

FIRST PRINT

## MOTOR ACCIDENTS (AMENDMENT) BILL 1993

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Motor Accidents Act 1988 so as:

- (a) to clarify the time of commencement and the duration of third-party policies by redefining the period for which a licensed insurer is on risk under a third-party policy; and
  - (b) to clarify the circumstances concerning the insurance of trailers; and
  - (c) to make it clear that the Nominal Defendant may join another person, or be joined, to a claim or proceedings as if the Nominal Defendant were a tortfeasor; and
  - (d) to make further provision concerning the circumstances in which late claims (that is, claims made later than 6 months after an accident) may be made; and
  - (e) to make further provision concerning the form of notice of claims; and
  - (f) to enable an insurer to require a claimant to provide further information needed to assess a claim; and
  - (g) to clarify the circumstances in which the claimant, in the making of a claim, is required to co-operate with the person against whom the claim is made and the person's insurer; and
  - (h) to clarify the principles applicable to the determination of damages for:
    - the provision of certain home care services
    - non-economic loss; and
  - (i) to enable an award of damages to include compensation for respite care; and
  - (j) to enact other provisions of a minor or consequential nature.
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Clause 1 specifies 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 which gives effect to the Schedule of amendments to the Principal Act.

Clause 4 provides that explanatory notes appearing in the Bill do not form part of the proposed Act.

**SCHEDULE 1—AMENDMENTS**

**Commencement and duration of third-party policies**

Schedule 1 (1) substitutes section 12. Under section 12, in its present form, it is necessary to know the date on which a "green slip" is issued in order to be able to determine the date on which an insurer comes on risk under a third-party policy. In practice, it is not always easy to determine the date.

The new arrangements determine the moment of risk by reference to the registration of the vehicle. The arrangements, in summary, are as follows:

- For original registrations (vehicles being registered for the first time or second-hand vehicles taking out new registration) the insurer is on risk for the period of registration.
- If registration is renewed before the previous period of registration expires, the new insurer comes on risk immediately after the previous period of registration expires.
- If registration is not renewed before the previous period of registration expires, there is a period of grace of 14 days.
- If registration is renewed during the period of grace, the old insurer is on risk until midnight on the day registration is renewed and the new insurer comes on risk immediately after midnight.
- If registration is renewed after the period of grace, the new insurer comes on risk at the time registration is renewed. The vehicle is not an insured vehicle from the time the previous period of registration expired until the registration is renewed.

In the case of traders' plates, the new arrangements make it clear that an insurer is on risk only while a trader's plate is fixed to the vehicle.

**Insurance of trailers**

At present under the Principal Act, a third-party policy covers liability for damage caused by trailers in most cases, but not where liability arises from:

- an unattached registered trailer parked on a public street
- an unregistered trailer which is attached to or has run out of control having become detached from a registered motor vehicle on a public street.

The amendment made by Schedule 1 (2) will enable claims in these cases to be made against the Nominal Defendant.

Schedule 1 (4) amends section 31 to prevent the Nominal Defendant from seeking recovery against the owner or driver of a trailer which is not required to be insured and which is lawfully used or operated on a public street.

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**Nominal Defendant as tortfeasor**

In the absence of a specific legislative provision, it is not clear whether the Nominal Defendant can be joined as a tortfeasor or has the rights of a tortfeasor to seek contribution or indemnity from another party. Schedule 1 (3) inserts proposed section 28B so as to put the matter beyond doubt.

**Late claims**

Section 43 requires a claim for damages to be made within 6 months after:

- the date of the motor accident
- the date of death (if the claim is made in respect of the death of a person).

If the claim is not made within the 6-month period, the claimant is required to give a full and satisfactory explanation for the delay.

Schedule 1 (5), (6) and (11) make amendments which provide that:

- the explanation is to be given in the first instance to the third-party insurer concerned or the Nominal Defendant (rather than to the court)
- if a late claim is made and no explanation is given, an insurer loses the right to challenge the claim on the ground of delay if the claim is not rejected, or an explanation is not asked for, within 2 months after the late claim is received
- if an explanation is given, an insurer loses the right to challenge the claim on the ground of delay if the explanation is not rejected within 2 months after it is received
- an insurer who has not lost the right to challenge a claim on the ground of delay may apply to have court proceedings struck out on that ground only within 2 months after the statement of claim is served.

**Information concerning claims**

Schedule 1 (7) (a) amends section 44 to enable particulars and information concerning a claim (for example, a medical certificate) to accompany a claim form rather than to be set out in the form.

Schedule 1 (7) (b) amends section 44 to provide that a claimant may be required, with the approval of the Motor Accidents Authority:

- to furnish a medical certificate signed by a medical practitioner
- to authorise the insurer to obtain information from specified persons.

Schedule 1 (8) inserts proposed sections 44A and 44B.

Proposed section 44A enables an insurer to obtain further information (for example, a certificate of earnings or a rehabilitation plan) from a claimant for the purpose of assessing a claim.

Proposed section 44B sets a 2-month time limit on the right of an insurer to reject a claim because it does not provide the necessary information or to reject further information needed to assess a claim because it is not given in the proper form. An insurer who has not lost the right to reject a claim or further information may apply to have court proceedings struck out on the ground of the relevant non-compliance only within 2 months after the statement of claim is served.

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**Making of interim payments prior to final settlement**

Section 45 requires insurers to make interim payments prior to final settlement for hospital, medical, pharmaceutical and rehabilitation expenses once liability has been admitted, wholly or in part. The section does not deal with the case where a court or an arbitrator has determined liability in favour of the claimant. There may be delay between a determination of liability and a final settlement.

Schedule 1 (9) amends section 45 to provide that an insurer's duty to make payments also arises on the making of such a determination.

**Claimant's duty to co-operate with other party**

Section 48 places a duty on a claimant to co-operate fully in respect of a claim with the person against whom the claim is made and the person's insurer. In particular, the claimant must comply with a reasonable request to provide relevant information and particulars.

Schedule 1 (10) amends section 48 so as:

- to include in the section a statement of its objectives
- to specify criteria against which the reasonableness of a request may be assessed.

These amendments are intended to address uncertainty as to the operation of the section.

**Proceedings against insurer if insured dead or unable to be served**

Section 54 provides that, where a person against whom a claim can be made is dead or unable to be served with process, the claimant may take proceedings and recover damages against the person's insurer instead.

Schedule 1 (12) extends section 54 to confer on a person claiming contribution or indemnity between joint tortfeasors the same rights as the claimant.

**Home care services**

Schedule 1 (13) substitutes section 72 which specifies the maximum amount of damages that may be awarded for the provision of certain home care services.

The substituted section, which is modelled on section 35C of the Motor Vehicles (Third Party Insurance) Act 1942, differs from its predecessor in the following respects:

- the section limits compensation for home care services, whether those services are provided by a member of the same household or family as the injured person or by any other person
- the restriction on an award of compensation for the first 6 months in which the services are provided is removed
- the restriction on an award of compensation for the first 6 hours of services per week is removed
- in order to avoid unnecessary expense associated with gathering evidence to prove the commercial rate for home care services, a court is to assume, unless evidence is adduced to the contrary, that the value of the services is the maximum value determined in accordance with the section (that determination being made by reference to average weekly total earnings of all employees in New South Wales).

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**Respite care**

Schedule 1 (14) inserts proposed section 72A to enable an award of damages to include compensation for necessary and reasonable respite care in respect of a claimant who is seriously injured and in need of constant care over a long term.

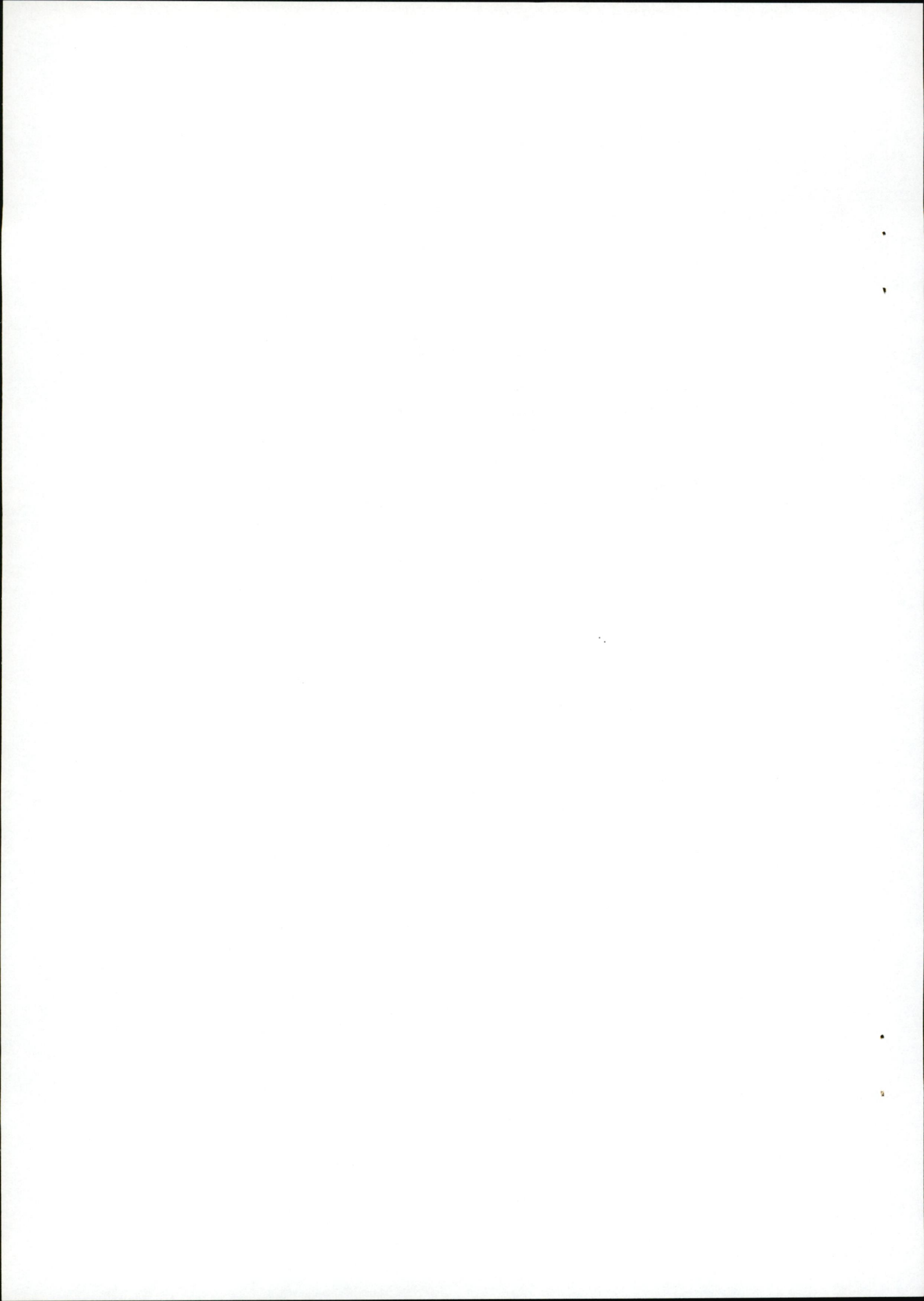
**Damages for non-economic loss—the verbal threshold**

The explanation for the amendment made to section 79 by Schedule 1 (15) is made following that item in the Bill.

**Savings and transitional provisions**

Schedule 1 (16) amends Schedule 4 to enact savings and transitional provisions consequent on the amendments made by the proposed Act.

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**MOTOR ACCIDENTS (AMENDMENT) BILL 1993**

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**SCHEDULE 1—AMENDMENTS**

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**MOTOR ACCIDENTS (AMENDMENT) BILL 1993**

NEW SOUTH WALES



No.       , 1993

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**A BILL FOR**

An Act to amend the Motor Accidents Act 1988 with respect to the commencement and duration of third-party policies, the form and making of claims, the rights and liabilities of the Nominal Defendant and the assessment of damages; and for other purposes.

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*Motor Accidents (Amendment) 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Motor Accidents (Amendment) Act 1993.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Motor Accidents Act 1988 No. 102**

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

**10 Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**15 (1) Section 12:**

Omit the section, insert instead:

**Commencement and duration of third-party policy**

20 12. (1) A third-party policy taken to have been issued for a motor vehicle has effect for the period for which the licensed insurer who is taken to have issued the policy is on risk in accordance with this section.

(2) In this section:

25 "new insurer" means the licensed insurer whose insurance is later in time;

"old insurer" means the licensed insurer whose insurance is earlier in time;

"period of grace" means the period of 14 days after the registration, or renewal of registration, of a motor vehicle expires;

*Motor Accidents (Amendment) 1993*SCHEDULE 1—AMENDMENTS—*continued*

**“period of registration”** means the period, not exceeding one year, for which the registration or renewal of registration of a motor vehicle is effected, but if, within that period, the registration or renewal of registration is cancelled or surrendered, it means the period for which the registration or renewal of registration is actually in force. 5

(3) The old insurer and the new insurer may be the same licensed insurer or different licensed insurers. 10

(4) In the case of the registration (but not the renewal of registration) of a motor vehicle, the licensed insurer is on risk for the period of registration of the motor vehicle.

(5) If registration is renewed before the previous period of registration expires, the old insurer is on risk until the previous period of registration expires and the new insurer comes on risk immediately after the previous period of registration expires. 15

(6) If registration is renewed during the period of grace, the old insurer is on risk until 12 midnight on the day registration is renewed and the new insurer comes on risk immediately after 12 midnight and is on risk for the balance of the period of registration of the motor vehicle effected by the renewal of registration. 20

(7) If registration is renewed after the period of grace expires, the new insurer comes on risk at the time the renewal of registration is effected. The motor vehicle is not an insured motor vehicle from the expiry of the previous period of registration until the time the renewal of registration is effected. 25  
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(8) There is no period of grace following the cancellation or surrender of the registration (whether registration or a renewal of registration) of a motor vehicle.

(9) A licensed insurer ceases to be on risk on the cancellation of a third-party policy under section 13. 35

(10) A licensed insurer is on risk in respect of a motor vehicle under a third-party policy relating to a motor vehicle to which a trader’s plate is fixed:

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) only during the period for which the policy is issued;  
and
- 5 (b) only during the period for which the trader's plate is  
issued; and
- (c) only while a trader's plate is fixed to the vehicle.
- (2) Section 27 (**Claim against Nominal Defendant where vehicle  
not insured**):
- After section 27 (4), insert:
- 10 (5) For the purposes of this section, and any regulations  
made for the purposes of this section, "**motor vehicle**"  
includes a trailer.
- (3) Section 28B:
- After section 28A, insert:
- 15 **Nominal Defendant as tortfeasor**
- 28B. The Nominal Defendant may join another person, or  
may be joined, for contribution or indemnity in respect of a  
claim or proceedings under this Act as if the Nominal  
Defendant were a tortfeasor.
- 20 (4) Section 31 (**Recovery from owner or driver**):
- Omit section 31 (3), insert instead:
- (3) The Nominal Defendant is not entitled to recover any  
amount under this section from the owner or driver of a  
25 motor vehicle, or a trailer, which was lawfully used or  
operated on a public street.
- (5) Section 43 (**Time for and notice of making of claims**):
- Omit section 43 (2) and (3).
- (6) Section 43A:
- After section 43, insert:
- 30 **Late making of claims**
- 43A. (1) A claim may be made more than 6 months after  
the date determined under section 43 (in this section called  
"**a late claim**") if the claimant provides a full and  
satisfactory explanation for the delay in making the claim.

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SCHEDULE 1—AMENDMENTS—*continued*

The explanation is to be provided in the first instance to the third-party insurer concerned (if there is one) or to the Nominal Defendant.

- (2) Evidence as to any delay in the onset of symptoms relating to the injury suffered by the injured person as a result of the motor accident may be given in any such explanation. 5
- (3) This subsection applies if the person against whom the late claim is made is insured by a third-party insurer.
- (a) If, within 2 months after receiving a late claim for which no explanation for delay is provided, the insurer does not reject the claim or ask the claimant to provide a full and satisfactory explanation for the delay in making the claim, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay. 10  
15
- (b) If, within 2 months after receiving an explanation for delay in the making of a late claim, the insurer does not reject the explanation, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay. 20
- (c) If court proceedings are commenced in respect of a late claim, an insurer (or the person against whom the claim is made) who has not lost the right to challenge the claim on the ground of delay may apply to have the proceedings struck out on the ground of delay only within 2 months after the statement of claim is served. 25
- (4) A court may strike out proceedings commenced in respect of a late claim if the court is satisfied that the claimant does not have a full and satisfactory explanation for the delay in making the claim. 30
- (7) Section 44 (**Form of notice of claim**):
- (a) After “set out” in section 44 (1) (b), insert “or be accompanied by”.
- (b) After section 44 (1), insert: 35
- (1A) A notice of claim given to an insurer may, if approved by the Authority, require the claimant to do either or both of the following:

*Motor Accidents (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) furnish a medical certificate relating to the claim signed by a medical practitioner;
- 5 (b) authorise the insurer to obtain information and documents relevant to the claim from persons specified in the authorisation.

(8) Sections 44A, 44B:

After section 44, insert:

**Further information required for assessment of claim**

10 44A. (1) For the purpose of assessing a claim, an insurer may require the claimant to provide further information in a form approved by the Authority.

(2) Further information may include, but is not limited to, a certificate of earnings and a rehabilitation plan.

15 **Challenging claims for failure to comply with s. 44 or 44A**

20 44B. (1) If, within 2 months after receiving notice of a claim under section 43 (4), the insurer does not reject the claim for non-compliance with section 44, the insurer loses the right to challenge the claim on the ground of non-compliance with that section.

(2) If, within 2 months after receiving further information under section 44A, the insurer does not reject the information for non-compliance with section 44A, the insurer loses the right to challenge the information on the ground of non-compliance with that section.

25 (3) If court proceedings are commenced in respect of a claim, an insurer who has not lost the right to challenge for non-compliance with section 44 or section 44A may apply to have the proceedings struck out on the ground of the relevant non-compliance only within 2 months after the statement of claim is served.

30 (4) A court may strike out the proceedings only if it is satisfied that the relevant non-compliance is substantial.

35 (5) In this section, a reference to an insurer includes, in the case of a third-party insurer, a reference to the person against whom the claim is made.

*Motor Accidents (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

- (9) Section 45 (**Duty of insurer to try to resolve claim etc.**):  
 After “(wholly or in part)” in section 45 (2), insert “or determined (wholly or in part) against the person against whom the claim is made”. 5
- (10) Section 48 (**Duty of claimant to co-operate with other party**):
- (a) After “insurer” in section 48 (1), insert:  
 for the purpose of giving the person and the insurer sufficient information:
- (a) to be satisfied as to the validity of the claim; and 10  
 (b) to be able to make an early assessment of liability; and  
 (c) to be able to make an informed offer of settlement.
- (b) After section 48 (2), insert:
- (2A) The reasonableness of a request may be assessed having regard to criteria including the following: 15
- (a) the amount of time the claimant needs to comply with the request;
- (b) whether the information sought is cogent and relevant to a determination of liability or quantum of loss, having regard to the nature of the claim; 20
- (c) the amount of information which has already been supplied to or is available to an insurer to enable liability and quantum of loss to be assessed and an offer of settlement made;
- (d) how onerous it will be for the claimant to comply with the request; 25
- (e) the purpose for which the insurer seeks the information;
- (f) whether the information is privileged;
- (g) whether the information sought is sufficiently specified; 30
- (h) the time of the request and whether the claimant will be delayed in commencing proceedings by complying with the request.

*Motor Accidents (Amendment) 1993*SCHEDULE 1—AMENDMENTS—*continued*

- (11) Section 52 (**Time limitations on commencement of court proceedings**):
- (a) Omit section 52 (2), insert instead:
- 5 (2) If notice is given to the other person's third-party insurer then despite subsection (1) the claimant is entitled to commence court proceedings if any of the following occurs:
- (a) the insurer denies all liability in respect of the claim;
- 10 (b) the insurer admits partial liability in respect of the claim but the claimant is dissatisfied with the extent to which liability is admitted;
- (c) in the case of a late claim within the meaning of section 43A, the insurer rejects the claimant's explanation for delay in making the claim.
- 15 (b) From section 52 (3), omit "must be made in accordance with section 43", insert instead "is made".
- (12) Section 54 (**Proceedings against insurer if insured dead or unable to be served**):
- (a) After "the claimant" where firstly occurring in section 54 (1), insert "and a person claiming contribution or indemnity between joint tortfeasors".
- 20 (b) After "the claimant" in section 54 (1) (b), insert "or the person claiming contribution or indemnity".
- (13) Section 72:
- 25 Omit the section, insert instead:
- Maximum amount of damages for provision of certain home care services**
72. (1) Compensation, included in an award of damages, for the value of services of a domestic nature or services relating to nursing and attendance:
- 30 (a) which have been or are to be provided by another person to the person in whose favour the award is made; and
- (b) for which the person in whose favour the award is made has not paid and is not liable to pay,
- 35 must not exceed the amount determined in accordance with this section.



*Motor Accidents (Amendment) 1993*SCHEDULE 1—AMENDMENTS—*continued*

(2) If the services provided or to be provided are not less than 40 hours per week, the amount of compensation must not exceed:

- (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for:
  - (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
  - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an award has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

(3) If the services provided or to be provided are less than 40 hours per week, the amount of compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (2) (a) or (b), as the case may be.

(4) Unless evidence is adduced to the contrary, the court is to assume that the value of the services is the maximum amount determined under subsection (2) or (3), as the case requires.

*Motor Accidents (Amendment) 1993*SCHEDULE 1—AMENDMENTS—*continued*

(5) No compensation is to be awarded if the services would have been provided to the person even if the person had not been injured by the motor accident.

5 (6) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1).

(14) Section 72A:

After section 72, insert:

10 **Respite care**

72A. An award of damages may include compensation for necessary and reasonable respite care in respect of a claimant who is seriously injured and in need of constant care over a long term.

15 (15) Section 79 (**Determination of non-economic loss**):

From section 79 (1), omit “is significantly impaired”, insert instead “has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months”.

20 **EXPLANATORY NOTE—item (15)**

Section 79 (1) presently provides:

No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person’s ability to lead a normal life is significantly impaired by the injury suffered in the accident.

25 As amended, section 79 (1) will provide:

No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person’s ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months by the injury suffered in the accident.

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The Supreme Court has held, in *Matthews v Dean* (1990) 11 MVR 455, that significant impairment must be assessed at the time of the hearing.

35 As originally proposed, the verbal threshold was intended to operate in the narrative sense: “the injury must significantly disrupt the personal or working life of the applicant”. The current position, taking account of case law, is that the degree of impairment is assessed at an arbitrary point of time. In view of current court delays, this could be some years after the accident. The interpretation has resulted in the exclusion of claims where the victim has suffered major trauma but has substantially recovered.

*Motor Accidents (Amendment) 1993*SCHEDULE 1—AMENDMENTS—*continued*

Schedule 1 (15) amends the section to introduce a period for which the impairment must exist. Damages for non-economic loss are to be available if the injured person's ability to lead a normal life was or will be significantly impaired for a continuous period of at least 6 months. This means that if, at the time damages are assessed (either during settlement negotiations, mediation, arbitration or by a court) the injured person's ability to lead a normal life has been significantly impaired for 6 months, or is likely to be significantly impaired for at least 6 months, the person is entitled to damages for non-economic loss, subject to the deductible.

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The assessment of a past period of impairment will be a matter of fact. The assessment of a future period of likely impairment will require a degree of judgment and prediction.

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The amendment is intended to ensure that the only claimants who will benefit from likely significant impairment in the near future will be those for whom medical evidence indicates that the injuries would almost certainly cause the onset of significant impairment (i.e. the commencement of a period of significant impairment) in the relatively near future. An example might be a claimant with a badly broken hip, where it is virtually certain that the hip will become severely arthritic within a few years.

15

The intention is to prevent arguments that there may well be some degree of impairment some time in the future. If the period of impairment has not ceased at the date of assessment, there must be clear evidence that there is a real likelihood of impairment continuing in the future to produce a continuous period of impairment of at least 6 months.

20

The amendment is not intended to provide access to general damages by virtually every claimant who suffers injury and has the potential for long term degeneration, particularly when combined with the debilitating effects of advancing age.

25

(16) Schedule 4 (**Savings, transitional and other provisions**):

(a) At the end of clause 1 (1), insert:

the Motor Accidents (Amendment) Act 1993.

(b) After Part 4, insert:

**Part 5—Provisions arising from the enactment of the  
Motor Accidents (Amendment) Act 1993**

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**General application of amendments**

9. An amendment made by the Motor Accidents (Amendment) Act 1993 applies to:

(a) motor accidents occurring before the commencement of the amendment as well as to motor accidents occurring after that commencement; and

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*Motor Accidents (Amendment) 1993*

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SCHEDULE 1—AMENDMENTS—*continued*

5 (b) claims made and proceedings brought before the commencement of the amendment that have not been finally determined before that commencement as well as to claims made and proceedings brought after that commencement,

except as provided by this Part.

**Commencement and duration of third-party policies**

10 10. Section 12, as substituted by the Motor Accidents (Amendment) Act 1993, does not apply to a third-party policy that is taken to have been issued before the commencement of Schedule 1 (1) to that Act.

**Late making of claims**

15 11. Section 43A does not apply to a claim made before the commencement of that section.

**Challenging claims for failure to comply with s. 44 or 44A**

12. Section 44B does not apply to a claim made before the commencement of that section.

**Determination of non-economic loss**

20 13. Section 79, as amended by the Motor Accidents (Amendment) Act 1993, does not apply to a motor accident occurring before the commencement of Schedule 1 (15) to that Act.

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MR PRESIDENT

THE AMENDMENTS TO THE MOTOR ACCIDENTS ACT PROPOSED BY THIS BILL FOLLOW AN EXTENSIVE REVIEW OF THE ACT BY THE GOVERNMENT, WITH THE ASSISTANCE OF THE MOTOR ACCIDENTS AUTHORITY.

THE MOTOR ACCIDENTS SCHEME HAS NOW BEEN IN OPERATION FOR FOUR YEARS AND HAS PROVEN TO BE SUCCESSFUL IN PROVIDING FAIR AND EFFECTIVE COMPENSATION AT AN AFFORDABLE PRICE.

ONE OF THE PRINCIPAL AIMS IN DEREGULATING THE COMPULSORY THIRD PARTY INSURANCE MARKET HAS BEEN TO FOSTER COMPETITION TO PROVIDE REDUCED PREMIUMS AND ENHANCED SERVICE FROM INSURERS.

ALL MOTOR VEHICLE OWNERS HAVE ENJOYED THE SUBSTANTIAL REDUCTIONS IN COMPULSORY THIRD PARTY INSURANCE PREMIUMS WHICH HAVE BEEN POSSIBLE UNDER THE SCHEME. SINCE THE INTRODUCTION OF THE SCHEME IN 1989 AVERAGE MOTOR CAR PREMIUMS IN THE SYDNEY METROPOLITAN REGION HAVE DROPPED FROM \$350 TO \$190. PREMIUMS HAVE NOW STABILISED AND ARE COMPARABLE WITH THOSE IN OTHER STATES.

MARKET RESEARCH COMMISSIONED BY THE MOTOR ACCIDENTS AUTHORITY HAS INDICATED THAT THE

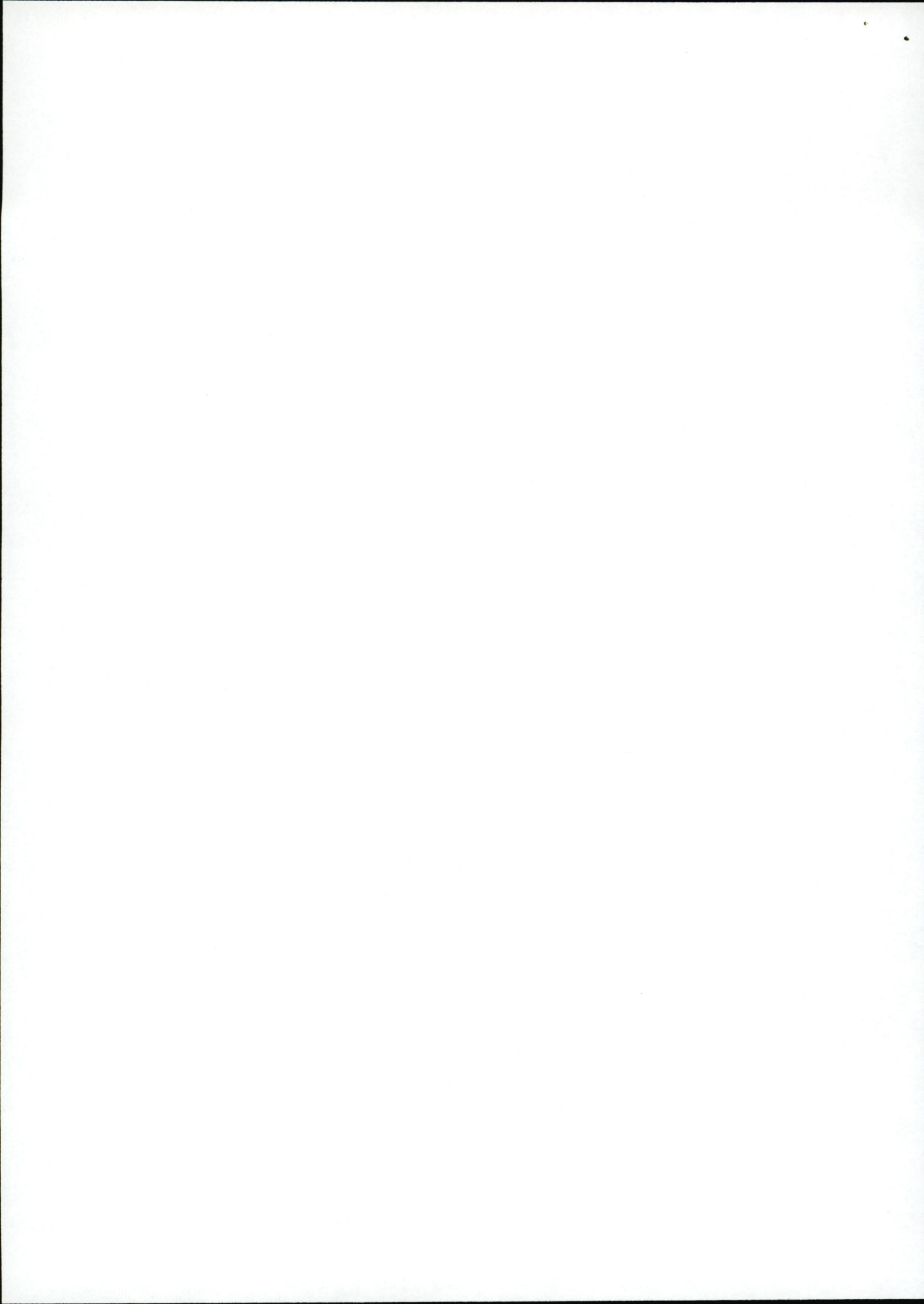


COMMUNITY PERCEIVES THE SCHEME TO BE BOTH AFFORDABLE AND AVAILABLE. THE EASE WITH WHICH THE CTP "GREEN SLIP" CAN BE PURCHASED HAS RESULTED IN BROAD COMMUNITY UNDERSTANDING AND ACCEPTANCE.

MANAGEMENT OF THE SCHEME BY THE MOTOR ACCIDENTS AUTHORITY HAS PROVEN TO BE BOTH SOUND AND EFFECTIVE. IMPROVED PROCEDURES, INCLUDING THE ARBITRATION OF CLAIMS AND THE INTRODUCTION OF ALTERNATIVE DISPUTE RESOLUTION PROCEDURES, PARTICULARLY MEDIATION, HAVE BEEN INTRODUCED TO ENCOURAGE THE EARLY DISPOSAL OF CLAIMS.

THE OUTSTANDING CLAIMS UNDER THE OLD THIRD PARTY SCHEMES INHERITED FROM THE PREVIOUS GOVERNMENT ARE ALSO BEING APPROPRIATELY MANAGED. THE NUMBER OF OUTSTANDING CLAIMS HAS BEEN REDUCED FROM 78,000 AS AT SEPTEMBER 1989 TO 28,000 AS AT MARCH THIS YEAR. THE ESTIMATED UNFUNDED LIABILITY RELATING TO THESE CLAIMS HAS BEEN REDUCED FROM A MASSIVE \$5,000 MILLION AS AT JUNE 1988 TO \$1,500 MILLION AT THE END OF 1992.

FRAUD IS BEING TARGETTED AND PROSECUTED, WITH THE GIO SPECIAL CLAIMS UNIT HAVING BEEN SUCCESSFUL IN GAINING 600 VERDICTS AGAINST PLAINTIFFS, AND INSTIGATING 175 ARRESTS ON OVER 320 CRIMINAL CHARGES. IN ADDITION, AS A RESULT OF THIS UNIT'S OPERATIONS, MANY TENS OF MILLIONS OF DOLLARS HAVE BEEN SAVED, AND MANY





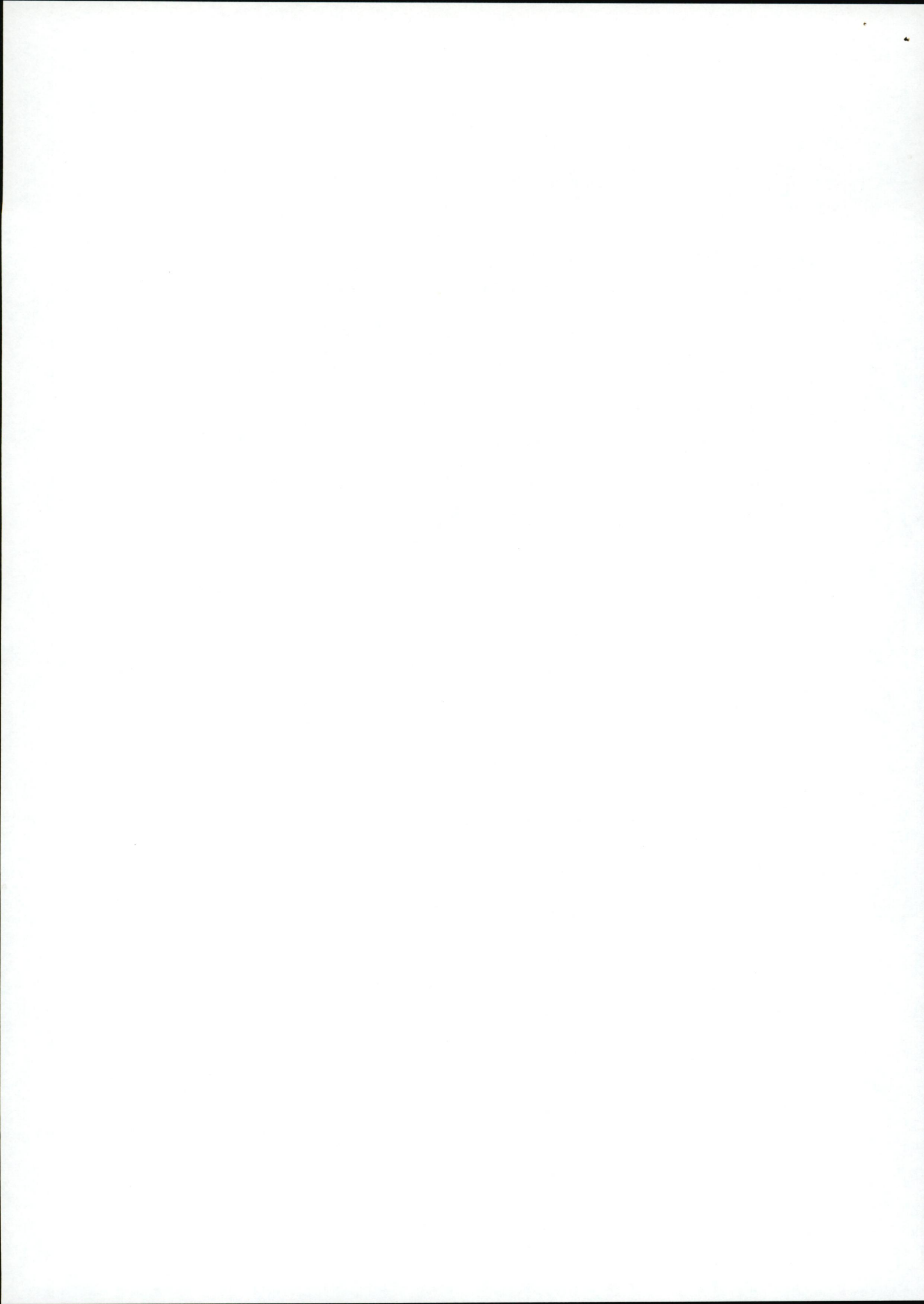
FRAUDULENT AND EXAGGERATED CLAIMS HAVE BEEN VOLUNTARILY WITHDRAWN OR NOT PROCEEDED WITH.

IN RE-INTRODUCING MODIFIED COMMON LAW RIGHTS FOR MOTOR VEHICLE INJURY THE GOVERNMENT HAS BEEN CONCERNED TO ENSURE THAT THOSE ENTITLED TO COMPENSATION UNDER THE MOTOR ACCIDENT SCHEME RECEIVE ALL NECESSARY CARE, AND HAVE ACCESS TO ALL NECESSARY SERVICES AND FACILITIES, TO ENSURE THEIR RETURN, AS MUCH AS POSSIBLE, TO THEIR PRE-INJURY ABILITIES, EMPLOYMENT AND LIFESTYLE.

THE PROPOSED CHANGES TO THE ACT CONTAINED IN THIS BILL CONTINUE THE EMPHASIS OF THE ORIGINAL LEGISLATION IN MEETING THE NEEDS OF PERSONS WHO HAVE MODERATE TO SEVERE INJURIES SUSTAINED IN A MOTOR VEHICLE ACCIDENT.

THE PROPOSED AMENDMENTS PROVIDE FOR NOTABLE IMPROVEMENTS IN THE AVAILABILITY OF COMPENSATION FOR NON-ECONOMIC LOSS, ALSO KNOWN AS COMPENSATION FOR PAIN AND SUFFERING, AND HOME CARE SERVICES.

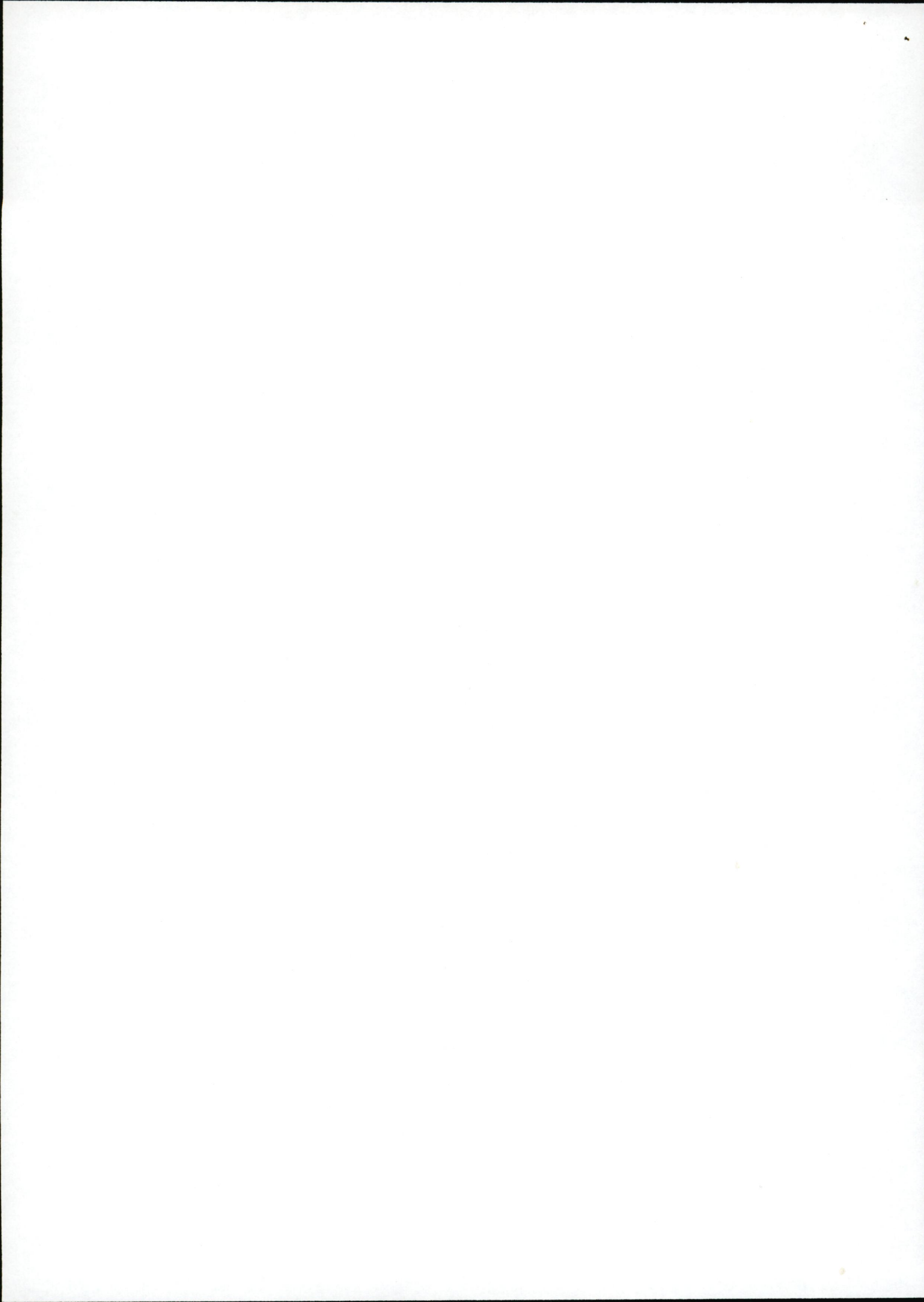
CURRENTLY, TO RECEIVE ANY COMPENSATION FOR NON-ECONOMIC LOSS, SECTION 79(1) OF THE ACT PROVIDES THAT AN INJURED PERSON MUST SHOW THAT "THEIR ABILITY TO LEAD A NORMAL LIFE IS SIGNIFICANTLY IMPAIRED BY THE INJURY SUFFERED IN THE ACCIDENT".



THIS HAS BEEN INTERPRETED BY THE COURTS TO MEAN THAT THE PERSON'S ABILITY TO LEAD A NORMAL LIFE MUST BE SIGNIFICANTLY IMPAIRED AT THE DATE OF ASSESSMENT OF THEIR DAMAGES [SUCH AS AT THE DATE OF THEIR COURT HEARING]. THEREFORE PEOPLE WHO HAVE ENDURED PAIN, SUFFERING AND TRAUMA BUT WHO HAVE LARGELY RECOVERED FROM THEIR INJURIES BY THE TIME THEIR DAMAGES ARE ASSESSED, MAY BE UNABLE TO CLAIM NON-ECONOMIC LOSS DAMAGES.

I AM PLEASED TO BE ABLE TO SAY THAT THE PROPOSED AMENDMENT TO SECTION 79(1) MAKES DAMAGES FOR NON-ECONOMIC LOSS AVAILABLE IF THE INJURED PERSON'S ABILITY TO LEAD A NORMAL LIFE WAS OR IS LIKELY TO BE SIGNIFICANTLY IMPAIRED FOR A CONTINUOUS PERIOD OF AT LEAST 6 MONTHS. THIS MEANS THAT IF AT THE TIME DAMAGES ARE ASSESSED THE INJURED PERSON'S ABILITY TO LEAD A NORMAL LIFE HAS ALREADY BEEN SIGNIFICANTLY IMPAIRED FOR 6 MONTHS, OR IS LIKELY TO BE SIGNIFICANTLY IMPAIRED FOR AT LEAST 6 MONTHS IN THE NEAR FUTURE, THEN THEY ARE ENTITLED TO CLAIM FOR NON-ECONOMIC LOSS DAMAGES, DESPITE THE INJURED PERSON NOT BEING SIGNIFICANTLY IMPAIRED AT THE TIME OF ASSESSMENT.

AS A CONSEQUENCE OF THE AMENDMENTS CLAIMANTS WHOSE ABILITY TO LEAD A NORMAL LIFE HAS NOT BEEN SIGNIFICANTLY IMPAIRED AT THE DATE OF THE ASSESSMENT, BUT WHOSE INJURIES WILL ALMOST CERTAINLY CAUSE A



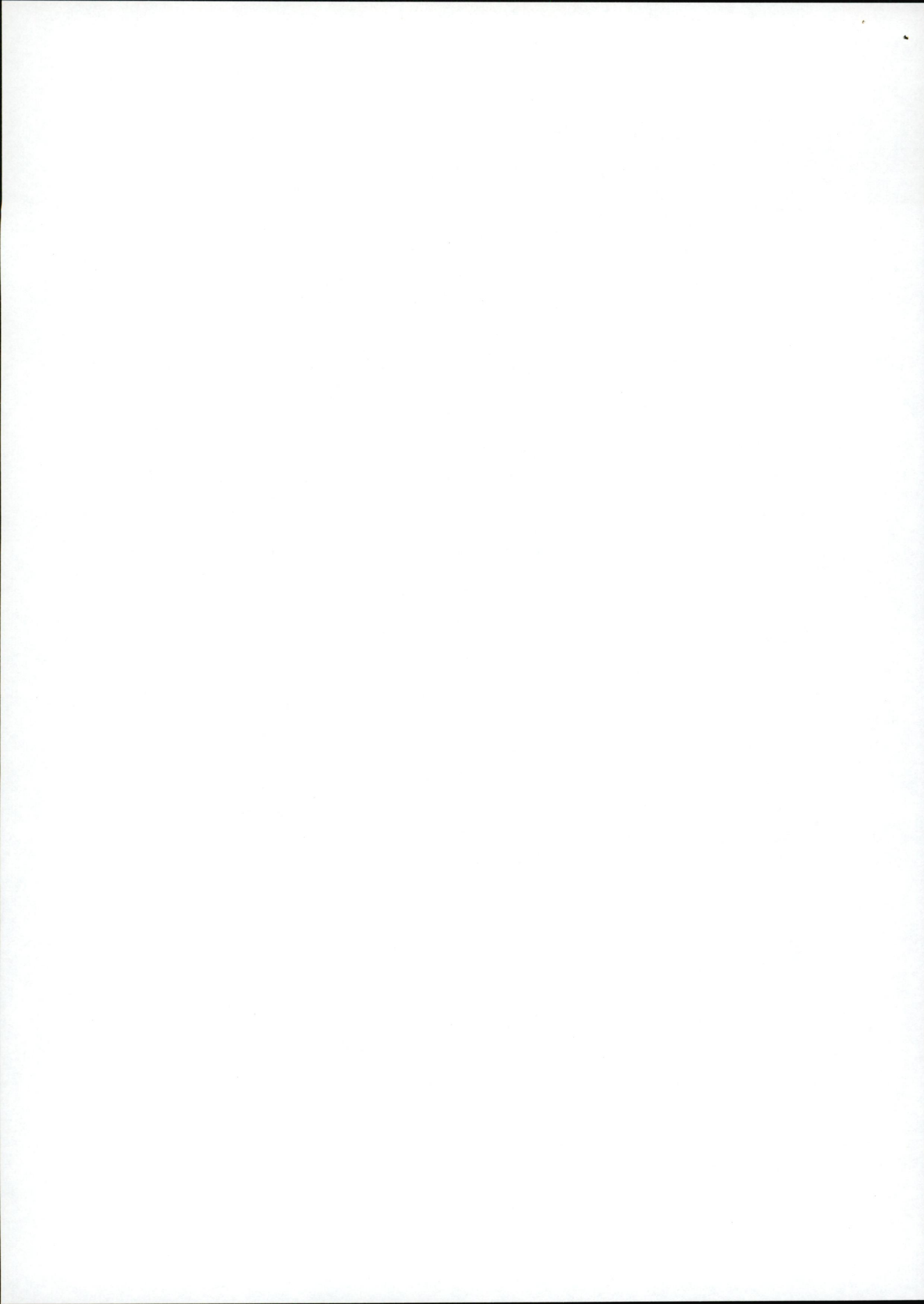
PERIOD OF SIGNIFICANT IMPAIRMENT IN THE NEAR FUTURE WILL NOT BE PREVENTED FROM MAKING A NON-ECONOMIC LOSS CLAIM.

THIS IS NOT INTENDED TO PROVIDE COMPENSATION WHERE THE ONLY IMPAIRMENT IS LIKELY TO BE SOME FORM OF LONG-TERM DEGENERATION WHICH WOULD HAVE LIKELY OCCURRED REGARDLESS OF THE ACCIDENT.

COMPENSATION PROVIDED BY FAMILY MEMBERS IN THE FORM OF HOME CARE SERVICES IS PRESENTLY PAYABLE ONLY AFTER THESE SERVICES HAVE BEEN PROVIDED FOR SIX MONTHS AND THEN ONLY WHERE THE SERVICES EXCEED SIX HOURS PER WEEK.

THIS LIMITATION HAS PROVEN TO BE ANOMALOUS AND IT IS PROPOSED TO REMOVE THESE RESTRICTIONS SO THAT WHERE A MEMBER OF THE INJURED PERSON'S HOUSEHOLD OR FAMILY PROVIDES CARE AND SERVICES, HOME CARE COMPENSATION WILL BE AVAILABLE EVEN DURING THE FIRST SIX MONTHS AFTER THE ACCIDENT AND FOR THE FIRST 6 HOURS OF SERVICES PER WEEK.

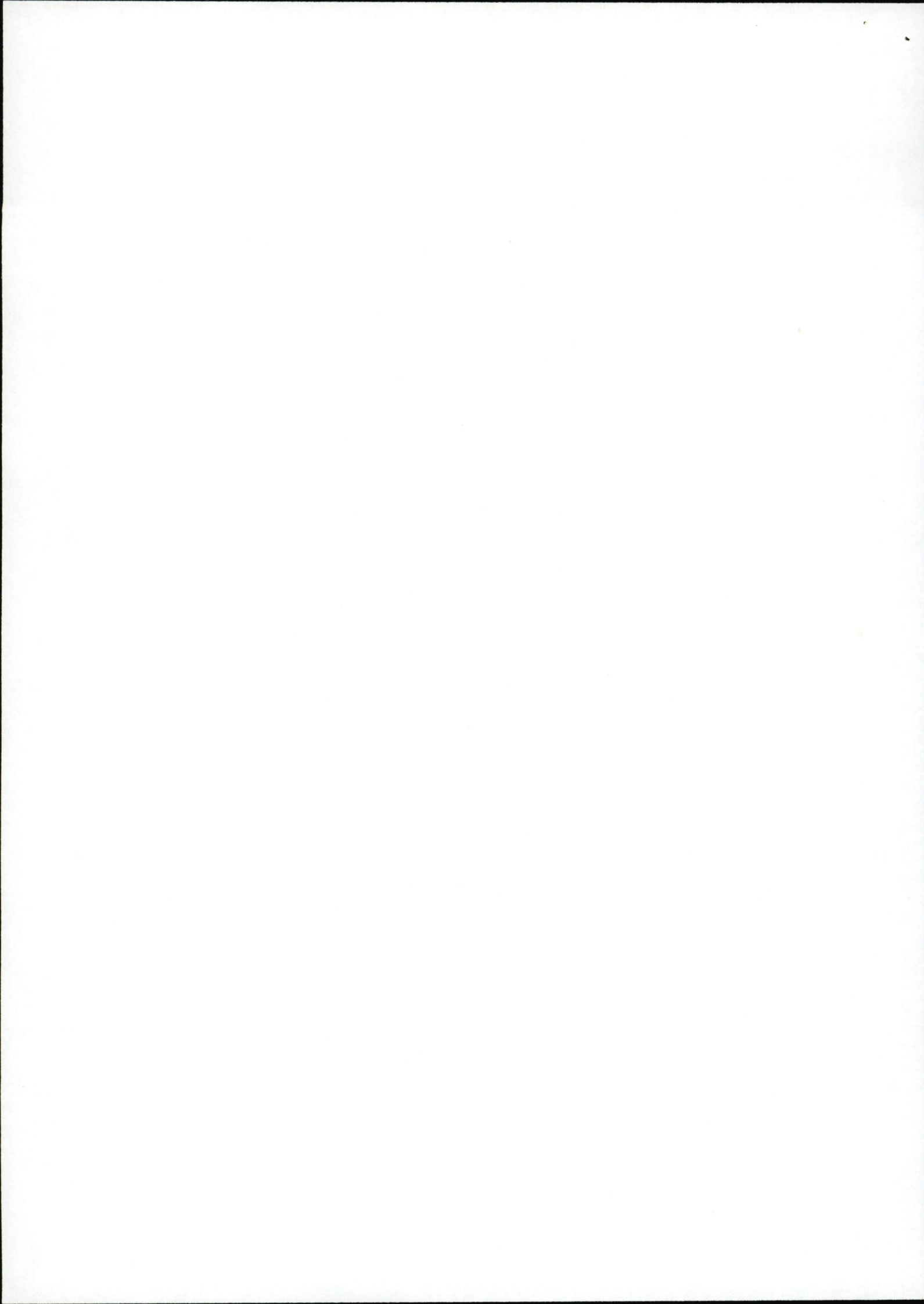
BECAUSE THE COMPENSATION IS FOR SERVICES PROVIDED VOLUNTARILY, THE AMOUNT OF COMPENSATION WILL CONTINUE TO BE LIMITED TO A MAXIMUM OF 40 HOURS PER WEEK BASED ON AVERAGE WEEKLY EARNINGS IN NSW. THIS LIMIT HAS BEEN PLACE SINCE JULY 1984.



THE VALUE OF RESPITE CARE HAS ALSO BEEN GIVEN STATUTORY RECOGNITION FOR THE FIRST TIME. REST OR 'RESPITE' FOR THE CARERS OF SERIOUSLY INJURED MOTOR ACCIDENT VICTIMS IS VERY IMPORTANT IN HELPING THE INJURED PERSON TO RECOVER. PREVIOUSLY, THESE COSTS HAVE BEEN REGARDED AS COSTS OF THE FAMILY AND NOT OF THE PERSON BEING CARED FOR AND WERE NOT NECESSARILY COVERED IN AN AWARD OF DAMAGES. IF THE STRESSES OF CARING FOR A SERIOUSLY INJURED PERSON WITHOUT RELIEF ARE SUCH THAT THEY RESULT IN FAMILY BREAKDOWN OR BURN OUT OF THE CARE GIVER, OTHER CARE ARRANGEMENTS MUST BE FOUND FOR THE INJURED PERSON, AT AN ENORMOUS EMOTIONAL AND ECONOMIC COST.

PROVISION HAS THEREFORE BEEN INCLUDED TO ENABLE A SPECIFIC AWARD OF DAMAGES FOR RESPITE CARE IN CASES WHERE THE CLAIMANT IS SERIOUSLY INJURED AND REQUIRES CONSTANT CARE OVER A LONG PERIOD OF TIME.

THESE CHANGES WILL LEAD TO AN ESTIMATED INCREASE IN PREMIUMS FOR COMPULSORY THIRD PARTY INSURANCE OF UP TO \$11 PER VEHICLE, ALTHOUGH THE ACTUAL PREMIUM WILL OF COURSE CONTINUE TO BE DETERMINED BY INSURERS. WHEN CONSIDERED AGAINST THE DRAMATIC FALL IN PREMIUMS SINCE THE INTRODUCTION OF THE SCHEME, THE ADDITIONAL COST INVOLVED IN PROVIDING ENHANCED COMPENSATION FOR SERIOUSLY INJURED PERSONS IS MODEST.





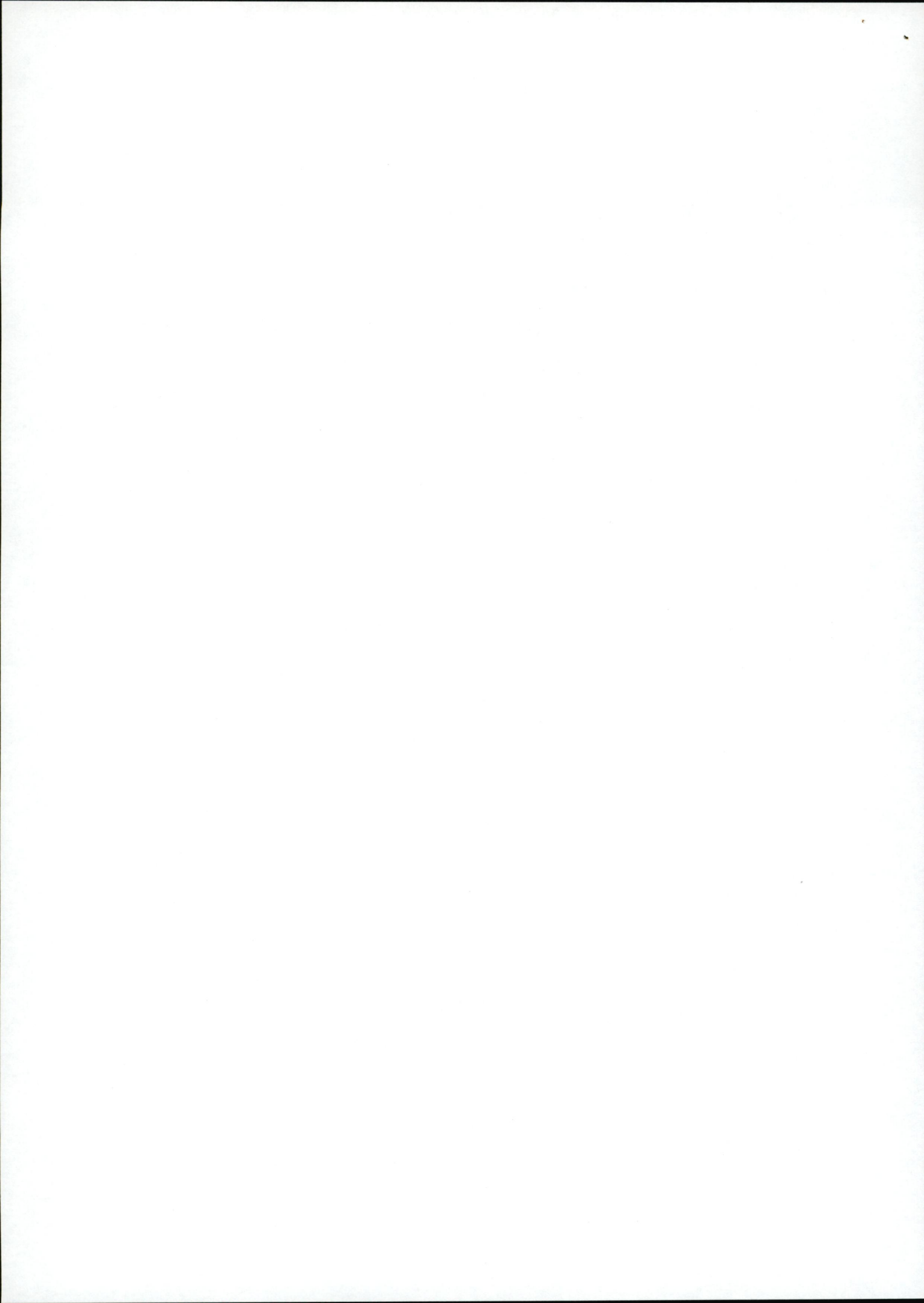
MR SPEAKER

I BELIEVE THAT UNDER THE STATUTORY SCHEME PROVIDED FOR BY THE MOTOR ACCIDENTS ACT, THE REAL CLIENTS OF THE SCHEME AND THE INSURERS PARTICIPATING IN THE SCHEME ARE THE INJURED MOTORISTS. THE GOVERNMENT AND THE MOTOR ACCIDENTS AUTHORITY ARE COMMITTED TO MEETING THE NEEDS OF MOTOR ACCIDENTS VICTIMS.

THE SCHEME HAS PLACED CONSIDERABLE EMPHASIS ON REHABILITATION AND AS A RESULT INSURERS ARE NOW WORKING WITH REHABILITATION PROVIDERS TO ENSURE THAT THE SEVERELY INJURED HAVE ACCESS TO ALL NECESSARY SERVICES. IN OTHER COMMON LAW SCHEMES INSURERS PLAY NO ROLE IN REHABILITATION AND THE CLAIMANT HAS LITTLE SUPPORT UNTIL THE FINAL LUMP SUM COMPENSATION IS PAID. HOWEVER, THROUGH THE IMPLEMENTATION OF THIS SCHEME THIS GOVERNMENT HAS RECOGNISED THAT THE EARLY IMPLEMENTATION OF A REHABILITATION PLAN REDUCES THE COST OF CARE BORNE BY THE COMMUNITY IN THE LONGER TERM.

I AM PLEASED TO BE ABLE TO REMIND THE HOUSE THAT THE MOTOR ACCIDENTS AUTHORITY HAS COMMITTED OVER \$30 MILLION TO REHABILITATION PROJECTS, INCLUDING:

\* MAJOR NEW BRAIN INJURY REHABILITATION CENTRES AT RYDE, WESTMEAD, AND ONE UNDER CONSTRUCTION AT



LIVERPOOL, WITH OTHER FACILITIES ESTABLISHED IN COUNTRY REGIONAL AREAS. BRAIN INJURY REHABILITATION FOR CHILDREN IS NOW OPERATING AT THE CAMPERDOWN CHILDREN'S HOSPITAL, WHILE THE NEW PAEDIATRIC BRAIN INJURY UNIT IS BEING CONSTRUCTED AT WESTMEAD;

\* OVER \$1 MILLION HAS BEEN PROVIDED TOWARDS THE SPINAL INJURY AWARENESS AND PREVENTION PROGRAM, HEADED BY DR JOHN YEO;

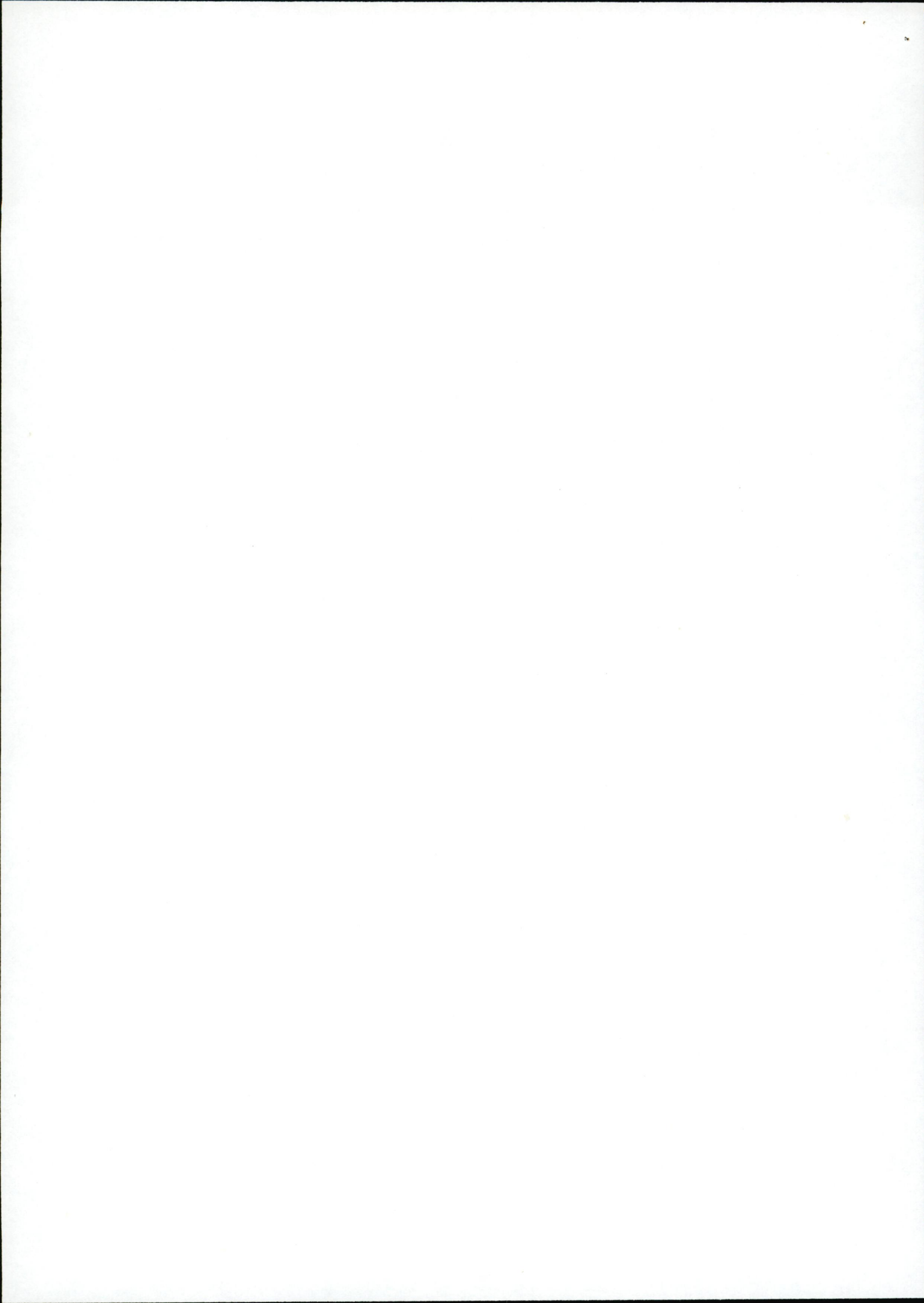
\* A CHAIR IN REHABILITATION MEDICINE HAS BEEN ESTABLISHED AT THE UNIVERSITY OF SYDNEY; AND

\* OVER \$800,000 HAS BEEN PROVIDED TO THE BRAIN INJURY ASSOCIATION TO ENABLE THEM TO SUPPORT THE FAMILIES AND CARERS OF THOSE WITH BRAIN INJURY.

A NUMBER OF CHANGES PROPOSED BY THE BILL ARE DIRECTED AT IMPROVING CLAIMS HANDLING AND THE EARLY PAYMENT OF COMPENSATION UNDER THE LEGISLATION.

I BELIEVE THAT IF INSURERS ARE ABLE TO IMPLEMENT MECHANISMS TO BETTER ASSESS AND DEAL WITH CLAIMS AT THE OUTSET THE BENEFITS FOR EVERYONE ARE REDUCED LEGAL COSTS, THE QUICKER DELIVERY OF COMPENSATION AND MOST IMPORTANTLY SATISFIED CLIENTS.

SECTIONS 43 AND 44 OF THE ACT CURRENTLY SET OUT



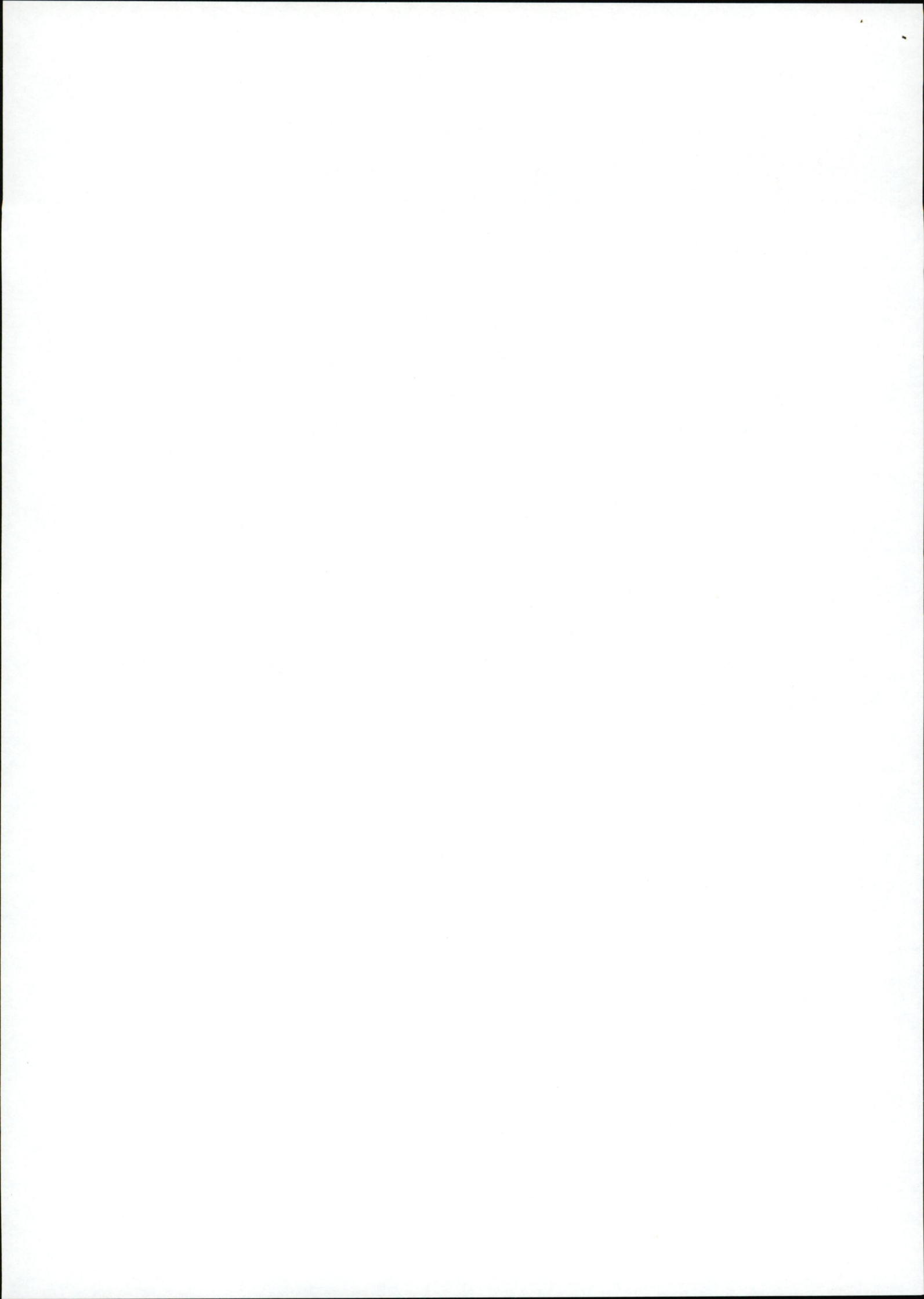
CERTAIN REQUIREMENTS REGARDING THE FORM OF THE NOTICE OF CLAIM AS WELL AS THE TIME FOR MAKING A CLAIM. THE CLAIM MUST BE MADE WITHIN SIX MONTHS AND MUST CONTAIN CERTAIN PARTICULARS.

THESE PROVISIONS HAVE BEEN AMENDED SO THAT IF A LATE CLAIM IS MADE AND NO EXPLANATION IS GIVEN, AN INSURER WILL NO LONGER HAVE THE RIGHT TO CHALLENGE THE CLAIM ON THE GROUND OF DELAY IF THE CLAIM IS NOT REJECTED, OR AN EXPLANATION IS NOT SOUGHT FROM THE CLAIMANT, WITHIN 2 MONTHS AFTER THE LATE CLAIM IS RECEIVED.

IF AN EXPLANATION IS GIVEN BY THE CLAIMANT, AN INSURER LOSES THE RIGHT TO CHALLENGE THE CLAIM ON THE GROUND OF DELAY IF THE EXPLANATION IS NOT REJECTED WITHIN 2 MONTHS AFTER IT IS RECEIVED.

AN INSURER WHO HAS NOT LOST THE RIGHT TO CHALLENGE A CLAIM ON THE GROUND OF DELAY MAY APPLY TO HAVE THE COURT PROCEEDINGS STRUCK OUT FOR THAT REASON ONLY WITHIN TWO MONTHS AFTER THE STATEMENT OF CLAIM IS SERVED.

WHERE CLAIM FORMS ARE INCOMPLETE THE PROPOSED AMENDMENTS SET A 2 MONTH TIME LIMIT ON THE RIGHT OF AN INSURER TO REJECT A CLAIM BECAUSE IT DOES NOT PROVIDE THE NECESSARY INFORMATION OR TO REJECT FURTHER INFORMATION NEEDED TO ASSESS A CLAIM BECAUSE



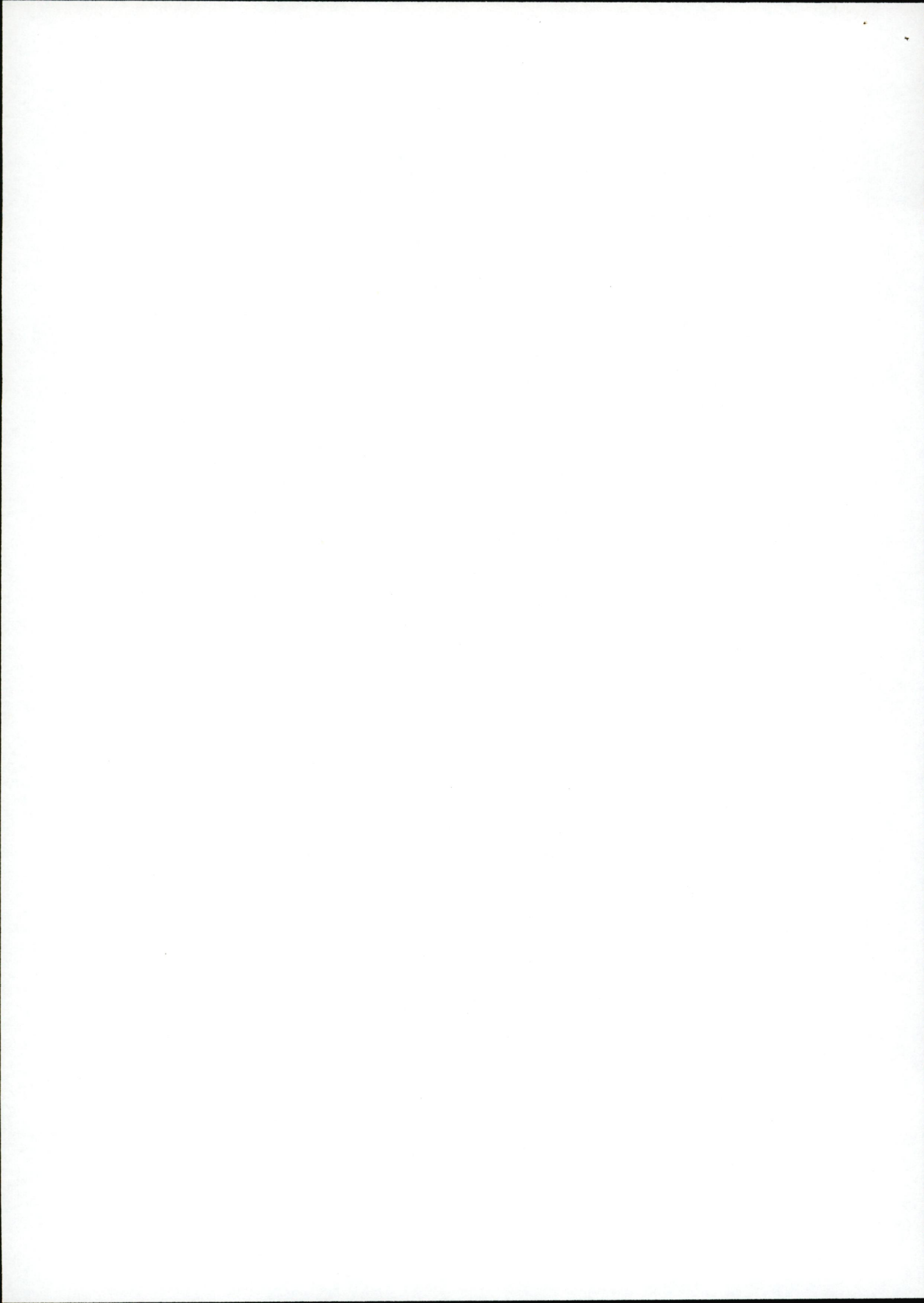
IT IS NOT GIVEN IN THE PROPER FORM.

AN INSURER WHO HAS NOT LOST THE RIGHT TO REJECT A CLAIM OR REQUEST FURTHER INFORMATION WILL ONLY HAVE TWO MONTHS TO APPLY TO HAVE COURT PROCEEDINGS STRUCK OUT IF THE CLAIM IS NOT GIVEN IN THE CORRECT FORM OR IF IT DOES NOT PROVIDE THE NECESSARY INFORMATION.

THE ACT ALSO REQUIRES A CLAIMANT TO CO-OPERATE WITH THE INSURER IN RESPECT OF THEIR CLAIM AND IMPOSES A DUTY ON THEM TO ANSWER ANY REASONABLE REQUEST MADE BY THE INSURER TO PROVIDE RELEVANT INFORMATION AND DOCUMENTS.

THE PURPOSE OF SECTION 48 OF THE ACT IS TO MAKE SURE THAT THE INSURER HAS ACCESS TO ALL INFORMATION NECESSARY TO BE ABLE TO SATISFY ITSELF OF THE VALIDITY OF THE CLAIM, ASSESS LIABILITY AT AN EARLY STAGE AND TO MAKE AN INFORMED OFFER OF SETTLEMENT. HOWEVER THERE IS SOME UNCERTAINTY AS TO HOW THE SECTION SHOULD OPERATE IN PRACTICE.

THE AMENDMENTS ARE INTENDED TO MAKE THE PURPOSE OF THE SECTION CLEARER AND TO GIVE SOME GUIDANCE AS TO WHAT CONSTITUTES A REASONABLE REQUEST FOR INFORMATION BY THE INSURERS. THE AMENDMENTS WILL INCLUDE A STATEMENT OF THE SECTION'S OBJECTIVES AND





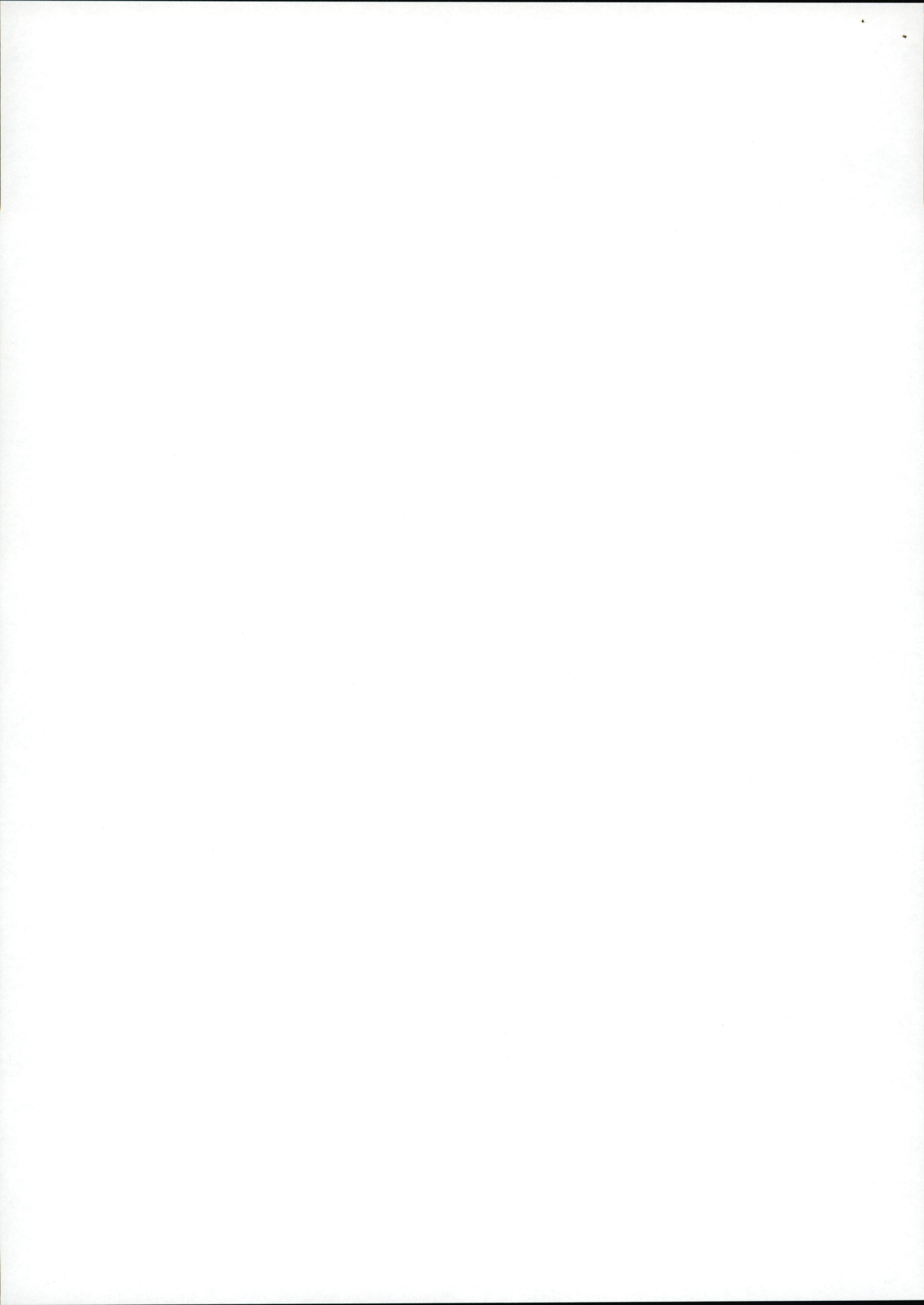
SET OUT CRITERIA AGAINST WHICH THE REASONABLENESS OF A REQUEST CAN BE ASSESSED.

BY VIRTUE OF SECTION 45 OF THE ACT INSURERS ARE REQUIRED TO MAKE INTERIM PAYMENTS PRIOR TO FINAL SETTLEMENT FOR HOSPITAL, MEDICAL, PHARMACEUTICAL AND REHABILITATION EXPENSES ONCE THEY HAVE ACCEPTED RESPONSIBILITY FOR THE CLAIM. HOWEVER THE ACT DOES NOT IMPOSE THE SAME DUTY ON INSURERS DURING THE PERIOD BETWEEN THE DATE WHEN A COURT OR ARBITRATOR HAS FOUND THE INSURER RESPONSIBLE FOR THE CLAIM AND THE DATE OF FINAL SETTLEMENT OF THE CLAIM.

THE INSURER'S WILL NOW HAVE AN OBLIGATION TO MAKE INTERIM PAYMENTS FOR MEDICAL, HOSPITAL AND REHABILITATION EXPENSES DURING THE PERIOD BETWEEN THE DETERMINATION OF LIABILITY BY THE COURT OR ARBITRATOR AND THE DATE OF FINAL SETTLEMENT OF THE CLAIM.

IN ADDITION TO THE CLAIMS HANDLING MECHANISMS OTHER ASPECTS OF THE LEGISLATION HAVE BEEN CLARIFIED AND UPDATED.

IN ORDER TO DETERMINE WHEN A THIRD PARTY POLICY COMES INTO EFFECT, OR IN OTHER WORDS THE DATE ON WHICH AN INSURER COMES ON RISK UNDER A THIRD PARTY POLICY, IT IS NECESSARY TO KNOW THE DATE ON WHICH THE

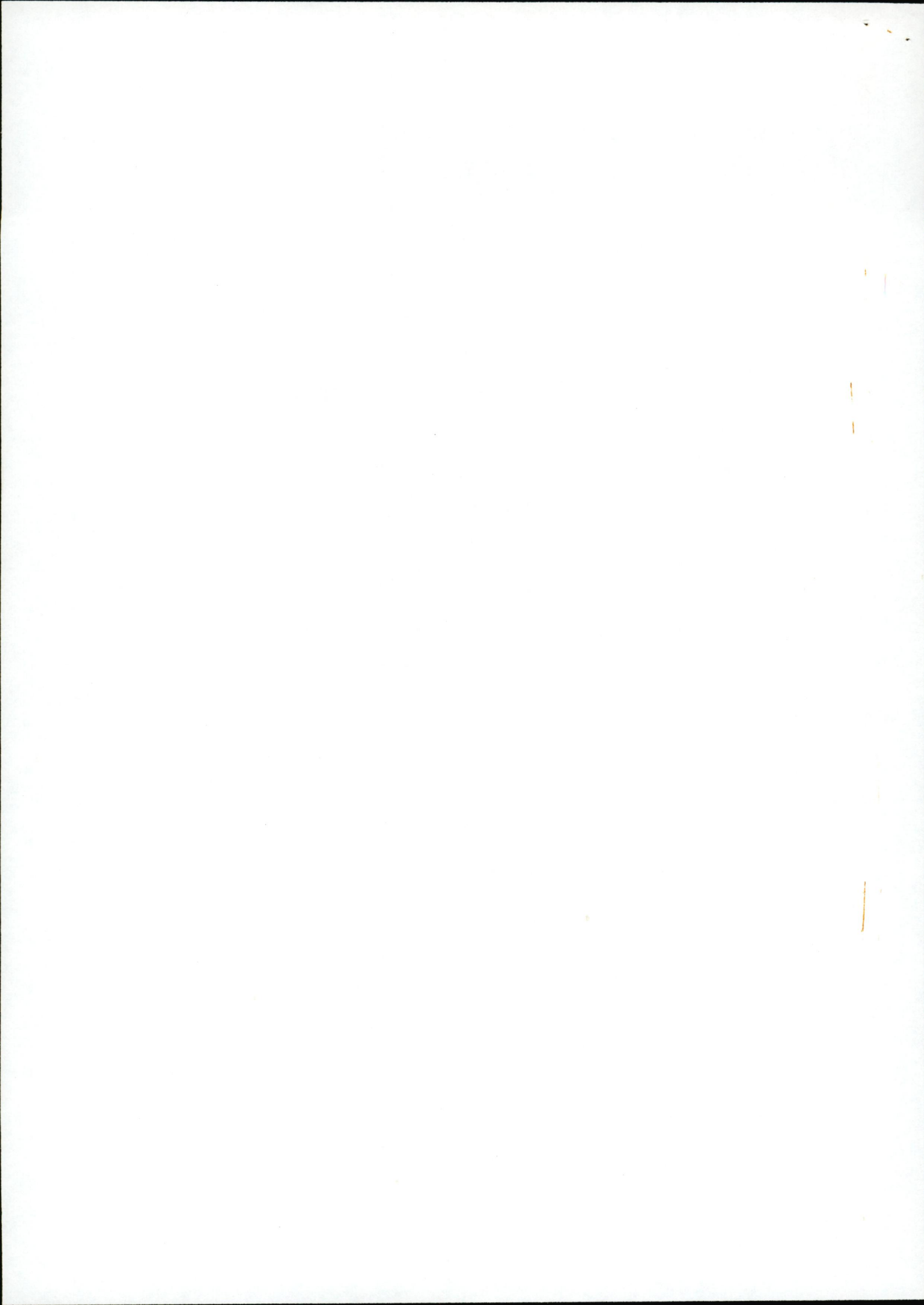


"GREEN SLIP" IS ISSUED. IN PRACTICE, IT IS NOT ALWAYS EASY TO DETERMINE THIS DATE.

THE NEW AMENDMENTS DETERMINE WHEN THIRD PARTY POLICIES ARE TO TAKE EFFECT BY REFERENCE TO THE DATE OF THE VEHICLE'S REGISTRATION. THE NEW PROVISIONS SET OUT SPECIFICALLY THE MOMENT THE INSURER COMES ON RISK DEPENDING ON DIFFERENT TIMES OF RENEWAL.

OTHER MINOR AMENDMENTS TO THE ACT PROVIDE THAT CLAIMS MAY BE MADE AGAINST THE NOMINAL DEFENDANT WHERE INJURY RESULTS FROM AN ACCIDENTS INVOLVING AN UNINSURED TRAILER. AN ACTION WILL ALSO BE ABLE TO BE BROUGHT BY JOINT TORTFEASORS AGAINST THE INSURER WHERE THE INSURED IS DEAD OR UNABLE TO BE SERVED.

I COMMEND THE BILL.



# **MOTOR ACCIDENTS (AMENDMENT) ACT 1993 No. 72**

**NEW SOUTH WALES**

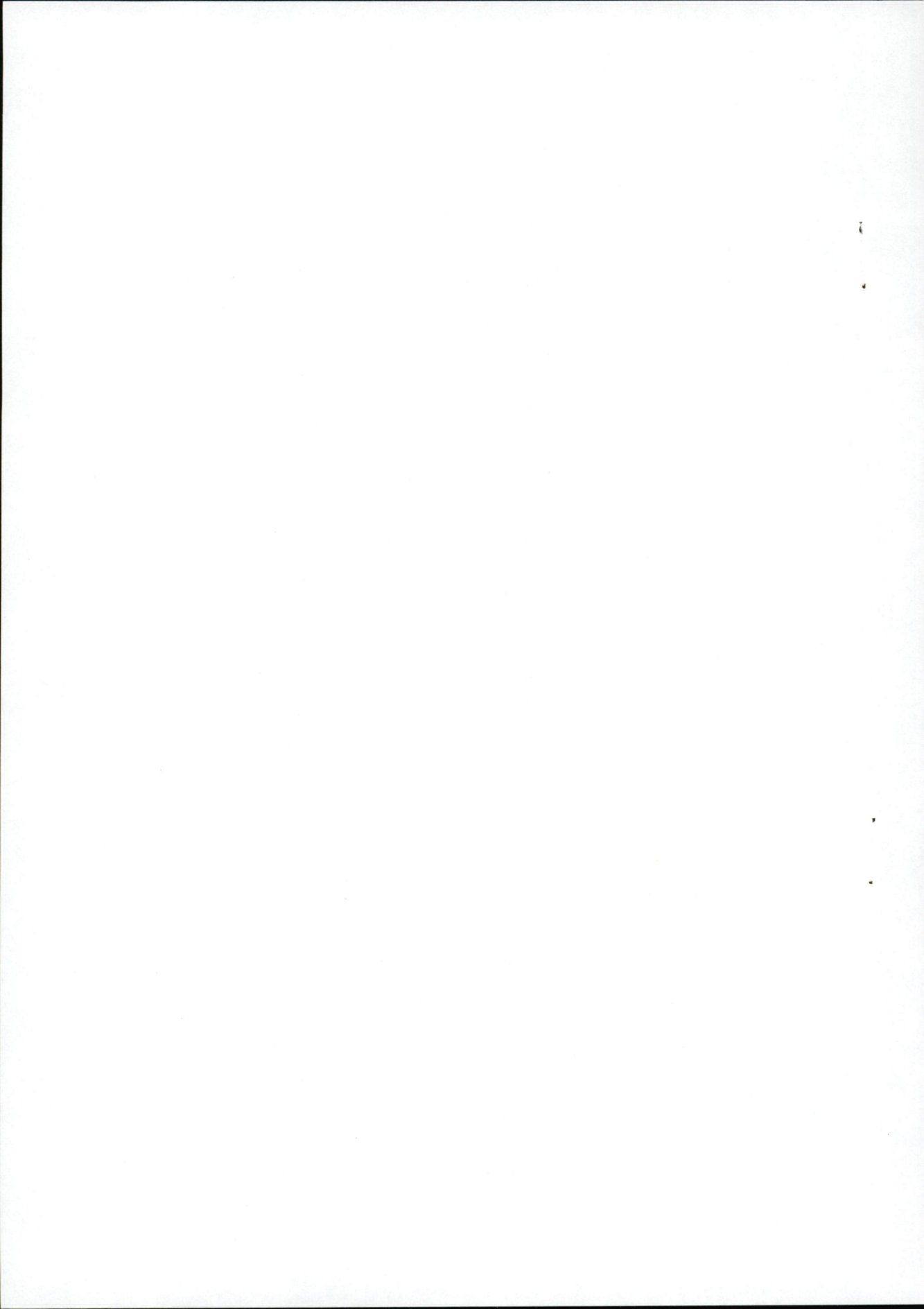


## **TABLE OF PROVISIONS**

1. Short title
2. Commencement
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4. Explanatory notes

**SCHEDULE 1—AMENDMENTS**

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# MOTOR ACCIDENTS (AMENDMENT) ACT 1993 No. 72

NEW SOUTH WALES



**Act No. 72, 1993**

An Act to amend the Motor Accidents Act 1988 with respect to the commencement and duration of third-party policies, the form and making of claims, the rights and liabilities of the Nominal Defendant and the assessment of damages; and for other purposes. [Assented to 18 November 1993]

*Motor Accidents (Amendment) Act 1993 No. 72*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Motor Accidents (Amendment) Act 1993.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Motor Accidents Act 1988 No. 102**

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

**Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 12:

Omit the section, insert instead:

**Commencement and duration of third-party policy**

12. (1) A third-party policy taken to have been issued for a motor vehicle has effect for the period for which the licensed insurer who is taken to have issued the policy is on risk in accordance with this section.

(2) In this section:

**"new insurer"** means the licensed insurer whose insurance is later in time;

**"old insurer"** means the licensed insurer whose insurance is earlier in time;

**"period of grace"** means the period of 14 days after the registration, or renewal of registration, of a motor vehicle expires;



SCHEDULE 1—AMENDMENTS—*continued*

**“period of registration”** means the period, not exceeding one year, for which the registration or renewal of registration of a motor vehicle is effected, but if, within that period, the registration or renewal of registration is cancelled or surrendered, it means the period for which the registration or renewal of registration is actually in force.

(3) The old insurer and the new insurer may be the same licensed insurer or different licensed insurers.

(4) In the case of the registration (but not the renewal of registration) of a motor vehicle, the licensed insurer is on risk for the period of registration of the motor vehicle.

(5) If registration is renewed before the previous period of registration expires, the old insurer is on risk until the previous period of registration expires and the new insurer comes on risk immediately after the previous period of registration expires.

(6) If registration is renewed during the period of grace, the old insurer is on risk until 12 midnight on the day registration is renewed and the new insurer comes on risk immediately after 12 midnight and is on risk for the balance of the period of registration of the motor vehicle effected by the renewal of registration.

(7) If registration is renewed after the period of grace expires, the new insurer comes on risk at the time the renewal of registration is effected. The motor vehicle is not an insured motor vehicle from the expiry of the previous period of registration until the time the renewal of registration is effected.

(8) There is no period of grace following the cancellation or surrender of the registration (whether registration or a renewal of registration) of a motor vehicle.

(9) A licensed insurer ceases to be on risk on the cancellation of a third-party policy under section 13, subject to section 13 (7).

(10) A licensed insurer is on risk in respect of a motor vehicle under a third-party policy relating to a motor vehicle to which a trader's plate is fixed:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) only during the period for which the policy is issued; and
  - (b) only during the period for which the trader's plate is issued; and
  - (c) only while a trader's plate is fixed to the vehicle.
- (2) Section 27 (**Claim against Nominal Defendant where vehicle not insured**):

After section 27 (4), insert:

(5) For the purposes of this section, and any regulations made for the purposes of this section, "**motor vehicle**" includes a trailer.

- (3) Section 28B:

After section 28A, insert:

**Nominal Defendant as tortfeasor**

28B. (1) The Nominal Defendant may join another person, or may be joined, for contribution or indemnity in respect of a claim or proceedings under this Act as if the Nominal Defendant were a tortfeasor.

(2) Joinder of the Nominal Defendant is required to be effected in accordance with this section.

(3) A person seeking to join the Nominal Defendant in respect of a claim or proceedings must give the Nominal Defendant notice of the person's intention to do so. The notice must include a copy of the notice of claim under section 43 given to the person.

(4) The notice must be given within 3 months after the claim is made against the person under section 43, or within 3 months after the person becomes a party to proceedings in respect of the claim, whichever occurs first.

(5) The court may extend the period for giving notice to the Nominal Defendant if the person seeking to join the Nominal Defendant gives a full and satisfactory explanation for not having given notice within the 3-month period.

(6) Within 2 months after notice is given, the person giving notice must provide the Nominal Defendant with full details of the allegations made against the Nominal

SCHEDULE 1—AMENDMENTS—*continued*

Defendant (or against the person to whom the Nominal Defendant is taken to have issued a third-party policy).

(7) An application may not be made to join the Nominal Defendant as a party to proceedings before the court after 3 years from the date on which the claim under section 43 in respect of which contribution or indemnity is sought must be made, except with the leave of the court.

(8) If the Nominal Defendant is sought to be joined because the identity of another motor vehicle is not known, joinder may not be effected unless due inquiry or search to identify the vehicle has been made. The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

(9) Except as provided by this section, nothing in this section affects any rules of court relating to the joinder of parties.

(4) Section 31 (**Recovery from owner or driver**):

Omit section 31 (3), insert instead:

(3) The Nominal Defendant is not entitled to recover any amount under this section from the owner or driver of a motor vehicle, or a trailer, which, at the relevant time, was not required to be registered or was exempt from registration or, if required to be registered, was not required to be insured under this Act.

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

Omit section 43 (2) and (3).

(6) Section 43A:

After section 43, insert:

**Late making of claims**

43A. (1) A claim may be made more than 6 months after the date determined under section 43 (in this section called “**a late claim**”) if the claimant provides a full and satisfactory explanation for the delay in making the claim. The explanation is to be provided in the first instance to the third-party insurer concerned (if there is one) or to the Nominal Defendant.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Evidence as to any delay in the onset of symptoms relating to the injury suffered by the injured person as a result of the motor accident may be given in any such explanation.

(3) This subsection applies if the person against whom the late claim is made is insured by a third-party insurer.

(a) If, within 2 months after receiving a late claim for which no explanation for delay is provided, the insurer does not reject the claim or ask the claimant to provide a full and satisfactory explanation for the delay in making the claim, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay.

(b) If, within 2 months after receiving an explanation for delay in the making of a late claim, the insurer does not reject the explanation, the insurer (and the person against whom the claim is made) lose the right to challenge the claim on the ground of delay.

(c) If court proceedings are commenced in respect of a late claim, an insurer (or the person against whom the claim is made) who has not lost the right to challenge the claim on the ground of delay may apply to have the proceedings struck out on the ground of delay only within 2 months after the statement of claim is received by the insurer.

(4) A court may strike out proceedings commenced in respect of a late claim if the court is satisfied that the claimant does not have a full and satisfactory explanation for the delay in making the claim.

(7) Section 44 (**Form of notice of claim**):

(a) After “set out” in section 44 (1) (b), insert “or be accompanied by”.

(b) After section 44 (1), insert:

(1A) A notice of claim given to an insurer may, if approved by the Authority, require the claimant to do either or both of the following:

(a) furnish a medical certificate relating to the claim signed by a medical practitioner;

*Motor Accidents (Amendment) Act 1993 No. 72*

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SCHEDULE 1—AMENDMENTS—*continued*

(b) authorise the insurer to obtain information and documents relevant to the claim from persons specified in the authorisation.

(8) Sections 44A, 44B:

After section 44, insert:

**Other approved forms**

44A. (1) The Authority may approve forms (other than the form for a notice of claim) for use by insurers for the purposes of this Part.

(2) Approved forms may include, but are not limited to, a certificate of earnings and a rehabilitation plan.

**Challenging claims for failure to comply with s. 44 or 44A**

44B. (1) If, within 2 months after receiving notice of a claim under section 43 (4), the insurer does not reject the claim for non-compliance with section 44, the insurer loses the right to challenge the claim on the ground of non-compliance with that section.

(2) If court proceedings are commenced in respect of a claim, an insurer who has not lost the right to challenge for non-compliance with section 44 may apply to have the proceedings struck out on the ground of the relevant non-compliance only within 2 months after the statement of claim is received by the insurer.

(3) A court may not strike out proceedings if the relevant non-compliance is technical and of no significance.

(4) In this section, a reference to an insurer includes, in the case of a third-party insurer, a reference to the person against whom the claim is made.

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

After “(wholly or in part)” in section 45 (2), insert “or determined (wholly or in part) against the person against whom the claim is made”.

(10) Section 48 (**Duty of claimant to co-operate with other party**):

(a) After “insurer” in section 48 (1), insert:

for the purpose of giving the person and the insurer sufficient information:

*Motor Accidents (Amendment) Act 1993 No. 72*

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) to be satisfied as to the validity of the claim and, in particular, to assess whether the claim or any part of the claim may be fraudulent; and
  - (b) to be able to make an early assessment of liability; and
  - (c) to be able to make an informed offer of settlement.
- (b) After section 48 (2), insert:
- (2A) The reasonableness of a request may be assessed having regard to criteria including the following:
    - (a) the amount of time the claimant needs to comply with the request;
    - (b) whether the information sought is cogent and relevant to a determination of liability or quantum of loss, having regard to the nature of the claim;
    - (c) the amount of information which has already been supplied to or is available to an insurer to enable liability and quantum of loss to be assessed and an offer of settlement made;
    - (d) how onerous it will be for the claimant to comply with the request;
    - (e) whether the information is privileged;
    - (f) whether the information sought is sufficiently specified;
    - (g) the time of the request and whether the claimant will be delayed in commencing proceedings by complying with the request.
- (11) **Section 52 (Time limitations on commencement of court proceedings):**
- (a) Omit section 52 (2), insert instead:
    - (2) If notice is given to the other person's third-party insurer then despite subsection (1) the claimant is entitled to commence court proceedings if any of the following occurs:
      - (a) the insurer denies all liability in respect of the claim;
      - (b) the insurer admits partial liability in respect of the claim but the claimant is dissatisfied with the extent to which liability is admitted;

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) in the case of a late claim within the meaning of section 43A, the insurer rejects the claimant's explanation for delay in making the claim.
- (b) From section 52 (3), omit "must be made in accordance with section 43", insert instead "is made".
- (12) Section 54 (**Proceedings against insurer if insured dead or unable to be served**):
- (a) After "the claimant" where firstly occurring in section 54 (1), insert "and a person claiming contribution or indemnity between joint tortfeasors".
- (b) After "the claimant" in section 54 (1) (b), insert "or the person claiming contribution or indemnity".
- (13) Section 72:
- Omit the section, insert instead:
- Maximum amount of damages for provision of certain home care services**
72. (1) Compensation, included in an award of damages, for the value of services of a domestic nature or services relating to nursing and attendance:
- (a) which have been or are to be provided by another person to the person in whose favour the award is made; and
- (b) for which the person in whose favour the award is made has not paid and is not liable to pay,
- must not exceed the amount determined in accordance with this section.
- (2) No compensation is to be awarded if the services are provided, or are to be provided:
- (a) for less than 6 hours per week; and
- (b) for less than 6 months.
- (3) If the services provided or to be provided are not less than 40 hours per week, the amount of compensation must not exceed:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for:
- (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
  - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.
- (4) If the services provided or to be provided are less than 40 hours per week, the amount of compensation must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (3) (a) or (b), as the case may be.
- (5) Unless evidence is adduced to the contrary, the court is to assume that the value of the services is the maximum amount determined under subsection (3) or (4), as the case requires.
- (6) No compensation is to be awarded if the services would have been provided to the person even if the person had not been injured by the motor accident.
- (7) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1).



*Motor Accidents (Amendment) Act 1993 No. 72*

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SCHEDULE 1—AMENDMENTS—*continued*

(14) Section 72A:

After section 72, insert:

**Respite care**

72A. An award of damages may include compensation for necessary and reasonable respite care in respect of a claimant who is seriously injured and in need of constant care over a long term.

(15) Section 79 (**Determination of non-economic loss**):

From section 79 (1), omit “is significantly impaired”, insert instead “has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months”.

**EXPLANATORY NOTE**—item (15)

Section 79 (1) presently provides:

No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person’s ability to lead a normal life is significantly impaired by the injury suffered in the accident.

As amended, section 79 (1) will provide:

No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person’s ability to lead a normal life **has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months** by the injury suffered in the accident.

The Supreme Court has held, in *Matthews v Dean* (1990) 11 MVR 455, that significant impairment must be assessed at the time of the hearing.

As originally proposed, the verbal threshold was intended to operate in the narrative sense: “the injury must significantly disrupt the personal or working life of the applicant”. The current position, taking account of case law, is that the degree of impairment is assessed at an arbitrary point of time. In view of current court delays, this could be some years after the accident. The interpretation has resulted in the exclusion of claims where the victim has suffered major trauma but has substantially recovered.

Schedule 1 (15) amends the section to introduce a period for which the impairment must exist. Damages for non-economic loss are to be available if the injured person’s ability to lead a normal life was or will be significantly impaired for a continuous period of at least 6 months. This means that if, at the time damages are assessed (either during settlement negotiations, mediation, arbitration or by a court) the injured person’s ability to lead a normal life has been significantly impaired for 6 months, or is likely to be significantly impaired for at least 6 months, the person is entitled to damages for non-economic loss, subject to the deductible.

*Motor Accidents (Amendment) Act 1993 No. 72*

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SCHEDULE 1—AMENDMENTS—*continued*

The assessment of a past period of impairment will be a matter of fact. The assessment of a future period of likely impairment will require a degree of judgment and prediction.

The amendment is intended to ensure that the only claimants who will benefit from likely significant impairment in the near future will be those for whom medical evidence indicates that the injuries would almost certainly cause the onset of significant impairment (i.e. the commencement of a period of significant impairment) in the relatively near future. An example might be a claimant with a badly broken hip, where it is virtually certain that the hip will become severely arthritic within a few years.

The intention is to prevent arguments that there may well be some degree of impairment some time in the future. If the period of impairment has not ceased at the date of assessment, there must be clear evidence that there is a real likelihood of impairment continuing in the future to produce a continuous period of impairment of at least 6 months.

The amendment is not intended to provide access to general damages by virtually every claimant who suffers injury and has the potential for long term degeneration, particularly when combined with the debilitating effects of advancing age.

(16) Schedule 4 (**Savings, transitional and other provisions**):

- (a) At the end of clause 1 (1), insert:  
the Motor Accidents (Amendment) Act 1993.
- (b) After Part 4, insert:

**Part 5—Provisions arising from the enactment of the  
Motor Accidents (Amendment) Act 1993**

**General application of amendments**

9. An amendment made by the Motor Accidents (Amendment) Act 1993 applies to:

- (a) motor accidents occurring before the commencement of the amendment as well as to motor accidents occurring after that commencement; and
- (b) claims made and proceedings brought before the commencement of the amendment that have not been finally determined before that commencement as well as to claims made and proceedings brought after that commencement,

except as provided by this Part.

**Commencement and duration of third-party policies**

10. Section 12, as substituted by the Motor Accidents (Amendment) Act 1993, does not apply to a third-party

SCHEDULE 1—AMENDMENTS—*continued*

policy that is taken to have been issued before the commencement of Schedule 1 (1) to that Act.

**Late making of claims**

11. Section 43A does not apply to a claim made before the commencement of that section.

**Challenging claims for failure to comply with s. 44 or 44A**

12. Section 44B does not apply to a claim made before the commencement of that section.

**Maximum amount of damages for provision of certain home care services**

13. Section 72, as substituted by the Motor Accidents (Amendment) Act 1993, does not apply to a motor accident occurring before the commencement of Schedule 1 (13) to that Act.

**Respite care**

14. Section 72A does not apply to a motor accident occurring before the commencement of that section.

**Determination of non-economic loss**

15. Section 79, as amended by the Motor Accidents (Amendment) Act 1993, does not apply to a motor accident occurring before the commencement of Schedule 1 (15) to that Act.

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[Minister's second reading speech made in—  
*Legislative Assembly on 19 May 1993*  
*Legislative Council on 27 October 1993*]

