

FIRST PRINT

**MOTOR VEHICLES (THIRD PARTY INSURANCE)
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 Vehicles (Third Party Insurance) Act 1942 with respect to work-related motor vehicle accidents affected by the decision in *Nikolovsky v GIO*.

The Motor Vehicles (Third Party Insurance) Act 1942 was amended in 1984 by substituting section 14 to require common law actions for damages for personal injury from motor vehicle accidents to be brought directly against GIO (as sole insurer). Before that time, plaintiffs sued the owner or driver of the vehicle but the defence was taken over by GIO or other authorised insurer. In addition, Part 3A (ss. 35A-35D) was inserted to prescribe discount rates for calculating the amount of damages in those actions and to provide for certain other restrictions on the amount of those damages.

The Court of Appeal, in *Nikolovsky's* case recently decided that the substituted section 14 applied also to common law actions for work-related motor vehicle accidents in which the employee sued his or her employer for breach of the duty of care owed by the employer. As a result, the plaintiff was not entitled to unrestricted common law damages by suing the employer. Many actions (including pending actions before the courts) have proceeded on the basis that section 14 did not apply to those actions. In other cases proceedings have been taken against GIO in accordance with the decision in *Nikolovsky's* case.

The proposed amendments to the Act will reverse the decision in *Nikolovsky's* case (but without affecting the order of the court in that or in any other decided case) to ensure that employees injured in motor vehicle accidents during the period of 1 July 1984 to 30 June 1987 to which the Act still applies will be able to sue their employer instead of GIO only.

All pending proceedings (whether against the employer or GIO) may be continued. In the case of pending proceedings against GIO, the plaintiff is given the opportunity to proceed against the employer (instead of or in addition to GIO) despite the fact that the limitation period for bringing the action has now expired.

Motor Vehicles (Third Party Insurance) Amendment 1993

The proposed amendments also make it clear that the rules concerning dual insurance and contributions between insurers continue to apply. Accordingly, both the workers compensation insurer and the Transport Accidents Compensation Fund will (in cases where either could be liable) be obliged to contribute to the damages recovered by the plaintiff.

Following the privatisation of GIO, the GIO's role in proceedings involving the Transport Accidents Compensation Fund has been assumed by the NSW Insurance Ministerial Corporation.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 gives effect to the Schedule of amendments.

Schedule 1 contains the amendments described above.

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**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Vehicles (Third Party Insurance) Act 1942 No. 15

SCHEDULE 1—AMENDMENTS

**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Motor Vehicles (Third Party Insurance) Act 1942 with respect to work-related motor vehicle accidents affected by the decision in Nikolovsky's case.

Motor Vehicles (Third Party Insurance) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Vehicles (Third Party Insurance) Amendment Act 1993.

5 Commencement

2. This Act commences on the date of assent.

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

3. The Motor Vehicles (Third Party Insurance) Act 1942 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 14 (**Making of claims—identified motor vehicles**):

After section 14 (5), insert:

15 (6) Subsection (1) (as inserted by the Motor Vehicles (Third Party Insurance) Amendment Act 1984) does not apply, and is taken never to have applied, to a claim for damages in respect of the death of or bodily injury to an employee if:

20 (a) the death or injury arises out of or in the course of the employment of the employee; and

(b) the claim is made by or in relation to the employee and against the employer (in the capacity of employer).

25 Subsection (4) extends to a claim to which this subsection applies.

(7) Subsection (6) (and the amendment made to section 35A by the Motor Vehicles (Third Party Insurance) Amendment Act 1993):

30 (a) do not affect the order made by the Court of Appeal in *Nikolovsky v GIO and Anor* of 11 September 1992 or any other order of a court made before the commencement of subsection (6); and

Motor Vehicles (Third Party Insurance) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(b) do not prevent the continuation of any pending proceedings, namely, proceedings brought (but not finally disposed of) before the commencement of subsection (6).

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Proceedings against the employer (as referred to in subsection (6)) may be brought instead of, or in addition to, any such pending proceedings against the Government Insurance Office, despite any restriction in the Limitation Act 1969.

10

(2) Section 35A (**Application**):

From section 35A, omit “in an action:” and paragraphs (c)–(e), insert instead “in respect of a claim to which section 14 (6) applies.”

**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT ACT 1993 No. 16**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Motor Vehicles (Third Party Insurance) Act 1942 No. 15

SCHEDULE 1—AMENDMENTS

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**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT ACT 1993 No. 16**

NEW SOUTH WALES



Act No. 16, 1993

An Act to amend the Motor Vehicles (Third Party Insurance) Act 1942 with respect to work-related motor vehicle accidents affected by the decision in Nikolovsky's case. [Assented to 12 May 1993]

Motor Vehicles (Third Party Insurance) Amendment Act 1993 No. 16

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Motor Vehicles (Third Party Insurance) Amendment Act 1993.

Commencement

2. This Act commences on the date of assent.

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

3. The Motor Vehicles (Third Party Insurance) Act 1942 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

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After section 14 (5), insert:

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Motor Vehicles (Third Party Insurance) Amendment Act 1993 No. 16

SCHEDULE 1—AMENDMENTS—*continued*

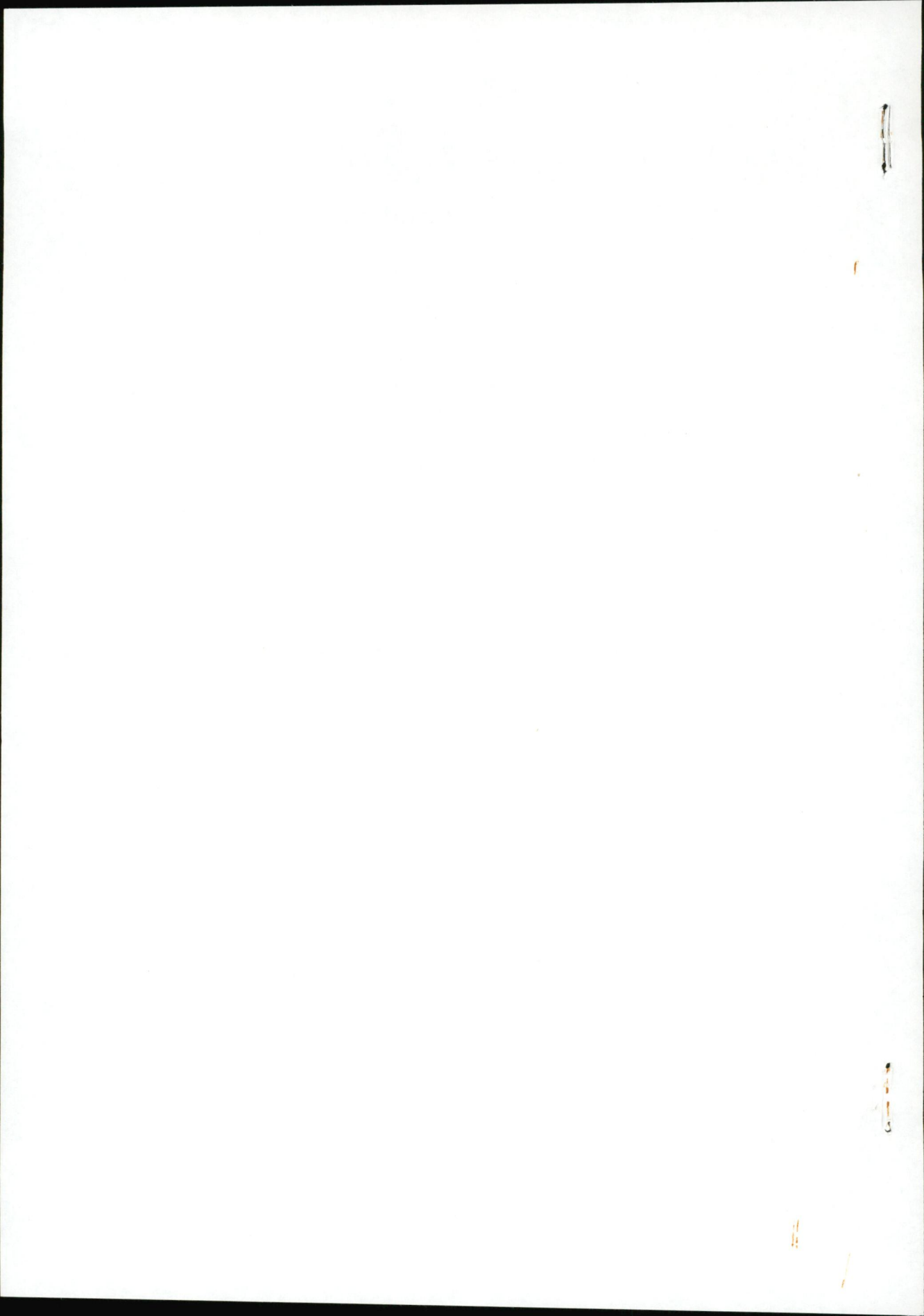
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(2) Section 35A (**Application**):

From section 35A, omit “in an action:” and paragraphs (c)–(e), insert instead “in respect of a claim to which section 14 (6) applies.”.

[*Minister's second reading speech made in—
Legislative Council on 21 April 1993
Legislative Assembly on 28 April 1993*]



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AMENDMENT BILL 1993**

NEW SOUTH WALES



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Motor Vehicles (Third Party Insurance) Amendment 1993

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AMENDMENT BILL 1993**

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No. , 1993

A BILL FOR

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Short title

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No. 15**

3. The Motor Vehicles (Third Party Insurance) Act 1942 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 14 (**Making of claims—identified motor vehicles**):

After section 14 (5), insert:

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Motor Vehicles (Third Party Insurance) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

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(2) Section 35A (**Application**):

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**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT ACT 1993 No. 16**

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**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AMENDMENT ACT 1993 No. 16**

NEW SOUTH WALES



Act No. 16, 1993

An Act to amend the Motor Vehicles (Third Party Insurance) Act 1942 with respect to work-related motor vehicle accidents affected by the decision in Nikolovsky's case. [Assented to 12 May 1993]

Motor Vehicles (Third Party Insurance) Amendment Act 1993 No. 16

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Motor Vehicles (Third Party Insurance) Amendment Act 1993 No. 16

SCHEDULE 1—AMENDMENTS—*continued*

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[*Minister's second reading speech made in—
Legislative Council on 21 April 1993
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