

An Act to amend the Motor Accidents Act 1988 to make further provision concerning compulsory insurance against liability for the death of or injury to persons as a consequence of motor accidents; and to amend the Motor Accidents (Amendment) Act 1989.

Motor Accidents (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Accidents (Amendment) Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Section 4 commences on the date of assent.

(3) Schedule 1 (2), (3) and (6) commence on 1 July 1991.

(4) Schedule 1 (8), (9), (18) and (19) are taken to have commenced on 1 July 1989.

Amendment of Motor Accidents Act 1988 No. 102

3. The Motor Accidents Act 1988 is amended as set out in Schedule 1.

Amendment of Motor Accidents (Amendment) Act 1989 No. 47

4. The Motor Accidents (Amendment) Act 1989 is amended by omitting Schedule 2 (2), (3) and (4).

Validation

5. Clause 4 of the Motor Accidents Regulation 1989 is taken to have commenced on 1 July 1989.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Interpretation**):

- (a) From the definition of "motor vehicle" in section 3 (1), omit "and includes a trailer, but does not include", insert instead "but does not include a trailer or".

SCHEDULE 1 - AMENDMENTS - *continued*

(b) Insert in section 3 (1) in alphabetical order:

"trailer" means any vehicle without motive power capable of being drawn by a motor vehicle attached to it.

(2) Part 3, Division 2:

Omit the Division, insert instead:

Division 2 - Method of effecting and duration of third-party insurance

Issue of certificate of insurance

10. (1) If a licensed insurer accepts a premium for the insurance under a third-party policy of a motor vehicle, the licensed insurer must immediately issue a certificate of insurance to the owner of the vehicle.

(2) If a licensed insurer accepts a premium for the insurance under a third-party policy of motor vehicles to which a trader's plate is or is to be fixed, the licensed insurer must immediately issue a certificate of insurance to the trader.

(3) A licensed insurer who issues such a certificate is taken to have issued a third-party policy for the motor vehicle or motor vehicles to which the certificate relates.

Evidence of insurance in respect of motor vehicle

11. The Roads and Traffic Authority must not register or renew the registration of a motor vehicle or issue a trader's plate unless:

- (a) the applicant produces a certificate of insurance issued under section 10 in relation to the motor vehicle or trader's plate; or
- (b) the Roads and Traffic Authority is satisfied that there is evidence, of a type approved by the Motor Accidents Authority, of the existence of a third-party policy in relation to the motor vehicle or trader's plate.

SCHEDULE 1 - AMENDMENTS - *continued*

Duration of third-party policy

12. (1) A third-party policy taken to have been issued for a motor vehicle (other than a third-party policy taken to have been issued for motor vehicles to which a trader's plate is or is to be fixed) takes effect:

- (a) on the date of registration of the motor vehicle; or
- (b) on the date the renewal of the registration of the motor vehicle takes effect if the renewal fee is paid on or before the date for renewal; or
- (c) on the date on which the renewal of the registration of the motor vehicle is effected if the renewal is effected after the date for renewal.

(2) Such a policy terminates on the date on which the registration of the motor vehicle expires or the date on which the policy is cancelled under section 13.

(3) A third-party policy relating to motor vehicles to which a trader's plate is or is to be fixed takes effect on the date of commencement of the period for which the trader's plate is issued and terminates on the date of expiration of that period.

(4) Despite subsections (2) and (3), if the renewal of the third-party policy in respect of a motor vehicle, or motor vehicles to which a trader's plate is or is to be fixed, is effected:

- (a) within 15 days after the termination of the previous third-party policy in respect of the motor vehicle or motor vehicles; or
- (b) during the named month in which that previous third-party policy terminates,

the previous third-party policy is taken not to have terminated but to have continued in force until the renewal.

Cancellation of third-party policies

13. (1) A licensed insurer has no power to cancel a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) A third-party policy may only be cancelled in accordance with this section.

(3) A third-party policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except where the registration is cancelled under section 18C of the Traffic Act 1909.

(4) If the whole or any part of the premium payable in respect of a third-party policy is paid by cheque and the cheque is not met on due presentation, the licensed insurer may request the Roads and Traffic Authority to cancel the registration of the motor vehicle to which the policy relates.

(5) Before requesting the Roads and Traffic Authority to cancel the registration of the motor vehicle, the licensed insurer must notify the owner of the motor vehicle that the registration and third-party insurance policy will be cancelled if the amount outstanding is not paid.

(6) If the licensed insurer certifies to the Roads and Traffic Authority that the relevant premium remains unpaid and that the licensed insurer has complied with subsection (5), the Roads and Traffic Authority must cancel the registration of the motor vehicle within 14 days of receipt of the certificate from the licensed insurer, and on such cancellation the third-party policy taken to have been issued for the motor vehicle is also cancelled.

(7) If the registration of a motor vehicle is cancelled, other than under section 18C of the Traffic Act 1909 or subsection (6), but restored before the date for renewal of the registration, the third-party policy cancelled is taken to have remained in force during the period of cancellation.

(3) **Section 14 (Determination by Minister of insurance premiums):**

Omit the section.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 14A:

Before section 15, insert:

Authority guidelines for the determination of premiums

14A. (1) The Authority may prepare and issue to licensed insurers guidelines for the determination of insurance premiums for third-party policies.

(2) The Authority may revoke, substitute or amend the guidelines.

(3) A guideline, or the revocation, substitution or amendment of a guideline, has no effect until it has been approved by the Board of Directors of the Authority.

(4) It is a condition of a licence granted under Division 1 of Part 8 that the licensed insurer must comply with the guidelines in force under this section.

(5) A guideline issued before 1 July 1993 must be substantially in conformity with the Motor Accidents Authority 1991/92 and 1992/93 Premium Filing Guidelines for Insurers, dated 16 October 1990.

(5) Section 15B (**Rejection of premiums by the Authority**):

At the end of section 15B (1) (b), insert:

; or

(c) the premium does not conform to the Authority's guidelines in force under section 14A.

(6) Sections 20 (**Effect of late renewal of registration of motor vehicle**), 21 (**Cancellation of third-party policy**):

Omit the sections.

(7) Section 27 (**Claim against Nominal Defendant where vehicle not insured**):

After section 27 (4), insert:

(5) In this section, "motor vehicle" includes a trailer, not being:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) a trailer which is attached to a motor vehicle; or
 - (b) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.
- (8) Section 31 (**Recovery from owner or driver**):
- After section 31 (2), insert:
- (3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of:
 - (a) a motor vehicle which was lawfully used or operated on a public street; or
 - (b) a trailer, not being:
 - (i) a trailer which is attached to a motor vehicle; or
 - (ii) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.
- (9) Section 37 (**Provision of rehabilitation services**):
- In section 37 (5), after "injured person", insert "whose claim has been settled or".
- (10) Section 42 (**Accident must be reported within 28 days**):
- (a) From section 42 (1), omit "as soon as is reasonably practicable after the accident", insert instead "within 28 days after the date of the accident".
 - (b) Omit section 42 (2).
 - (c) Omit section 42 (4), insert instead:
 - (4) If a person commences proceedings in respect of a claim without having complied with the duty under this section, the person must provide a full and satisfactory explanation to the court for the non-compliance.
 - (5) If the court is satisfied that sufficient cause existed to justify the delay in making the report and that a report of the accident was made within such period as the court

SCHEDULE 1 - AMENDMENTS - *continued*

considers reasonable, having regard to the duty under this section, the court may allow the proceedings to continue.

(11) Section 43 (Time for and notice of making of claims):

Omit section 43 (4), insert instead:

(4) A claim is made by giving notice of the claim to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.

(12) Section 44:

Omit the section, insert instead:

Form of notice of claim

44. (1) A notice of a claim under section 43 (4) must:
- (a) be in the form approved by the Authority; and
 - (b) set out such particulars and information as may be required by that form.
- (2) The Authority may approve different forms according to the persons to whom the notice is to be given.
- (3) A notice of a claim given to a third-party insurer must be verified by statutory declaration.

(13) Section 45 (Duty of insurer to try to resolve claim etc.):

After section 45 (3), insert:

(4) Payments made under this section are taken to form part of any damages payable to the claimant.

(14) Section 67 (Claims register):

From section 67 (1), omit "30 days after receiving notice of a claim", insert instead "such period after receiving notice of a claim as the Authority may reasonably require".

(15) Section 110 (Business plans of licensed insurers):

From section 110 (1), omit "granted a licence", insert instead "requested to do so by the Authority".

SCHEDULE 1 - AMENDMENTS - *continued*

(16) Section 132A (**Certificate evidence**):

From section 132A (1), omit "conclusive".

(17) Section 138 (**Definitions**):

Omit the definition of "intermediate transport accident", insert instead:

"intermediate transport accident" means a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before 1 July 1989, being the date of commencement of Part 2:

- (a) in relation to which a person is entitled to benefits under the 1987 Act; or
- (b) in relation to which a person would be entitled to damages assessed in accordance with this Act if the person at fault had, on the occurrence of the accident, been an insured person;

(18) Sections 145A, 145B:

After section 145, insert:

Claims in respect of certain intermediate transport accidents

145A. (1) This section applies to an intermediate transport accident in respect of which a claim had not been made under the 1987 Act before 1 July 1989.

(2) A claim relating to an intermediate transport accident to which this section applies and any proceedings brought to enforce the claim may, in respect of a form of transportation or conveyance described in Column 1 of the Table to this subsection, be made or taken against the person (or, as the case may be, one or more of the persons) specified in Column 2 of that Table opposite that form of transportation or conveyance as if a person specified in Column 3 of that Table opposite that form of transportation or conveyance were the insurer under a third-party policy of the owner and driver of that form of transportation or conveyance.

Motor Accidents (Amendment) 1990

SCHEDULE 1 - AMENDMENTS - *continued*

Column 1	TABLE Column 2	Column 3
New South Wales registered motor vehicle	Owner, driver	GIO
Unidentified motor vehicle	GIO	GIO
Uninsured motor vehicle	GIO	GIO
Motor vehicle registered in Australia elsewhere than in New South Wales	Owner, driver, GIO	The insurer of, or compensation authority in respect of, the vehicle, GIO
A form of transportation or conveyance, not being a motor vehicle	Owner, driver, operator	GIO

(3) This section is taken to have commenced on 1 July 1989.

Contribution from other insurers in respect of intermediate transport accident claims

145B. (1) For the purposes of assessing and apportioning any liability for contribution between the GIO as manager of the TAC Fund and an insurer of a person at fault in respect of an intermediate transport accident, the GIO is taken to be the insurer of the person under a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) This section is taken to have commenced on 1 July 1989.

(19) Section 146 (**Provisions applicable to claims concerning intermediate transport accidents**):

- (a) From section 146 (1), omit "Part 5 (Claims and court proceedings to enforce claims) applies", insert instead "Parts 4, 4A, 5, 6, 9 and 10 apply".
- (b) From section 146 (1), omit "it applies", insert instead "they apply".
- (c) From section 146 (1), omit "that Part", insert instead "Part 5".

(20) Schedule 1 (**Third-party policy**):

- (a) Omit clause 2 (a), insert instead:
 - (a) a trailer attached to the motor vehicle and a trailer running out of control because it has become accidentally detached from the towing motor vehicle; and
- (b) From clause 2 (b), omit "town truck", insert instead "tow truck".

(21) Schedule 3 (**General Manager and Deputy General Manager of the Authority**):

- (a) In clause 3 (1), after "may", insert ", with the approval of the Board of Directors of the Authority,".
 - (b) In clause 3 (2), omit "Minister", insert instead "Board of Directors of the Authority".
-

FIRST PRINT

MOTOR ACCIDENTS (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to make miscellaneous amendments to the Motor Accidents Act 1988, including amendments relating to:

- * insurance of trailers
- * the method of effecting and the duration of third-party insurance
- * the determination of premiums
- * claims by and against the Nominal Defendant
- * claims in respect of intermediate transport accidents

and to amend the Motor Accidents (Amendment) Act 1989.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days, with certain exceptions. Those exceptions, and the reasons for them, are explained later in this Explanatory Note.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Motor Accidents Act 1988.

Clause 4 amends the Motor Accidents (Amendment) Act 1989. The amendments made by this clause are consequential on the amendment made by Schedule 1 (2) relating to the method of effecting and duration of third-party insurance and are to take effect on the date of assent to the proposed Act.

Clause 5 validates the operation of clause 4 of the Motor Accidents Regulation 1989 by giving it a retrospective commencement as from 1 July 1989. The effect of the provision is to enable a claim to be made against the Nominal Defendant for the death of or injury to a person arising from the use or operation on a public street of a vehicle which may lawfully be so used or operated despite the fact that it is not registered.

SCHEDULE 1 - AMENDMENTS

Trailers

Schedule 1 (1), (7), (8) and (20) (a) amend provisions relating to trailers. Under the Act at present, trailers are treated as being motor vehicles and are required to be separately insured. The requirement for separate insurance is removed.

Liability for the death of or injury to a person caused by a trailer is to be determined, as a consequence of the amendments, as follows. If the trailer is attached to a motor vehicle at the time of the accident or has run out of control because it has become accidentally detached from the towing vehicle, the trailer will be covered by the third-party policy relating to the motor vehicle. In other cases, a claim involving a trailer may be brought against the Nominal Defendant.

Method of effecting and duration of third-party insurance

Schedule 1 (2) substitutes Division 2 of Part 3. The substituted Division contains the following provisions:

Proposed section 10 requires a licensed insurer to issue a certificate of insurance on acceptance of a premium for a third-party policy for a motor vehicle or for motor vehicles to which a trader's plate is or is to be fixed. A licensed insurer who issues such a certificate is taken to have issued a third-party policy in relation to the vehicle or vehicles.

Proposed section 11 requires the production of evidence of insurance at the time an application is made for the registration or renewal of registration of a motor vehicle or on an application for a trader's plate.

Proposed section 12 specifies the period for which a third-party policy is in force. A policy takes effect on the registration (or renewal of registration) of the vehicle to which it relates or, if renewal of the registration is effected after the date for renewal, on the date on which the renewal is effected. A policy terminates on the expiry of the motor vehicle's registration or on the cancellation of the policy under proposed section 13. In the case of motor vehicles to which a trader's plate is to be fixed, the third-party policy is in force for the period for which the trader's plate is issued.

Proposed section 13 provides that a licensed insurer has no power to cancel a third-party policy. A policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except if the registration is cancelled for fine default purposes under section 18C of the Traffic Act 1909 or except if, after cancellation, the registration is restored before the date for renewal of the registration. The proposed section also provides that a third-party policy may be cancelled if the Roads and Traffic Authority, at the request of a licensed insurer, cancels the registration of a motor vehicle because the premium for the policy is unpaid.

Schedule 1 (6) and clause 4 make consequential amendments.

The substituted Division and Schedule 1 (6) are to commence from 1 July 1991, being the end of the phasing-in period for the motor accidents scheme contained in the Act.

Motor Accidents (Amendment) 1990

Determination of premiums

Schedule 1 (3) repeals section 14 which enables the determination of premiums for third-party policies by the Minister administering the Motor Accidents Act 1988. The repeal takes effect on 1 July 1991, being the end of the phasing-in period for the motor accidents scheme contained in the Act.

Schedule 1 (4) inserts proposed section 14A which enables the Motor Accidents Authority to issue guidelines, after approval by the Board of Directors of the Authority, to licensed insurers as to the determination of premiums for third-party policies.

Schedule 1 (5) enables the Authority to reject premiums if they do not comply with the Authority's guidelines.

Claims against the Nominal Defendant

As referred to in the summary of amendments relating to trailers, Schedule 1 (7) has the effect of enabling a claim to be made against the Nominal Defendant for an accident involving a trailer which is not attached to, and which has not become detached from, a motor vehicle.

Clause 5, as explained above, confirms the right of a person to claim against the Nominal Defendant in respect of the death of or injury to a person arising from the use or operation on a public street of a vehicle which may lawfully be so used or operated despite the fact that it is not registered.

Schedule 1 (8) prevents the Nominal Defendant from recovering from an owner or driver any amount paid by the Nominal Defendant in respect of an accident involving a trailer which is not attached to, and which has not become detached from, a motor vehicle or a vehicle which may lawfully be used or operated on a public street despite the fact that it is not registered.

Schedule 1 (8) is to commence retrospectively as from 1 July 1989.

Rehabilitation services

Schedule 1 (9) amends section 37 to make it clear that the obligation of a licensed insurer to provide rehabilitation services to an accident victim ceases if the victim's claim is settled.

The amendment is to commence retrospectively as from 1 July 1989 so as to apply to rehabilitation services provided at any time from that date.

Reporting of accidents

Schedule 1 (10) amends section 42 to remove the requirement that a court order to commence proceedings in relation to a motor accident is necessary if a report of the accident has not been made within a specified period after the date of the accident. The amendment requires the plaintiff to provide a full and satisfactory explanation to the court for the non-compliance and enables the court to allow the proceedings to continue if it is satisfied by the explanation.

Motor Accidents (Amendment) 1990

Making of claims

Schedule 1 (11) and (12) amend sections 43 and 44 in minor respects to clarify the procedure for the making of claims. In particular, the Motor Accidents Authority is empowered to approve different forms according to the person to whom notice of a claim is to be given.

Payments by licensed insurers in respect of claims

Schedule 1 (13) amends section 45 to make it clear that a payment made by a licensed insurer after liability in respect of a claim is admitted is to be taken to form part of any damages payable to the claimant.

Claims register

Schedule 1 (14) amends section 67 to replace the requirement that a licensed insurer forward specified details of a claim to the Motor Accidents Authority within 30 days after receiving notice of a claim with a requirement that those details be forwarded within such period as the Authority may reasonably require.

Business plans of licensed insurers

Schedule 1 (15) amends section 110 to replace the requirement that a licensed insurer deliver to the Motor Accidents Authority a business plan for its third-party insurance business as soon as practicable after it is granted a licence with a requirement that the business plan be delivered as soon as practicable after a request to do so is made by the Authority.

Certificate evidence

Schedule 1 (16) amends section 132A to provide that a certificate issued by the Motor Accidents Authority naming a licensed insurer as the third-party insurer of a particular vehicle for a particular period is to be evidence, rather than conclusive evidence, of the matter certified.

Intermediate transport accidents

An intermediate transport accident is a motor accident which occurred after 1 July 1987 (the date of commencement of the Transport Accidents Compensation Act 1987) and before 1 July 1989 (the date of repeal of that Act by the Motor Accidents Act 1988) and which was or would have been compensable under either Act.

Schedule 1 (17) amends the definition of "intermediate transport accident" in section 138 by way of statute law revision.

Schedule 1 (18) inserts proposed sections 145A and 145B.

Proposed section 145A makes it clear that, if a person entitled to make a claim in respect of an intermediate transport accident had not made a claim before 1 July 1989, the person may make such a claim. The proposed section specifies the person against whom the claim may be made and the insurer in respect of the claim.

Motor Accidents (Amendment) 1990

Proposed section 145B enables the GIO to obtain contribution from another insurer of a person at fault in respect of an intermediate transport accident.

Schedule 1 (19) amends section 146 to make it clear that Parts 4, 4A, 5, 6, 9 and 10 of the Motor Accidents Act 1988 apply to intermediate transport accidents (and not just Part 5).

The amendments made by Schedule 1 (18) and (19) are commenced retrospectively as from 1 July 1989.

Deputy General Manager of the Motor Accidents Authority

Schedule 1 (21) (a) provides that the approval of the Board of Directors of the Motor Accidents Authority is required before the Deputy General Manager may act in the office of the General Manager.

Schedule 1 (21) (b) enables the appointment of an Acting Deputy General Manager by the Board of Directors of the Authority rather than by the Minister.

Statute law revision

Schedule 1 (20) (b) makes an amendment by way of statute law revision.

FIRST PRINT

MOTOR ACCIDENTS (AMENDMENT) BILL 1990

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Accidents Act 1988 No. 102
4. Amendment of Motor Accidents (Amendment) Act 1989 No. 47
5. Validation

SCHEDULE 1 - AMENDMENTS

MOTOR ACCIDENTS (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Motor Accidents Act 1988 to make further provision concerning compulsory insurance against liability for the death of or injury to persons as a consequence of motor accidents; and to amend the Motor Accidents (Amendment) Act 1989.

Motor Accidents (Amendment) 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Accidents (Amendment) Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Section 4 commences on the date of assent.

(3) Schedule 1 (2), (3) and (6) commence on 1 July 1991.

(4) Schedule 1 (8), (9), (18) and (19) are taken to have commenced on 1 July 1989.

Amendment of Motor Accidents Act 1988 No. 102

3. The Motor Accidents Act 1988 is amended as set out in Schedule 1.

Amendment of Motor Accidents (Amendment) Act 1989 No. 47

4. The Motor Accidents (Amendment) Act 1989 is amended by omitting Schedule 2 (2), (3) and (4).

Validation

5. Clause 4 of the Motor Accidents Regulation 1989 is taken to have commenced on 1 July 1989.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (Interpretation):

- (a) From the definition of "motor vehicle" in section 3 (1), omit "and includes a trailer, but does not include", insert instead "but does not include a trailer or".

SCHEDULE 1 - AMENDMENTS - *continued*

(b) Insert in section 3 (1) in alphabetical order:

"trailer" means any vehicle without motive power capable of being drawn by a motor vehicle attached to it.

(2) Part 3, Division 2:

Omit the Division, insert instead:

Division 2 - Method of effecting and duration of third-party insurance

Issue of certificate of insurance

10. (1) If a licensed insurer accepts a premium for the insurance under a third-party policy of a motor vehicle, the licensed insurer must immediately issue a certificate of insurance to the owner of the vehicle.

(2) If a licensed insurer accepts a premium for the insurance under a third-party policy of motor vehicles to which a trader's plate is or is to be fixed, the licensed insurer must immediately issue a certificate of insurance to the trader.

(3) A licensed insurer who issues such a certificate is taken to have issued a third-party policy for the motor vehicle or motor vehicles to which the certificate relates.

Evidence of insurance in respect of motor vehicle

11. (1) A person who applies for the registration or renewal of registration of a motor vehicle must, at the time the application is made, produce evidence of the existence of a third-party policy in relation to the motor vehicle.

(2) A person who applies for the issue of a trader's plate must, at the time the application is made, produce evidence of the existence of a third-party policy in relation to motor vehicles to which the trader's plate is to be fixed.

(3) The Roads and Traffic Authority must not register or renew the registration of a motor vehicle or issue a trader's plate unless the applicant complies with the relevant

SCHEDULE 1 - AMENDMENTS - *continued*

provisions of this section or the Authority is otherwise satisfied as to the existence of the requisite third-party policy.

Duration of third-party policy

12. (1) A third-party policy taken to have been issued for a motor vehicle (other than a third-party policy taken to have been issued for motor vehicles to which a trader's plate is or is to be fixed) takes effect:

- (a) on the date of registration of the motor vehicle; or
- (b) on the date of renewal of the registration of the motor vehicle if the renewal is effected on or before the date for renewal; or
- (c) on the date on which the renewal of the registration of the motor vehicle is effected if the renewal is effected after the date for renewal.

(2) Such a policy terminates on the date on which the registration of the motor vehicle expires or the date on which the policy is cancelled under section 13.

(3) A third-party policy relating to motor vehicles to which a trader's plate is or is to be fixed takes effect on the date of commencement of the period for which the trader's plate is issued and terminates on the date of expiration of that period.

(4) Despite subsections (2) and (3), if the renewal of the third-party policy in respect of a motor vehicle, or motor vehicles to which a trader's plate is or is to be fixed, is effected:

- (a) within 15 days after the termination of the previous third-party policy in respect of the motor vehicle or motor vehicles; or
- (b) during the named month in which that previous third-party policy terminates,

the previous third-party policy is taken not to have terminated but to have continued in force until the renewal.

SCHEDULE 1 - AMENDMENTS - *continued*

Cancellation of third-party policies

13. (1) A licensed insurer has no power to cancel a third-party policy.

(2) A third-party policy is cancelled on the cancellation of the registration of the motor vehicle to which it relates, except where the registration is cancelled under section 18C of the Traffic Act 1909 or except as provided by subsection (3).

(3) If the registration of a motor vehicle is cancelled but is restored before the date for renewal of the registration, the third-party policy in force in respect of the motor vehicle is taken to have remained in force during the period of cancellation.

(4) A licensed insurer may request the Roads and Traffic Authority to cancel the registration of a motor vehicle if the whole or any part of the premium payable in respect of the policy taken to have been issued for the motor vehicle is unpaid.

(5) The Roads and Traffic Authority may, under the Traffic Act 1909, cancel the registration of a motor vehicle in accordance with such a request and, if it does so, the third-party policy taken to have been issued for the motor vehicle is cancelled on the cancellation of the registration.

- (3) **Section 14 (Determination by Minister of insurance premiums):**

Omit the section.

- (4) **Section 14A:**

Before section 15, insert:

Authority guidelines for the determination of premiums

14A. (1) The Authority may prepare and issue to licensed insurers guidelines for the determination of insurance premiums for third-party policies.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) The Authority may revoke, substitute or amend the guidelines.

(3) A guideline, or the revocation, substitution or amendment of a guideline, has no effect until it has been approved by the Board of Directors of the Authority.

(4) It is a condition of a licence granted under Division 1 of Part 8 that the licensed insurer must comply with the guidelines in force under this section.

(5) A guideline issued before 1 July 1993 must be substantially in conformity with the Motor Accidents Authority 1991/92 and 1992/93 Premium Filing Guidelines for Insurers, dated 16 October 1990.

(5) Section 15B (**Rejection of premiums by the Authority**):

At the end of section 15B (1) (b), insert:

; or

(c) the premium does not conform to the Authority's guidelines in force under section 14A.

(6) Sections 20 (**Effect of late renewal of registration of motor vehicle**), 21 (**Cancellation of third-party policy**):

Omit the sections.

(7) Section 27 (**Claim against Nominal Defendant where vehicle not insured**):

After section 27 (4), insert:

(5) In this section, "motor vehicle" includes a trailer, not being:

(a) a trailer which is attached to a motor vehicle; or

(b) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.

SCHEDULE 1 - AMENDMENTS - *continued*

(8) Section 31 (Recovery from owner or driver):

After section 31 (2), insert:

(3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of:

- (a) a motor vehicle which was lawfully used or operated on a public street; or
- (b) a trailer, not being:
 - (i) a trailer which is attached to a motor vehicle; or
 - (ii) a trailer running out of control because it has become accidentally detached from the towing motor vehicle.

(9) Section 37 (Provision of rehabilitation services):

In section 37 (5), after "injured person", insert "whose claim has been settled or".

(10) Section 42 (Accident must be reported within 28 days):

(a) From section 42 (1), omit "as soon as is reasonably practicable after the accident", insert instead "within 28 days after the date of the accident".

(b) Omit section 42 (2).

(c) Omit section 42 (4), insert instead:

(4) If a person commences proceedings in respect of a claim without having complied with the duty under this section, the person must provide a full and satisfactory explanation to the court for the non-compliance.

(5) If the court is satisfied that sufficient cause existed to justify the delay in making the report and that a report of the accident was made within such period as the court considers reasonable, having regard to the duty under this section, the court may allow the proceedings to continue.

SCHEDULE 1 - AMENDMENTS - *continued*

(11) Section 43 (Time for and notice of making of claims):

Omit section 43 (4), insert instead:

(4) A claim is made by giving notice of the claim to the person against whom the claim is made and, if that person's insurer is a third-party insurer, to the insurer.

(12) Section 44:

Omit the section, insert instead:

Form of notice of claim

44. (1) A notice of a claim under section 43 (4) must:

- (a) be in the form approved by the Authority; and
- (b) set out such particulars and information as may be required by that form.

(2) The Authority may approve different forms according to the persons to whom the notice is to be given.

(3) A notice of a claim given to a third-party insurer must be verified by statutory declaration.

(13) Section 45 (Duty of insurer to try to resolve claim etc.):

After section 45 (3), insert:

(4) Payments made under this section are taken to form part of any damages payable to the claimant.

(14) Section 67 (Claims register):

From section 67 (1), omit "30 days after receiving notice of a claim", insert instead "such period after receiving notice of a claim as the Authority may reasonably require".

(15) Section 110 (Business plans of licensed insurers):

From section 110 (1), omit "granted a licence", insert instead "requested to do so by the Authority".

SCHEDULE 1 - AMENDMENTS - *continued*

(16) Section 132A (**Certificate evidence**):

From section 132A (1), omit "conclusive".

(17) Section 138 (**Definitions**):

Omit the definition of "intermediate transport accident", insert instead:

"intermediate transport accident" means a transport accident (within the meaning of the 1987 Act) occurring on or after 1 July 1987 and before 1 July 1989, being the date of commencement of Part 2:

- (a) in relation to which a person is entitled to benefits under the 1987 Act; or
- (b) in relation to which a person would be entitled to damages assessed in accordance with this Act if the person at fault had, on the occurrence of the accident, been an insured person;

(18) Sections 145A, 145B:

After section 145, insert:

Claims in respect of certain intermediate transport accidents

145A. (1) This section applies to an intermediate transport accident in respect of which a claim had not been made under the 1987 Act before 1 July 1989.

(2) A claim relating to an intermediate transport accident to which this section applies and any proceedings brought to enforce the claim may, in respect of a form of transportation or conveyance described in Column 1 of the Table to this subsection, be made or taken against the person (or, as the case may be, one or more of the persons) specified in Column 2 of that Table opposite that form of transportation or conveyance as if a person specified in Column 3 of that Table opposite that form of transportation or conveyance were the insurer under a third-party policy of the owner and driver of that form of transportation or conveyance.

SCHEDULE 1 - AMENDMENTS - *continued*

Column 1	TABLE Column 2	Column 3
New South Wales registered motor vehicle	Owner, driver	GIO
Unidentified motor vehicle	GIO	GIO
Uninsured motor vehicle	GIO	GIO
Motor vehicle registered in Australia elsewhere than in New South Wales	Owner, driver, GIO	The insurer of, or compensation authority in respect of, the vehicle, GIO
A form of transportation or conveyance, not being a motor vehicle	Owner, driver, operator	GIO

(3) This section is taken to have commenced on 1 July 1989.

Contribution from other insurers in respect of intermediate transport accident claims

145B. (1) For the purposes of assessing and apportioning any liability for contribution between the GIO as manager of the TAC Fund and an insurer of a person at fault in respect of an intermediate transport accident, the GIO is taken to be the insurer of the person under a third-party policy.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) This section is taken to have commenced on 1 July 1989.

- (19) Section 146 (**Provisions applicable to claims concerning intermediate transport accidents**):
- (a) From section 146 (1), omit "Part 5 (Claims and court proceedings to enforce claims) applies", insert instead "Parts 4, 4A, 5, 6, 9 and 10 apply".
 - (b) From section 146 (1), omit "it applies", insert instead "they apply".
 - (c) From section 146 (1), omit "that Part", insert instead "Part 5".
- (20) Schedule 1 (**Third-party policy**):
- (a) Omit clause 2 (a), insert instead:
 - (a) a trailer attached to the motor vehicle and a trailer running out of control because it has become accidentally detached from the towing motor vehicle; and
 - (b) From clause 2 (b), omit "town truck", insert instead "tow truck".
- (21) Schedule 3 (**General Manager and Deputy General Manager of the Authority**):
- (a) In clause 3 (1), after "may", insert ", with the approval of the Board of Directors of the Authority,".
 - (b) In clause 3 (2), omit "Minister", insert instead "Board of Directors of the Authority".
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