

# MOTOR ACCIDENTS (AMENDMENT) ACT 1994 No. 27

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Acts

## SCHEDULE 1—AMENDMENT OF ACTS

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**MOTOR ACCIDENTS (AMENDMENT) ACT 1994 No. 27**

**NEW SOUTH WALES**



**Act No. 27, 1994**

An Act to amend the Motor Accidents Act 1988 and the Motor Vehicles (Third Party Insurance) Act 1942 with respect to the payment of interest on awards of damages. [Assented to 30 May 1994]

*Motor Accidents (Amendment) Act 1994 No. 27*

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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 1994.

**Commencement**

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

**Amendment of Acts**

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 3)

**Motor Accidents Act 1988 No. 102**

(1) Section 73:

Omit the section, insert instead:

**Payment of interest**

73. (1) **Limited statutory entitlement.** A plaintiff has only such right to interest on damages payable in relation to a motor accident as is conferred by this section.

(2) **Domestic services, nursing and attendance.** No interest is payable on damages comprising compensation under section 72. A court cannot order the payment of interest on such damages.

(3) **Non-economic loss.** No interest is payable on damages awarded under section 79. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages.** The following provisions apply to damages, other than damages to which subsection (2) or (3) applies, payable in relation to a motor accident:

SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless:
- (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer; or
  - (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer; or
  - (iii) if the defendant is insured under a third-party policy or is the Nominal Defendant, the insurer has failed to comply with its duty under section 45 (2) and (2A); or
  - (iv) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.
- (b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind.
- (c) For the purposes of this subsection, an offer of settlement must be in writing.

*Motor Accidents (Amendment) Act 1994 No. 27*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(5) **Calculation of interest.** If a court is satisfied that interest is payable under subsection (4) on damages:

- (a) the amount of interest is to be calculated for the period from when the loss to which the damages relate was first incurred until the date on which the court determines the damages; and
- (b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) **Rate of interest.** The rate of interest to be used in any such calculation is three-quarters of the rate that would otherwise be applicable under the rules of court.

(7) **Judgment debts.** Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

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

- (a) At the end of clause 1 (1), insert:  
the Motor Accidents (Amendment) Act 1994.
- (b) After Part 5, insert:

**Part 6—Provisions arising from the enactment of the  
Motor Accidents (Amendment) Act 1994**

**Payment of interest**

16. Section 73, as substituted by the Motor Accidents (Amendment) Act 1994, applies to claims for damages:

- (a) in respect of motor accidents, within the meaning of Part 6, occurring after 30 June 1987; and
- (b) that were not settled or finally determined as at the date on which that section was so substituted.

**Motor Vehicles (Third Party Insurance) Act 1942 No. 15**

Section 35D (**Payment of interest**):

- (a) In section 35D (1), after “general damages”, insert “, or damages under section 35C,”.

*Motor Accidents (Amendment) Act 1994 No. 27*

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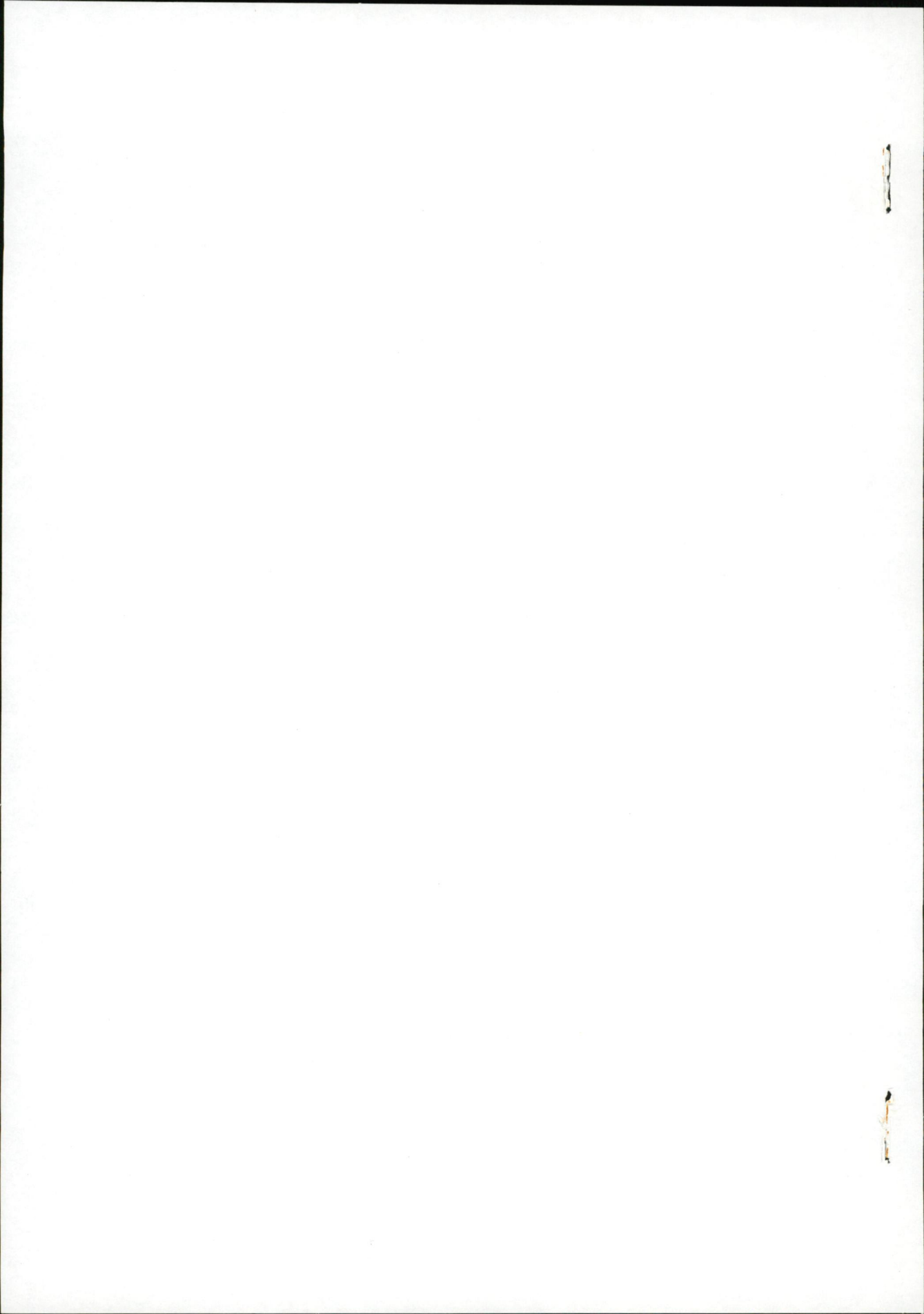
SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(b) After section 35D (2), insert:

(3) Subsection (1), as amended by the Motor Accidents (Amendment) Act 1994, applies to claims for damages arising from the death of or bodily injury to a person caused by or arising out of the use, between 1 July 1984 and 30 June 1987 (both dates inclusive), of a motor vehicle that were not settled or finally determined as at the date of commencement of the amendment made by that Act to that subsection.

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*[Minister's second reading speech made in—  
Legislative Council on 4 May 1994  
Legislative Assembly on 11 May 1994 a.m.]*





FIRST PRINT

## MOTOR ACCIDENTS (AMENDMENT) BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to specify the circumstances in which a court may or may not order the payment of interest on an award of damages under the Motor Accidents Act 1988 and the Motor Vehicles (Third Party Insurance) Act 1942.

Those Acts are amended in order to ensure that the majority decision of the New South Wales Court of Appeal in *Marsland v. Andjelic (No. 2)* given on 24 December 1993 with respect to the payment of interest is not followed in future cases.

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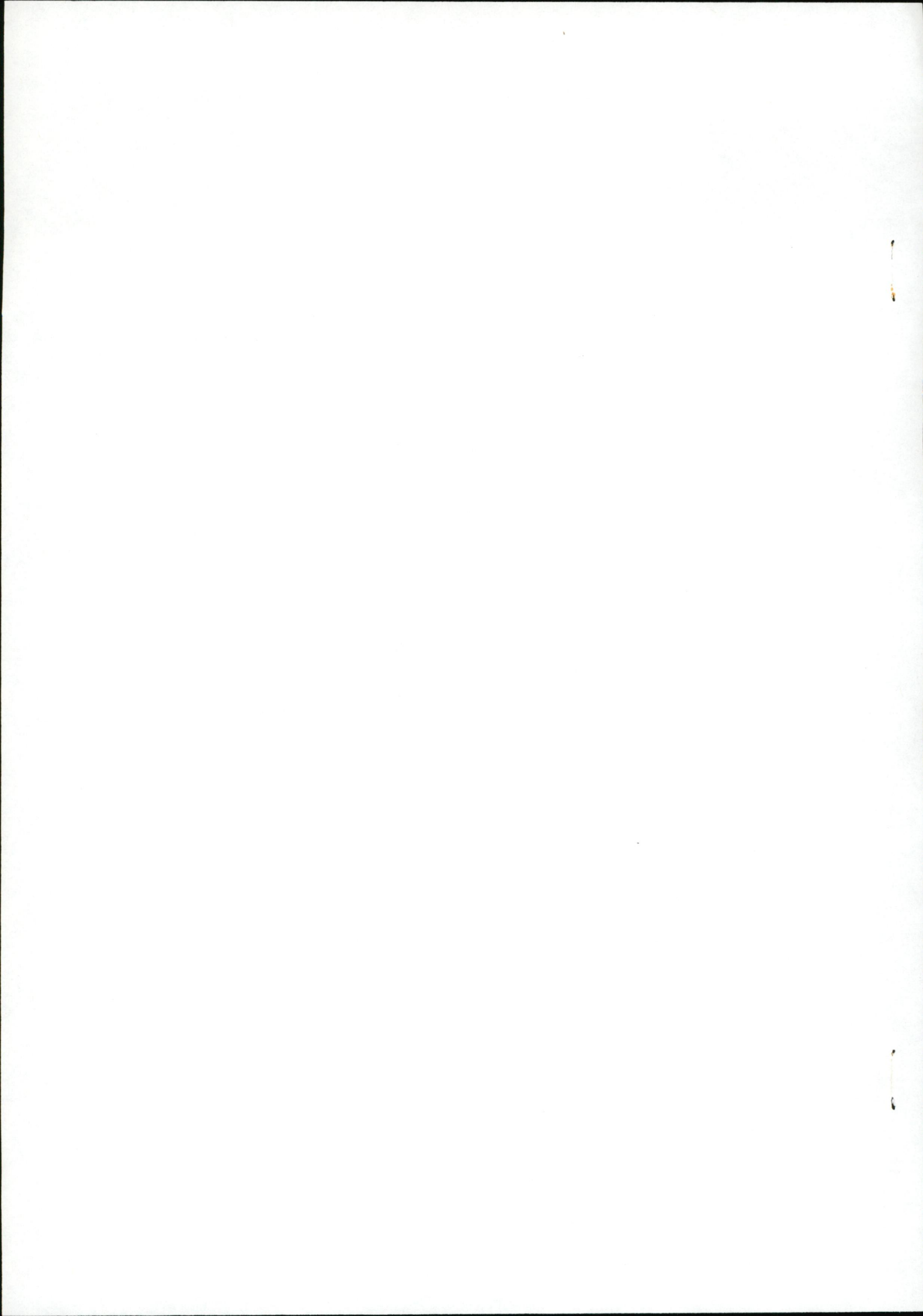
**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a proclaimed day or days.

**Clause 3** gives effect to the Schedule of amendments to the Motor Accidents Act 1988 and the Motor Vehicles (Third Party Insurance) Act 1942.

**Schedule 1** amends those Acts so as to give effect to the object of this Bill and identifies the claims for damages to which the amendments are to apply.

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FIRST PRINT

**MOTOR ACCIDENTS (AMENDMENT) BILL 1994**

NEW SOUTH WALES



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**SCHEDULE 1—AMENDMENT OF ACTS**

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**MOTOR ACCIDENTS (AMENDMENT) BILL 1994**

**NEW SOUTH WALES**



No.       , 1994

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**A BILL FOR**

An Act to amend the Motor Accidents Act 1988 and the Motor Vehicles  
(Third Party Insurance) Act 1942 with respect to the payment of interest  
on awards of damages.

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*Motor Accidents (Amendment) 1994*

The Legislature of New South Wales enacts:

**Short title**

1. This Act may be cited as the Motor Accidents (Amendment) Act 1994.

**5 Commencement**

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

**Amendment of Acts**

3. Each Act specified in Schedule 1 is amended as set out in that  
10 Schedule.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 3)

**Motor Accidents Act 1988 No. 102**

(1) Section 73:

15 Omit the section, insert instead:

**Payment of interest**

73. (1) **Limited statutory entitlement.** A plaintiff has only such right to interest on damages payable in relation to a motor accident as is conferred by this section.

20 (2) **Domestic services, nursing and attendance.** No interest is payable on damages comprising compensation under section 72. A court cannot order the payment of interest on such damages.

25 (3) **Non-economic loss.** No interest is payable on damages awarded under section 79. A court cannot order the payment of interest on such damages.

(4) **Other heads of damages.** The following provisions apply to damages, other than damages to which subsection (2) or (3) applies, payable in relation to a motor accident:

*Motor Accidents (Amendment) 1994*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

- (a) Interest is not payable (and a court cannot order the payment of interest) on such damages unless:
- (i) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind but has not made such an offer; or 5
  - (ii) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind but has not made such an offer; or 10
  - (iii) if the defendant is insured under a third-party policy or is the Nominal Defendant, the insurer has failed to comply with its duty under section 45 (2) and (2A); or 15
  - (iv) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made. 20
- (b) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind. 25
- (c) For the purposes of this subsection, an offer of settlement must be in writing. 30
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*Motor Accidents (Amendment) 1994*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(5) **Calculation of interest.** If a court is satisfied that interest is payable under subsection (4) on damages:

- 5 (a) the amount of interest is to be calculated for the period from when the loss to which the damages relate was first incurred until the date on which the court determines the damages; and
- 10 (b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) **Rate of interest.** The rate of interest to be used in any such calculation is three-quarters of the rate that would otherwise be applicable under the rules of court.

- 15 (7) **Judgment debts.** Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

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

- (a) At the end of clause 1 (1), insert:  
the Motor Accidents (Amendment) Act 1994.
- 20 (b) After Part 5, insert:

**Part 6—Provisions arising from the enactment of the  
Motor Accidents (Amendment) Act 1994**

**Payment of interest**

25 16. Section 73, as substituted by the Motor Accidents (Amendment) Act 1994, applies to claims for damages:

- (a) in respect of motor accidents, within the meaning of Part 6, occurring after 30 June 1987; and
- (b) that were not settled or finally determined as at the date on which that section was so substituted.

30 **Motor Vehicles (Third Party Insurance) Act 1942 No. 15**

**Section 35D (Payment of interest):**

- (a) In section 35D (1), after “general damages”, insert “, or damages under section 35C,”.



*Motor Accidents (Amendment) 1994*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(b) After section 35D (2), insert:

(3) Subsection (1), as amended by the Motor Accidents (Amendment) Act 1994, applies to claims for damages arising from the death of or bodily injury to a person caused by or arising out of the use, between 1 July 1984 and 30 June 1987 (both dates inclusive), of a motor vehicle that were not settled or finally determined as at the date of commencement of the amendment made by that Act to that subsection.

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